THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. Cv. 2016-00480

Between

Satyanan Sharma

Chandrica Sharma

Claimants

And

Ricardo Abbott

Hazelle Harry

Defendants

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on April 8, 2019

Appearances:

Mr Kelvin Ramkissoon instructed by Ms. Sonya Gyan, Attorneys at Law for the Claimants

Mr. Farid Scoon and Ms Donielle Jones, Attorneys at Law for the Defendants

JUDGEMENT

A. Introduction

1. It is said that no man is an island[i]. Each person relies to some extent on communal living in harmony with others to achieve mutual well-being, peace, happiness and development. This is particularly so as it relates to those, such as the parties to this matter, who reside as neighbours. Accordingly, when litigation commences

concerning disputes among such persons, early alternate dispute resolution ["ADR"] is encouraged.

2. That was the approach taken in this case by the initial presiding Judge, Mr. Justice Rajkumar, as he then was. It continued when the matter was re-assigned after his elevation to the Court of Appeal. However, efforts at an out of Court settlement failed.

3. A neighbourhood dispute concerning a garbage bin, which gave rise to ethnic/race based insults, verbal squabbles and violent confrontations over a six month period from August 2015, was the subject matter of the Claim and Counterclaim that has continued to Trial. Both parties made extensive use of technology in presenting their cases. They had taken photographs and made video recordings during the five separate incidents when the confrontations took place.

4. The Claimants, a father and son employed as an Accountant/ Hindu Pundit and an Attorney-at-Law respectively, filed this Claim on February 22, 2016. It seeks a declaration of entitlement to have a garbage bin owned by the First Claimant, Satyanan Sharma, installed on the western side of Williams Street Extension. The said location is in front of their own premises but across the road. It is on the curb just outside the back fence of the property now owned by the Defendants, a husband and wife employed as an Electrician and an Accounts Clerk respectively.

5. It is not in dispute that the curb is not owned by either party as it comprises land under the jurisdiction of the Tunapuna/Piarco Regional Corporation ["the corporation"]. However, the Defendants only moved to the neighbourhood in 2015 and the First Claimant says he always had his bin installed on that curb since he bought his home across the road in 1989.

6. I noted with interest that the First Defendant stated nonchalantly in his Oral Testimony that he has no knowledge as to whether the Claimants resided there before him. He said he knew no neighbours but only the person who sold him the

land. Likewise there was no indication on the part of the Claimants that their interaction with the Defendants as new neighbours had been welcoming.

7. As it relates to the confrontations with the Defendants concerning the garbage bin, the Claimants allege that they were injured due to assault and battery by Defendants. They say they also suffered damage and trespass to their property. Accordingly, they seek damages including aggravated, punitive and exemplary damages. Earlier on in the proceedings the Claimants were granted injunctive relief prohibiting the Defendants from engaging, inter alia, in further harassment or assault against them.

8. The Defendants, even before filing their own Defence also applied for and obtained the same injunctive relief. This was obtained when the Claimants gave an undertaking to then presiding Judge Rajkumar J, not to interfere with the quiet enjoyment of the Defendants' property. The parties were from then expected to have engaged in mediation. Timelines for a Defence were stayed.

9. It was not until November 2, 2016 that a Defence was filed by the Defendants with a Counterclaim. The Defence included extensive pleadings as to the conduct of the Claimants that would have caused the Defendants to react with admitted abusive language and missile throwing. The specific issue of self–defence, which would have exculpated them from liability for assault, is not expressly raised by them in their pleadings. They did specifically refer to provocation, which provides no defence, as the motivation for their actions.

10. The absence of the express reference to Self-Defence as the Defence to the alleged torts committed by the Defendants does not of itself mean that such a Defence has not been made out. As expressed by Boodoosingh J in **Wayne Dillon v Trinity Housing Company Limited CV2010-05075** at paragraph 13, "Pleadings must be looked at with common sense and in the context of the claim as a whole." However, in the narrative set out in the Defendants pleadings, there is no indication of the motivation of their actions being the fear of imminent harm to

either of them or their property. Instead, the apparent rationale was retaliation in anger for insults, harassment and prior attacks by the Claimants. In closing submissions however, counsel for the Defendants has argued that their actions were in self-defence.

11. The Defendants also counterclaimed seeking damages for alleged injuries they sustained due to assault and battery by the Claimants during confrontations concerning the garbage bin.

12. Additionally, they allege in the Counterclaim that the Claimants were placing garbage against their fence in the vicinity of the spot where the First Claimant seeks to have the garbage bin installed. They seek damages in the sum of $35,000 to compensate for hiring transport to remove the said garbage, which they say they undertook so as to avoid prosecution by the Corporation for littering violations.

13. The pleadings, interim applications, written and oral evidence presented in these proceedings revealed a disheartening degree of miscommunication, cultural intolerance and lack of empathy on both sides. The First Claimant and the First Defendant in particular engaged in race-based, obscene, insulting language against each other

14. At one stage the First Claimant stood in his garbage bin attempting to prevent its removal by the Defendants' agents. It was an act of desperation on his part to protect himself against perceived violation of long held property rights, based on ownership of the bin and having had it in place for decades. However, there was uproarious laughter by the Defendants at his expense when an attempt at empathy could have assisted in de-escalating tension between the parties.

15. On the part of the First Claimant, it is clear that in one instance where he brandished a cutlass over the fence of the Defendants, while shouting at them, he was in turn fuelling unhealthy relations between the neighbours. These actions of

cruel laughter and cutlass waving, though symptomatic of the underlying issues that caused this dispute to fester, bear no relation to the relief sought. As put in colloquial terms by the Second Claimant under cross-examination, "this is not a cuss case".

16. The broader issues of intolerance and lack of civility as neighbours would best have been addressed comprehensively with the facilitation of a mediator. This option is still open to the parties to engender better relations as they continue to co-exist as neighbours. To facilitate this, copies of the Judgement will be forwarded to relevant authorities.
17. To the extent that further harassment or other harmful behaviour is anticipated the parties have been granted the injunctive relief sought in the Claim on an interim basis. It is clearly in their interest that the injunctions remain in place and this will be included as part of the final order.

18. In determining the remaining aspects of the Claim only facts relevant to the declaratory relief sought and the alleged injuries, damage to property sustained and expenses incurred are relevant to be considered.

B. **Issues**

19. The main issues to be determined were set out in the parties Statement of Agreed Issues filed on July 10, 2017. Having already considered the need for continued injunctive relief the issues remaining are as follows:

    i. Whether the First Claimant is lawfully entitled to have his garbage bin installed on the western side of Williams Street Extension?

    ii. Whether the Defendants are liable to compensate the Claimants in damages for replacement on three occasions of the garbage bin?

    iii. Whether the Defendants are entitled to be compensated in damages for the cost of removing garbage leaning on their fence?

iv. Re the ***First Incident*** - Whether the Defendants, their servants and/or agents on or about August 2013 drove a truck on to First Claimant's bridge, causing damage to the said bridge and whether the Defendants are liable to pay to the First Claimant damages in the sum of $2,500.00 representing the cost of repairing the said bridge?

v. Re the ***Second Incident*** - Whether on September 24 2015, the Claimants deposited litter outside the fence or Defendants' property and whether prior thereto the Claimants their servant and or agents on diverse occasions deposited litter on the outside of the Defendants' fence causing the Defendants to incur financial expenses of $35,000.00?

vi. Re the ***Third Incident*** - Whether the First Claimant was assaulted by the First Defendant on the December 11, 2015 thereby causing personal injury to him and damage to his property and whether as a result the First Defendant is liable to pay damages, including the sums listed at paragraph 41 of the Statement of Case as payable for replacement for one (1) cordless phone, repairs to the front gate, and some "galvanized" sheets on the roof?

vii. Re the ***Fourth Incident*** - Whether the Defendants or either of them on February 13, 2016 assaulted the First Claimant and or threw stones at the First Claimant's vehicle thereby causing damages to the First Claimant's vehicle and the gate to his premises?

viii. Re the ***Fifth Incident*** - Whether the Defendants or either of them on February 14, 2016 threw concrete rubble on the First Claimant's tulsi plants, on his bridge and through the front gate of his premises and whether the Defendants as a result of their actions are liable to pay damages to the Claimants for property repairs including $6,800.00 to repair vehicles TCW 6366 and PDG 4054 and other particularized amounts for security light, gate and decorative repairs? Whether the Defendants or either of them by their actions on 14 Feb 2016 caused personal injuries to the Claimants and are liable to pay damages

for the personal injuries suffered by the Claimants and their respective loss of earnings? Whether on 14 Feb 2016, the Claimants assaulted the Defendants causing personal injury to the Defendants?

ix. Finally, in the event that liability on the part of any of the four parties for injuries to another party is established, the assessment of the quantum of damages to be awarded is an issue to be determined.

C. **Pleadings and Evidence on The Five Incidents in Chronology**

Prelude to the five Incidents

20. The First Claimant is one of the owners of the property where he has maintained residence with his family, including the Second Claimant, since 1989 at No 13 Williams Street Extension, Waterloo Road, Arouca. He says that on moving there in 1989 he installed a garbage bin not on his side of the road but on the western side. The bin was installed on the curb behind the property at Lot #7 Williams Street Extension. That location is opposite to, or in my view can also be described as in front of but across the road from, the First Claimant's home

21. At that time the location was to the rear of the said Lot #7 since there was no entry way on that side. The Lot #7 property was on a corner and had entry ways on two other sides. The person who previously occupied Lot #7, who the Claimants say was one Olu Maharajh, accessed it from Waterloo Road and not from Williams Street Extension. He said that this was the case for all except one occupant of the western side of Williams Street Extension. There was only a chain-link and galvanized fence to the back of Lot #7 outside of which the bin was placed.

22. Although at some stages of these proceedings the Defendants cast doubt as to whether the garbage bin had always been in place on that spot, its existence there since 1989 has not been included by the parties as an issue in dispute. The Defendants must be commended for this as one of their own photographs, first attached as "RA3"to an Affidavit dated March 7, 2016 of the First Defendant in

support of his application for an injunction and later attached as "RA3" to his Witness Statement, clearly shows a rather old, rusty looking bin in place, covered with bush cuttings leaning against the said back fence. The picture, according to the Defendants, relates to sometime between December 2011 and May 2015; long before the five incidents complained of herein took place.

23. In August 2011 the Defendants became the owners of the said #7 Williams Street Extension property located in front of the Claimants' home. They did not move in immediately but they "occupied" it by demolishing old structures, clearing debris and cutting grass. According to the Defendants, they ensured that they cleared the premises of debris and grass. They say they did so because they had already received a notice of complaint from the Corporation about overgrown "bushes in the yard". The said Notice is mentioned at paragraph 4 of the Defence. The Defendants' evidence in chief confirms that the complaint they received was about bushes **in the yard**.

24. The Defendants say that in December 2011 they observed tree cuttings and garbage bags outside the yard leaning against the fence to the rear of their property. They say they did not want to breach the Corporation's Notice so they paid $1500 to move it. They did not know who put it there and they say the placement of garbage there recurred regularly from 2011 to 2015. They claim to have made repeated reports to the Corporation about this. However, no written complaint referring to that period has been entered into evidence.

25. The Defendants say that on one of the visits to the Corporation the First Defendant was given a copy of the Corporation's Notices concerning the disposal of garbage. He laminated them and hung them on his fence. The notices are directed to residents in general of Tunapuna/Piarco and state that rubbish to be collected by the Corporation must be secured in a receptacle "in front of your premises." Placing it any other place is considered littering and such action can lead to prosecution.

26. The laminated notices were, according to the Defendants, removed. On later visits to their property they saw rubbish piled even higher by the fence. They say that in order to avoid prosecution they paid one Curtis Thomas for many trips to remove the rubbish thereby incurring expenses of $35,000.00.

27. The photographs referred to above, attached as "RA3" in the First Defendant's Witness Statement, were produced to prove the placement of garbage i.e. bush cuttings by the fence. Ironically, these photographs also prove that the Claimants' garbage bin was in place on the curb behind the back fence of the Defendant's property before they eventually moved in. It can be seen in the midst of the bush cuttings.

Incident # 1

28. It is not in dispute that a few years after clearing the property they owned, the Defendants commenced the building of a home. The Claimants say that in August 2013 the Defendants temporarily removed part of the old back fence to allow a truck to deliver blocks.

29. That truck drove onto the Claimants' bridge, according to the Claimants, and damaged the tiles on the bridge. The Defendants, according to the Claimants, had at that time denied that such damage was done and when asked refused to repair it. However, the pleaded Defence regarding this incident is that it never took place.

30. The Claimants presented photographic evidence of the damage to the tiles on their bridge.

Incident #2

31. The Defendants claim they first met the Claimants when on September 24, 2015 they saw them stacking garbage by their fence. They claim there was no garbage bin there then as it was only installed the next day September 25. However, as

aforementioned, the Defendants' own photographs show that a garbage bin was there some months or years before in the midst of piles of bush cuttings.

32. The First Defendant says that when he saw the placement of garbage on September 24 he protested against such actions by the Claimants. He approached them and told them that he pays for the removal of rubbish. Thereafter, he says the First Claimant brandished a cutlass towards him.

33. Photographs and videos of these actions by the First Claimant have been put into evidence by the Defendants. They can be seen at "RA6" on a CD at "L" to the Defence/Counterclaim. There can be no doubt that the First Claimant indeed waved his cutlass at the First Defendant. However, this was done with the chain-link fence between them. The Defendants were not within reach and no-one was injured.

34. The incident was therefore relevant mainly to the Counterclaim for injunctive relief against threatening behaviour by the Claimants, which has been granted and will be continued. Having viewed the video played during the Trial, I have found relevance also in the behaviour of the parties which provides background information against which I assessed the credibility of their assertions that they were never confrontational in the incidents to follow.

35. In particular, the video shows both the First Claimant and the First Defendant acting in a manner that is confrontational. The Second Defendant at that time plays a peace maker role begging her husband, the First Defendant not to engage in retaliation since they have everything recorded. The Second Claimant, likewise, appears to be seeking to diffuse the confrontation.

Incident #3

36. Several occurrences are alleged to have taken place over a two day period from December 10 to 11, 2015. The First Claimant says that on December 10, 2015

three men alighted from a truck, dug out his garbage bin and threw it on his bridge. He says he made inquiries of the Corporation and then reinstalled his bin in the same location where it had been.

37. The Defendants at paragraph 6 of their Defence, deny knowledge of this removal. They say they were subsequently told the Corporation removed it when they visited the area to investigate an application made by the Defendants to have a new access driveway built on Williams Street Extension. The Defendants confirm however that on the next day, December 11, the bin was back in place.

38. It was on December 11, 2015 that the Claimants say the First Defendant removed the bin once more, with the help of his workers, and threw it in the road. The First Claimant asked him why and says he was cursed and threatened. He then telephoned the police. While waiting and talking to the police on a cordless phone as he stood on the bridge at the entrance of his home, the First Claimant says he was assaulted and injured by the First Defendant.

39. The First Defendant is said, by the First Claimant in his pleadings, to have alighted from a truck with steel in hand, knocked away the First Claimant's phone, returned with a cutlass and a sharp instrument, knocked a piece of "soffit" from the First Claimant's hands and slashed his neck and cheek.

40. The First Defendant's pleaded version of events differs. He denies removing the garbage bin and says that the First Claimant confronted him when he was in a truck approaching his Williams Street Extension back fence to offload building materials. At that point, according to the First Defendant, he was blocked by the First Claimant who was also hurling racist and obscene remarks at him.

41. The First Defendant pleads that he then came out of the truck and was struck by two stones. He ran up to the First Claimant and there was a confrontation provoked by the first Claimant. The First Defendant says he walked away and the

First Claimant called him and then started attacking him with a piece of galvanize/soffit

42. He admits that he then ran to his truck and took up a piece of steel which he waived at the First Claimant warning him to desist from threatening him. The First Defendant admits that the First Claimant was then at his own gate but says that he was using obscene language. He says he then warned him again. That was the end of the incident from the First Defendant's perspective. However, he says he called the police and it was when the police came that the First Claimant came out of his yard with an abrasion on his face.

43. The First Defendant's account is corroborated to an extent by the testimony of his wife, the Second Defendant. However, the strongest evidence of what took place is in the Video entered into evidence by the Claimants. It is entitled "Assault on Claimant" and is included in the CD at Trial Bundle #3. My observations while watching this video, as recorded at pages 57 to 60 and 114 to 115 of the transcript, were as follows:

> "Ms. Jones: This is the video.
>
> Ct: Can you run it from there please? [Video playing] I am seeing a gentleman standing next to some plants. I see two pillars it looks like a gate. That gentleman appears to me to be Mr. Satyanan Sharma in awhite shirt with black pants. I think they are next to the plants. I also see a vehicle. I am not sure what type it is but it's dark in colour in front of him and behind that I see a truck an orange open back truck so that is what I see so far. Can we start the video please? Now I see the truck moving. I now see a gentleman emerging from the truck. I see Mr. Sharma has his hands in his ear. I don't see what is in his hand but I see a watch on his wrist and I can see his hand by his head. I see a gentleman came out of the vehicle; he has a white shirt on, out of the orange truck. Mr. Sharma moved forward he is near to the dark vehicle now. The other gentleman is coming closer to him. in a white shirt.

That gentleman looks like the 1st Defendant. I am now seeing Mr. Sharma around near the front of the vehicle but the gentleman in the white shirt is still following around. I now see Mr. Sharma has come around, he now has a piece of something in his hand and it was knocked out of his hand by the 2nd Defendant who has a long sharp instrument in his right hand. I see someone less now in a brown outfit that could be the 2nd Defendant I am not sure, who just walked between the orange truck and dark coloured van. ……..

Yes so I covered that, the gentleman coming out of the vehicle, both hands clenched, his arms quickly raised towards Mr. Sharma's head. I think I believe it was the right arm. I saw something fly out his hand there. I now see Mr. Sharma move back. He is walking around that dark coloured van but the 1st Defendant is following all around. Mr. Sharma has picked up a flat object it could be a metallic object, it's not square its about 1 ft. in area all around but that object was knocked out of Mr. Sharma's hand. The positioning of the object that was knocked off was in the format of a shield. That's my observation that that object was flat, it was about a ft. in area and it was being held in front of Mr. Sharma. Also I am also seeing where Mr. Sharma was heading towards that area as identified as looking like a gate. ……..

Yes I observed an object in both hands of the 1st Defendant. Also I am reiterating that my observation that Mr. Sharma after picking up the flat object after having walked all around the vehicle picked up the flat object. The positioning of the object I saw was as though it was a shield, perhaps we can go around again.

Ms. Jones: No my lady I accept that and my lady in the first instance the Defendant number one had nothing in his arm I think that needs to be… perhaps if we play the video again and we pause it I will show you from the beginning.

Ct: That's not the beginning of the video.

Ms. Jones: I would just like the replay and if the court could take notice that's all from the beginning when the 1st Defendant approach.

Ct: When his hands raised something flew, I can't see where it flew from but I did observe that the 1st Defendant's hands were closed. I cannot say for sure whether or not something was in his hand but I see very clearly that when he raised his hand up something went flying.

Ms. Jones: My lady just now I would like when he reaches to the beginning of the vehicle look at his hand and the Defendants hand is no longer clear. He is touching the vehicle with one hand and moving. If the person who is operating the video stops it when the Defendant hand reaches the front of the Hilux. ……..

Ct: Yes I did see both hands appear to be empty at that stage when he moved a bit more quickly. Mr. Sharma had picked up that shield shaped object and he is no longer pursuing Mr. Sharma around the vehicle. Instead he has reversed and he is going back around the vehicle in the direction of the red truck. So we proceed. I now see the 1st Defendant reach the red truck and he put his arm over the back of the truck and his arms came back out of the truck, but at this stage he has objects in both hands, that's my observation.

I am now seeing the 2nd Defendant emerging from somewhere around behind the truck, so those are my observations. …….

[Mr. Ramkissoon cross-examining Second Defendant] And your husband came on this bridge, you see your husband on this bridge?

A: Ah ah

Q: You see he hit him. He has a sharp object here and I want you…….

Mr. Ramkissoon: Ma'am it's really important that you see this

Ct: Yes so this is what I described before.

Q: You see other objects going towards his face do you accept you see that Ms. Harry?

A: I see he raised his hand yes.

Q: He raised his left hand and the object going towards Mr. Sharma's face.

A: In what direction sir?

Q: There is a first object in this hand and there is a longer object in the other hand. He has struck him towards his face with the object, do you see that?

A: I am not seeing that clearly.

Ct: Just for the record again for the record again because it's a video and I have to record what I saw. I did see that hand moved up towards the face. I can see the object in the hand it is clearly visible in the video."

44. As is clear from the foregoing extract, my impression was that beyond a doubt the First Defendant was the aggressor in the confrontation that unfolded at that time on December 11th, 2015. It ended with the First Claimant being slashed in the face and neck on his bridge. Note is taken of the seriousness of this incident and the possibility that a slash to the face/neck could, with more force applied, have resulted in the death of the First Claimant.

45. On the video evidence before the Court, this aggressive, menacing conduct on the part of the First Defendant was not precipitated by any act of physical aggression from the Claimants. There was no video in evidence as to either the alleged blocking of the First Defendant by the First Claimant when he drove up in his truck or any stone thrown by the First Claimant at that time. Counsel for the Defendants cross-examined the First Claimant extensively to try to prove that such an occurrence took place before the events viewed in Court. This was to no avail as the First Claimant denied it.

46. Logically as well, since the video viewed in court commenced with the First Defendant emerging from the truck, it was clear from my observation that the First Claimant was neither blocking him nor throwing stones. I agree with the submission of Counsel for the Claimants that the video "*shows that the First Defendant was not parked offloading material but instead drove in to Williams Street Ext. It shows he alighted his vehicle and he was the one who menacingly approached Mr. S. Sharma who was standing on his bridge apparently on his phone. It does not show any stones being pelted by Mr. Sharma nor does it show him coming out of his property and standing in front the Defendant's truck. The video clearly corroborates the Claimant's version of the encounter…… Additionally, Mr. S. Sharma attempted to go around the vehicle on the roadway to avoid the attack. It was only then that he picked up the shield of soffit …….. to avoid the consequences but was out manoeuvred and overpowered by the first Defendant……..*"

47. The contention of the Defendants that the First Claimant slashed his own cheek and neck when he went into his house is not credible. In all the circumstances, the account given by the First Claimant as to how he sustained the injury that day is the more credible on a balance of probabilities.

48. The alleged incident of confrontation on December 11, 2015 continued, according to the Claimants, when later on in the day the First Defendant threw stones at the First Claimant injuring his back and damaging his premises. He called the police and he says they warned the First Defendant not to remove the garbage bin. Counsel for the Claimant underscores in his submissions that "*when the police arrived more than 45 minutes later and as the vehicle moved along the street to turn in the dead end, within close proximity of officers of the law, the first Defendant began to hurl missiles at the first claimant and his premises……".* This part of the missile throwing was viewed in Court in a video entered into evidence by the Claimants.

49. The Defendants say that after the police left the First Claimant approached their fence using abusive language. This was videotaped and put into evidence as Video #3 and #4 on the Defendants' CD attached as "L" to the Defence and Counterclaim. There was no pleading as to any injury sustained at that time by the Defendants. It is unclear therefore why at paragraph 10(c) of the Defence it is pleaded that the police came and gave the Defendants forms to go to the Arouca Health Facility to seek attention.

50. The Claimants have pleaded that they lost 10 days of earnings due to Incident #3 and the incidents that followed. They claim they were forced to stay away from conducting professional duties based on having been called away to attend to the Defendants actions and because they were injured.

Incident #4

51. The Defendants reported more garbage on their fence to the Corporation on February 10, 2016. They had, by letter dated January 19, 2016 addressed to the Second Defendant, been granted permission to break the slipper wall of a drain by the fence in the back of their property and build a new access driveway. From thenceforth there would be rear entry access for vehicles to drive into what was previously the fenced off rear of the property. It would be a third entry point to the Defendants' yard. The location where the Defendants decided to build the new driveway was exactly at the point on the curb where the Claimants' garbage bin stood.

52. On February 13, 2016, at 8 in the morning, the First Defendant told his workers to remove the Claimants' garbage bin. It was then that the First Claimant accompanied by his son the Second Claimant, attired in vests and shorts, protested by standing next to the garbage bin while the Defendants' workers broke the slipper drain.

53. A few minutes later Special Reserve Police, employed privately by the Defendants to perform extra duties, came on the scene and gave the First Claimant a copy of the Second Defendant's letter from the Corporation permitting breaking of the slipper drain and building of a driveway. The Claimants say these officers told them they had instructions to remove the garbage bin.

54. Observing that the letter made no mention of removal of the bin, the First Claimant remained in place and in fact stood in the bin. The Defendants laughed while filming the event. By 10am six task force police arrived and ordered the first Claimant to move. They had been contacted by the other officers hired by the Defendants. They removed the bin. All this was captured on video tape by the Defendants and entered into evidence. The videos are numbered 1, 2, 6 and 7 on CD at "L" to the Defence and Counterclaim.

55. The hostilities continued as the day went on. The First Claimant says that around 1.30pm he was assaulted by the Defendants who threw stones at him. The stone-throwing damaged his gate and the police were called.

56. The Defendants allege that it was the Claimants who initiated this part of the confrontation by throwing stones on the wet concrete of the new driveway. They say this was videotaped and they made a police report. There is no claim herein for damage to the Defendants' driveway.

Incident #5

57. There were further violent and destructive actions involving these litigants on February 14, 2016. The Claimants say that the Defendants threw rubble on their bridge and on Tulsi Plants the First Claimant had planted for religious purposes. These plants were on the property next door to the rear of the Defendants' property. The Claimants say they asked the First Defendant why this was done and obscene language, lewd gestures towards a female relative of the Claimants and threats ensued.

58. Later on, concrete rubble was thrown at the Claimants and their premises injuring them and damaging three vehicles, the gate and the security lights. The 2nd Claimant was struck on his right thigh and lower back and the First Claimant was struck on his left ankle, back of his head and his back.

59. According to the Claimants, the Second Defendant, armed with a cutlass, pulled open the Claimants' pedestrian gate and threw in stones and concrete rubble. Images of this incident were captured by the Claimants' security camera and entered into evidence labelled #12 "Assault on claimants' property" and #21 "Defendants pelt after police arrive" in Trial Bundle #3.

60. The cross-examination of the Second Defendant while the video was being played, records her confirmation that both Defendants are seen in the video scaling their rear fence [See Transcript page 112 to 113]. My observation was of the two Defendants armed with rubble, repeatedly picking up more, pelting incessantly, while running back and forth towards the Claimants' home.

61. The Second Defendant, while denying that her whole body went into the Claimants' home, does not deny that they opened the gate as alleged. On my viewing of the video, I could see objects flying from the Defendants' hands into the Claimants' property before the gate was opened. Thereafter, it appeared that the Second Defendant, who opened the gate, was still making throwing movements to the inside of the property

62. The Defendants' version of the later part of the fifth Incident is that it all started after they returned from making a report to the Police about rubble placed on their wet driveway the day before. They returned with a welder, Mr. Martin Baptiste, who came to install a gate for the driveway. The Defendants say that while they were holding the gate the Second Defendant screamed and held her left hand. The First Defendant blocked a blow from a piece of iron in the First Claimant's hand and a stone from the Second Claimant. They say they were both injured and list their injuries at paragraph 18 of the Defence and Counterclaim.

63. The Defendants say it was because of these events that they started throwing stones. However, they admit that after they were hit by the Claimants the Claimants ran quickly back home and locked themselves in behind their burglar bars. Accordingly, it is clear from their own account that while they may have been provoked they were in no way protecting their property when they threw rubble at the Claimants' home. They were simply retaliating in anger.

64. The Defendants in fact admit that they threw stones at the Claimants' home but they deny any damage was caused. This is so because they say the stones could not pass through the burglar proof. However, on viewing the video I could see the stones passing through the gate. Additionally, the Claimants presented evidence by way of photographs of the damage caused and un-contradicted documentary estimates for repairs were entered into evidence under cover of Hearsay Notices.

65. The Defendants' account of having been hit is partially corroborated by their witness Mr Baptiste. He presented as a rather reluctant witness. Though he was hired by the Defendants to work on their new gate that day, he had no interest in the instant matter. He impressed me as a witness of truth. There was no written evidence filed on his behalf as the Defendants had not gotten him to prepare a Witness Statement. As a result they had only been able to file a Witness Summary for him, setting out certain questions in answer to which they expected him to provide evidence. So it was only at Trial that his account was heard for the first time.

66. His evidence at page 97 of the Transcript was that he saw the First Claimant hit the Second Claimant. While viewing the video in Court, he admitted under cross examination that it was a piece of branch and not a piece of iron that the First Claimant had with him. He also admitted the positioning of the Claimants' vehicles, which were on the property at the time they allege they were damaged by the rubble thrown in. He said that at the time of the incident he spoke to both the First Claimant and the First Defendant letting them know he wanted no part of this and had moved away when the altercation took place.

67. The incident was reported to the Arouca Police Station and the medical evidence showing injury to both Claimants is at number 6 of the Unagreed Bundle of Documents filed on 10th July 2017. The records show that in relation to the Second Claimant– "patient was hit with stone to lower back and right thigh. Pains and tenderness to back… bruise to leg… tenderness to lower back, tenderness to right thigh… superficial bruise to right thigh… soft tissue injury." In relation to the First Claimant – "patient was assaulted with a stone… pains in left ankle region and upper back. Pains to left flank. Tenderness in left lateral ankle. Tenderness to occipital region and upper back. Bruise to left flank. Soft tissue injury."

68. The Defendants also reported having been hit to the Police. Medical records reflecting lacerations, bruises and soft tissue injuries about the body are attached as "RA13" and "HH5" respectively. These records were covered by Hearsay Notices. The Second Defendant also tendered photographs of her injuries into evidence.

D. **<u>Findings –Fact and Law</u>**

Whether a declaration of entitlement for the Claimants to have the Garbage Bin installed on the Western side of Williams Street Extension should be granted.

69. There is merit to the Defendants' submission that this aspect of the Claimants' case is unsustainable. Counsel for the Defendants correctly points out that prior to the Court determining whether it can make the declaratory order prayed for by the Claimant, the question as to who owns the curb upon which the Claimant claims that he erected his garbage bin must first be asked and answered.

70. It is not in dispute that Williams Street Extension is a paved road or highway bordered by a grass verge or curb extending in width from the paved road or highway to the boundary line of the properties adjacent. It is further admitted in the written submissions of the Claimants at paragraph 3.3, that there is no dispute as to the fact that the garbage bin's location is on neither of the parties' properties.

The location, as clearly seen in the photographs and videos presented, is on the grass verge or curb just outside the back fence of the Defendants' property.

71. The proprietary rights in the garbage bin itself vest in the Claimants. However, there is no basis for a determination that the Claimants are entitled by law to keep the said bin on the curb. This is so because the curb is owned by neither party but instead is owned by the State and falls under the responsibility of the Corporation. In fact Counsel for the Claimant admits at paragraph 3.5 that it is within the legal ambit of the State authorities to call upon the First Claimant to remove the Garbage bin from the public curb.

72. In the circumstances, the Counsel for the Defendants is correct in submitting that the proper Defendant in an action for a declaration that the First Claimant is entitled to have his garbage bin installed on the western side of Williams Street Extension is not, and cannot be, the instant Defendants. The proper Defendant against whom such a declaratory order is to be sought can only be the State and the Corporation could be included as a party to such a claim

73. The Claimants' case appears to have been geared to proving entitlement to keep the bin in the said location based on undisturbed possession since 1989. However, by proceeding against the wrong party, they have failed to establish the claim for declaratory relief regarding entitlement to placement of the garbage bin on the curb. There is no merit to the submission on behalf of the Claimants that "*The conclusion of the court must therefore be that the actions of the Corporation were likewise high-handed and illegal, facilitated and enabled by the Defendants. This will entitle the Claimants to a declaration of reinstatement of the garbage receptacle or damages for destruction of property, both aggravated and exemplary*."
74. The Claim for the declaration fails.

Whether the Defendants are liable to compensate the Claimants for replacement on three occasions of the garbage bin.

75. The Defendants were neither the owners of the Garbage bin nor the owners of the curb upon which it stood. Prima facie therefore, they had no right to interfere with the garbage bin.

76. The Claimants contend that the bin was removed on three occasions. They have failed to prove however, that on the first occasion on December 10, 2015 the Defendants removed it. Further, although it was removed on the Defendants' orders on February 14, 2016, it was not put back in the same spot thereafter. Ambiguity as to entitlement to have the bin placed there, remains unresolved due to the Claimants' failure to name the State as a Defendant. The Claimants' Reply Submissions regarding rights as against the State in a Constitutional claim are not relevant in the present circumstances. However, there is no impediment to the Claimants' future actions in either seeking to have their right to place the bin where it was recognized by the State or obtaining permission from the State. Accordingly, there will be an award of damages for the third removal.

77. The second removal of the bin remains to be accounted for as the Defendants have not presented any reasonable justification for interfering with the Claimants property by digging it up and casting it aside on December 11, 2015. The Defendants have not presented sufficient evidence that they had authority from the Corporation to remove the bin. Instead they appear to have taken the law into their own hands and trespassed on the bin which was not on their property.

78. The only documentary evidence generated prior to the filing of this Claim that was presented by the Defendants as to the Corporation's position, was the generalised notice to all Tunapuna/Piarco residents. It said that garbage must be in receptacles in front of one's property. The Defendants also tendered the letter dated January 2016 granting them permission to build the driveway. That letter did not refer to garbage or the bin at all. Neither of these documents amounts to a prohibition against the Claimants having the bin installed on the curb. The curb was for all

intents and purposes in front of their home. It was at the back of the Defendants' property. The removal of the bin if appropriate ought to have been a matter for the Corporation.

79. It was only on September 19, 2018, on the eve of the Trial, that the Defendants made two additional filings. Firstly, there was an application seeking to adduce hearsay evidence as to certain documents. The order granting this application was entered two days later. The documents covered by the Hearsay Notice included the photographs and videos previously disclosed, receipts for garbage disposal and the medical records regarding the Defendants injuries.

80. The Second filing on September 19, 2018 was a Supplemental List of Documents. None of those documents were covered by the Hearsay Notice. They were introduced well beyond the time provided for at Case Management directions. The documents included correspondence dated 2018 from the Corporation concerning the Claimants and complaining of litter violations. The correspondence was issued pursuant to a January 10, 2018 complaint from the Defendants. It is clear that these documents, concerning a period long after the incidents relevant to this Claim, do not retroactively prove that the Defendants were authorised by the Corporation to remove the garbage bin.

81. Accordingly, the Defendants will be directed to pay the Claimants the cost of replacement of the bin on two occasions out of the three claimed.

Whether the Second Incident when the Claimants left garbage on the curb and on other instances occurred and whether the Claimants are liable to compensate the Defendants in damages for the cost of removing garbage leaning against their back fence from the curb. There appears to be no dispute that the bush cuttings complained of on September 24, 2015 were placed there by the Claimants. There is no evidence from the Defendants as to having seen the Claimants place garbage there at any other time. This aspect of their counterclaim as to other occurrences is therefore based largely on suspicion. So even if there

was merit in the Claim for garbage removal it could only be with regard to this one instance.

82. There is evidence before the Court covered by the Hearsay Notice as to the Defendants having paid to have a truck remove garbage they found leaning against their fence on the back curb. The Defendants, as aforementioned, have produced no documentation emanating from the Corporation, dated prior to the filing of this Claim. Instead, all they produced was the generic notice concerning keeping garbage to the front of properties in proper receptacles and the permission to build a driveway.

83. The Defendants also referred to a notice of complaint they received in 2011 when they became owners of the property. That notice had to do with overgrown bushes in their yard. It did not concern the alleged garbage leaning against the back fence outside their yard. Although the Defendants' evidence was that they made many complaints to the Corporation, there is no evidence of such complaints being made or brought to the Claimants' attention. The letters dated 2018 in the Supplemental Bundle do not assist in this regard.

84. A witness from the Corporation was called on behalf of the Defendants. His testimony did not take the matter of proving that the Corporation would prosecute the Defendants if they did not remove the garbage any further. Counsel for the Claimants points out that he "*could have produced no evidence or note or minute from Council to support the purported decision to remove the garbage receptacle. ……. The Court will recall his statement that litter wardens visited the area and determined that the bin was in the wrong place. There is no mention of this in his witness summary nor is there any documentary evidence to this effect. Further, his evidence is hearsay and no weight ought to be accorded to it*."

85. Further, there is an indication from the general notice put into evidence by the Defendants, i.e. the one they laminated in 2011, that the Corporation and its contractors collect garbage placed in front of properties. The Notice indicated that

garbage to be collected must be in receptacles failing which prosecution may result. However, it is unclear why the Defendants, having allegedly reported the matter to the Corporation, took matters into their own hands. They could have left further action to the Corporation since they were not responsible for any garbage disposed of on the curb by their back fence that may have been out of a receptacle.

86. It is understandable and commendable that the Defendants preferred to have the area on the public curb outside their back fence tidy. However, they have not proven on a balance of probabilities that they were in danger of prosecution if they did not remove the bush cuttings they believe were placed there by the Claimants. Instead, that garbage was removed on their own volition. No award of compensation will be made.

Whether the Defendants are liable to the Claimants in the First Incident

87. The Defendants have underscored in submissions that apart from the Claimants' allegations in their pleadings and bare statements in their witness statements there is no scintilla of evidence that actually connects the broken tiles on the Claimants' bridge with the Defendants' activities. There is no evidence that the driving of their truck caused damages to the Claimant's bridge. The Defendants' pleadings and viva voce evidence deny that they caused such damage.

88. Further, the Defendants submit that the Claimants' bare unsupported statements ought not to be accepted as sufficient proof, "*in the face of the Claimants' not producing video evidence supporting these allegations in circumstances where they have attempted to prove every other allegation by way of video evidence. What evidence they show is a mere picture of the broken tiles and that could have happened at any time*."

89. It is my finding on a balance of probabilities that the Claimants have not established that the Defendants' truck damaged the tiles on their bridge.

Whether the parties are liable to each other for the assaults, battery, trespass and damage to property alleged to have occurred in the third, fourth and fifth incidents and if so whether the Special Damages claimed have been proven.

90. The law governing these torts is well established. Counsel for the Claimants expressed it as follows at paragraph 3.45: "*Trespass is defined in the Oxford Dictionary of Law as "a wrongful direct interference with another person or with his possession of land or goods." Trespass to land is defined as usually taking the form of entering it without permission. Winfield and Jolowicz on Tort (12th ed) page 359 says that "Trespass to land is the name given to that form of trespass which is constituted by unjustifiable interference with the possession of land… I intend to enter upon your land if I consciously place myself upon what proves to be your land, even though I neither knew nor could reasonably have known that it was not mine... where he is thrown or pushed on to the land, he is not liable for trespass. Trespass is actionable per se whether or not the plaintiff has suffered any damage.""*

91. At paragraph 3.25 the Claimants submit: "*An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person: Collins v Wilcock [1984] 1 WLR 1172 at 1178. The Defendant's act must also be coupled with the capacity of carrying out the intention to commit a battery into effect. The battery is the least touching of another in anger: Clerk & Lindsell on Torts (20th ed) 15-09. There is no requirement to prove that the contact caused or threatened any physical injury or harm. An intention to injure is not essential to an action for trespass to person. It is the mere trespass by itself which is the offence: Wilson v Pringle [1987] QB 237 at 249."*

92. Importantly, the Defendants in submissions have highlighted the legitimacy of the long-established common-law right to employ reasonable force for self-protection or to protect a person's own property. Such action in self-defence relieves persons of liability for assault and battery.

93. The Defendants cite the Privy Council decision in **Stephen Robinson a/c Psycho a/c Tony v The State Cr. App. No 12 of 2009** as having synthesized the essential principles to be extracted from **Palmer v The Queen AC 814 at 831-832** as follows:

"1. A person who is attacked is entitled to defend himself.

2. In defending himself he is entitled to do what is reasonably necessary.

3. The defensive action must not be out of proportion to the attack.

4. In a moment of crisis a person may not be able to weigh to a nicety the exact measure of his necessary defensive action.

5. In a moment of anguish a person may do what he honestly and instinctively thought was necessary.

6. If there has been no attack then the issue of self-defence does not arise."

94. In Civil Law cases however, as highlighted by the Defendants at page 7 of **Dave Leon Moore v Dexter Lewis and the AG CV2009 of 2004,** the burden of proof with regard to self-defence is on the Defendant. "*The defendant must show that, where he is being attacked or in imminent danger of attack, he honestly and reasonably believed that it was necessary to defend himself (as well as that the force used was reasonable in all the circumstances). Indeed, the majority of their Lordship left open whether there is any defence of self-defence at all in civil law where the defendant cannot show that there was actually an attack or an imminent danger of attack. In other words, it may be irrelevant that the defendant mistakenly and reasonably believed that there was an actual or imminent attack: what may be needed is proof that there was in fact an attack or imminent attack."*

95. On the facts of this case, as outlined above in my observations from the photographic, video, written and oral evidence, it is my finding that the Defendants have failed to establish that in any of the three incidents where assaults took place there was an actual attack or threat of imminent danger in relation to which they were acting in self-defence.

96. In the Third Incident on December 11 when the First Claimant was slashed, it was clear to me, from the cogent oral evidence presented by the First Claimant corroborated by the video entered into evidence, that the allegation of the Defendants that the First Claimant had bodily blocked the Defendant's truck while driving, thrown stones at him and then after the altercation had gone inside his home and slashed his own face is a fabrication.

97. Instead I accept as fact that, on a balance of probabilities, the First Defendant attacked the First Claimant in anger without there being any need for self-protection. This was clear in that when he returned to his truck and picked up two sharp instruments he could simply have entered the truck to protect himself if that was required. Instead he pursued the First Claimant to the gate of his own home where he, the Claimant, sought refuge. The Claimant was injured by his own gate.

98. The Special Damages claims arising from this incident are uncontroverted save for the claim for loss of earnings. It is my finding that the quantum claimed for ten days loss of earnings by the Claimants has not been effectively proven. Lost earnings are alleged to have resulted from being called home to attend to the Defendants' actions and the recuperation period from injuries sustained thereafter. Little weight can be afforded to the Claimants' own self-serving/ hearsay evidence as to whether they may have lost clients and if so why. Further, there is no medical evidence assessing either of the Claimants as unfit to work. In fact, the Accident & Emergency Report produced by the Claimant gives "Instructions on Discharge" on the same date of the incident. The length of time out of work therefore has not been proven.

99. Accordingly, all special damages for the Third Incident save for the amounts claimed for loss of earnings will be awarded.

100. As with the Third Incident, there is no evidence of imminent threat or attack to the Defendants in the Fourth Incident that could not have been addressed be entering their own home and calling the police. There was nothing that could

excuse their missile throwing at the Claimants and their property. The Claimants are to be compensated in damages for injuries sustained from missiles thrown by the Defendants on February 14, 2016.

101. On February 14, 2016, the Fifth Incident, the Defendants allege that they were first assaulted when the First Claimant hit them with an implement and the Second Claimant used a stone. This aspect of the case was not videotaped. On the written and oral testimony of the parties, I find on a balance of probabilities that the Defendants were attacked and injured in the manner they allege

102. Ironically, the reaction of the Second Defendant, who was previously somewhat of a peacemaker but was in this Fifth Incident seen in a video scaling a fence and pelting at the Claimants home, led me to believe that logically something happened to change her behaviour. Also the evidence of at least the First Defendant being hit was supported by the Defendants' witness Mr. Baptiste.

103. On his evidence he saw the First Defendant hit by the First Claimant. He admitted that it was really with a piece of branch and not iron. The Defendants also presented medical evidence, covered by a Hearsay Notice to prove that they were injured that day. In all the circumstances, the Defendants have succeeded in establishing that they were the victims of an assault and battery at the hands of the Claimants.

104. Thereafter however, the Defendants also inflicted an assault and trespass on the home of the Claimants. This was not done in self-defence as alleged. The Defendants' evidence was that by then the Claimants had run into their home and locked themselves in behind the burglar bars.

105. The actions of the Defendants were instead motivated by anger at having been attacked. This motivation is not a defence to the torts of assault and trespass on the Claimants' property. Accordingly, they will be held liable for assault and trespass.

106. The Defendants contend that none of the missiles thrown could have entered the Claimants' yard and damaged the gate, cars, roof and lights. However, it was clearly visible in the video presented that the objects were flying into the Claimants' yard.

107. The Claimants have provided documentary proof of their injuries and the expenses incurred as a result of damaged property in the Fifth Incident. These will be awarded as Special Damages.

108. No medical evidence to show that the Claimants were unfit to work after the Third to Fifth incidents was produced by either of the Claimants. The medical report submitted is in fact a "Referral & Discharge: Clinical Assessment." The Claimants, therefore, have not succeeded in proving any length of time out of work. No award will be made for loss of earnings.

E. **Assessment of General Damages for personal Injuries**

109. The principles set out in the Court of Appeal decision of **Cornilliac v St Louis (1965) 7 WIR 491** are considered in assessing the award of general damages to be awarded.

110. The injuries suffered by the First Claimant in relation to the third incident are determined to be caused by the slashing of his face and neck by the First Defendant with a sharp object. This injury has caused him pain and left a scar on the First Claimant's face running from his neck to the angle of his mouth. The First Claimant claims he experiences self-consciousness and embarrassment because of it, particularly because of his TV appearances.

111. The injury suffered by the First Claimant in relation to the fifth incident is determined to have been caused by the throwing of stones by the First and Second Defendants. This injury caused pain in the First Claimant's left ankle, upper back

and left flank, tenderness in his left lateral ankle, occipital region and upper back, a bruise to the left flank and some soft tissue injury.

112. Several of the cases cited by Counsel for the First Claimant appear to be out-dated, going as far back as 1970 and adjusted to 2010. Some reservation was expressed by the Privy Council in **Seepersad v Persad & Anor [2004] UKPC 19** about the usefulness of comparing awards of damages in cases decided a number of years ago. The Privy Council recommended caution in extrapolating trends from such awards. In light of this, more recent decisions were also considered.

113. The case of **Samaroo v Esau M Jan Transport Ltd & anor CV2014-00001** involved multiple injuries including lacerations and bruising to the face and right arm. The injuries were considered by the learned judge to be on the less serious side, despite a small scar on the face. It was noted that the scar was hardly noticeable at trial. The claimant in that case also experienced pain after the incident and these pains continued from time to time. However, the court did not accept that this injury affected her pecuniary prospects. The court considered that although *"a cut or a bruise would generally entitle a claimant to a lower award, the spread over her body and taking them together would have added to the overall nature and effect of them on the claimant"* and an award of $50,000 was made. In the present case, the scar was on the First Claimant's face so it was more noticeable. However, the injuries on a whole appear to be of a similar nature.

114. The case of **Mohammed v Bellamy HCA 11 of 2002** cited by the Claimants involved far more serious injury and scarring to the plaintiff's face as well as debilitating knee pain. An award in the range of $171,000 is therefore too high to compensate the First Claimant in the present case.

115. In the case of **Hyacinth Culley v Krishna Gajadhar & ors CV2007-00363** cited by the Claimants, the court awarded an amount of $70,000 for personal injury sustained in a car accident which caused pains in lumbar spine; pains in left iliac fosse; pains in left hip; pains in Achilles tendon; pains in left arm; muscular swelling

of posterior aspect of thigh; muscle spasms; dysfunctional uterine bleeding; swelling and tenderness of knee joint; difficulty raising leg off the ground on walking; and nervous reactions. These injuries are considerably more significant than those experienced by the First Claimant and involve long-lasting pain and suffering.

116. I would consider, therefore, that an award of $50,000 to the First Claimant would be most appropriate in the present case.

117. The First and Second Defendants were assaulted on February 14, 2016 by the First and Second Claimants who used a branch and a stone respectively. The First and Second Claimants were earlier that day assaulted by the First and Second Defendants throwing missiles at them. The First Claimant's medical report detailed his injury as pains and tenderness to back, lower back and right thigh, bruise to leg, superficial bruise to right thigh and soft tissue injury.

118. The injuries suffered by the First Claimant in the Fifth Incident on February 14, 2016 have been addressed above together with those sustained in the Third Incident on December 11, 2015. The injuries suffered by the Second Claimant, the First Defendant and the Second Defendant in the Fifth Incident appear to be relatively similar. Therefore, a similar award will be made in compensation for these injuries.

119. In the cases of **Terrell Toney v The AG CV2010-00513**; **Randy St Rose v The AG CV2009-004756** and **Leon King v The AG CV2009-04757** arising out of the same incident, there were injuries inflicted on prisoners by prison officers that resulted in similar injuries to the Second Claimant, the First Defendant and the Second Defendant in the present case. In Terrell Toney, there were soft tissue injuries to both forearms and left thigh and a shallow laceration and an award of general damages was made of $25,000.00 inclusive of an uplift for aggravated damages and exemplary damages of $20,000.00. In Randy St Rose, there were inter alia a swollen knee and forearms and $25,000.00 was awarded as general damages

inclusive of an uplift for aggravated damages and exemplary damages of $20,000.00. In Leon King, there was a laceration to the forehead, bruises about the body and $35,000.00 was awarded as general damages inclusive of an uplift for aggravated damages and exemplary damages of $20,000.00.

120. In **Judson Mohammed v The Attorney General CV 2015 – 00123**, the claimant was assaulted and battered by police officers and sustained injury. He was diagnosed with neck pain due to damaged muscles and limitation of movement, cerebral concussion or post-concussion syndrome, amnesia, post traumatic headaches, dizziness, loss of balance, soft tissue injuries, wound above the right eye and pain in the right ear. He endured pain in his right ear and neck area which lasted months and suffered from headaches. There was no evidence of loss of amenity and no long-term resulting injuries. He was awarded $30,000. 00 in general damages.

121. The claimant in the case of **Dotsy Walker & Anor v Ashton Williams CV2015-04057** had suffered minor soft tissue injuries. The court compared the case of **Diane Drayne Quamina v Anthony Cherry & Anor HCA S-556 of 1995**, observing certain distinctions i.e. that plaintiff in **Quamina** had received stitches for the several punctured wounds about the body, unlike the claimant where stitches were not administered for the wounds and that the plaintiff in **Quamina** was bed ridden for three weeks, unlike the claimant who was given only one week's sick leave before returning to work. The court held that the claimant's injuries were of a far lesser degree of severity than those of the plaintiff in **Quamina** which were expressed to be of a minor nature and the claimant was awarded the sum of $25,000.00 for her pain and suffering.

122. Similarly, in the present case, the injuries of the Second Claimant, the First Defendant and the Second Defendant did not require any surgery nor stitches and did not require hospitalization for any extended period. The Second Claimant, the First Defendant and the Second Defendant did not experience any long-term injuries and their injuries were limited to bruising, soft-tissue injury, pain and

tenderness on various parts of the body. Therefore, an award of $25,000 will be made for each of them.

F. **Order**

i. The Claimants' claim for a declaration of entitlement to have the First Claimant's garbage bin installed on the western side of Williams Street Extension is dismissed.

ii. The Claimants' claim for replacing the garbage bin succeeds as to two replacements only and the Defendants are to pay the Claimants an award of $3,000.00 plus interest at 2.5% from the 11 December, 2015 to the date of Judgement.

iii. The Defendants' counterclaim for compensation in damages for garbage removal is dismissed.

iv. The Claimants' claim for special damages for cracked tiles on the bridge said to have occurred during alleged Incident #1 is dismissed.

v. On the First Claimants' claim for special damages arising from personal injuries sustained in Incident #3 an award is to be paid by the First Defendant as follows:

Medical Expenses	$3,500
Silicone Treatment	$2,000
Cost of Plastic Surgery	$25,000
Total	**$30,500.**

Plus Interest at 2.5% from 11 December, 2015 to Judgement.

vi. On the First Claimant's claim for general damages for personal injuries arising from Incidents #3 and #5 the First Defendant is to pay the amount of $50,000 plus interest at the rate of 2.5% from 11 December, 2015 to the date of Judgement.

vii. On the Second Claimant's claim for general damages for personal injuries arising from Incident #5 the Defendants are to pay the amount of $25,000 plus interest at the rate of 2.5% from 14 February, 2016 to the date of Judgement.

viii. On the Claimants' claims for special damages arising from trespass and damage to property an award is to be paid by the Defendants in the amounts as follows:

First Claimant

Repairs to TCW 6366	$3,800
Repairs to PDG 4054	$3000
Repairs to gate	$3,500
Repairs to roof	$4,000
Security Light	$1,100
Decoration repair	$800
Cordless phone	$500
Total	$16,700

With Interest at 2.5% From 14th February, 2016 to Judgement

Second Claimant

Repair to TCX 7478	$3,600

With Interest at 2.5% From 14th February, 2016 to Judgement

ix. On the First Defendant's claim for damages for personal injuries the Claimants are to pay the amount of $25,000 plus interest at the rate of 2.5% from 14 February, 2016 to the date of Judgement.

x. On the Second Defendant's claim for damages for personal injuries the Claimants are to pay the amount of $25,000 plus interest at the rate of 2.5% from 14 February, 2016 to the date of Judgement.

xi. The injunctions ordered against the Claimants and the Defendants by Rahim J dated 22nd February 2016, by undertaking dated May 2, 2016 and by undertaking on 27th August, 2018 are to remain in force until further order.

xii. On the application of either side filed on or before April 15, 2019 I will hear evidence and submissions as to whether any party unreasonably refused to consider mediation as directed by the Court and then

determine whether such refusal should be taken into account in an award of costs, failing which each party is to bear his or her own costs.

xiii. This Judgement is to be forwarded to the Chairperson of the Mediation Board of Trinidad and Tobago for consideration as to whether, with the consent of the parties, the videos referred to herein can be used in furthering the objectives of achieving community peace through mediation.

xiv. Liberty to apply.

……..

Eleanor J. Donaldson-Honeywell

Judge

Assisted by Christie Borely JRC 1

[i] UK poet John Donne's Meditation 17, written in 1623

"No man is an island,
entire of itself;
every man is a piece of the continent,
a part of the main.
If a clod be washed away by the sea,
Europe is the less,
as well as if a promontory were.
As well as if a manor of thy friend's
or of thine own were.
Any man's death diminishes me,
because I am involved in mankind;
and therefore never send to know for whom the bell tolls;
it tolls for thee."