

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA No S-1499 of 2005

BETWEEN

TIMMY WESLEY ANTHONY

Plaintiff

AND

AMMI'S PROTECTIVE SERVICES

Defendant

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Before: Master Alexander

Appearances:

For the Plaintiff: Mr Kingsley Walesby

No Appearance for the defendant

DECISION

Background

1. On 17<sup>th</sup> August, 2001 Timmy Anthony was working at the Saisnarine Gas Station as a security guard when he was viciously attacked and assaulted by a bandit. During the incident, he was shot with a shotgun in his abdomen and sustained multiple injuries. He was 24 years at the time of the incident and employed by the defendant. His claim is for compensation for the personal injuries and losses suffered from the assault. Judgment was entered against the defendant on 28<sup>th</sup> November, 2006.
2. It is trite law that awards of damages in assault and battery cases resulting in bodily injuries are arrived at by the same channel as in any claim for personal injury. See *Mahadeo Sookhai v The Attorney General*<sup>1</sup>. Hence a claimant can claim both pecuniary and non-pecuniary damages. With respect to the claim for non-pecuniary damages, the usual principles in

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<sup>1</sup> *Mahadeo Sookhai v The Attorney General* CV2006-00986

assessing damages for personal injuries would apply as set out in *Cornilliac v St Louis*<sup>2</sup> including: (a) The nature and extent of the injuries sustained; (b) The nature and gravity of the resulting physical disability; (c) The pain and suffering which had to be endured; (d) The loss of amenities suffered; and (e) The extent to which the plaintiff's pecuniary prospects have been materially affected.

*The nature and extent of the injuries sustained*

3. The uncontroverted evidence of Timmy on the incident and injuries sustained are as follows:
  - a) When he was shot, there were 5 pellets dispersed all of which entered his abdomen, on the right hand side, and became embedded.
  - b) Timmy was rendered unconscious, waking up only in the ambulance heading to the hospital.
  - c) He was hospitalized for approximately 1 month at the POSGH.
  - d) While the wound was healing, Timmy was immobile and had assistance breathing for 1 week.
  - e) Subsequently, he was required to use a wheelchair to move around the hospital and use the washroom until he was discharged.
  - f) He was treated as an outpatient for 6 months during which he had his dressings and bandages changed and stitches removed and got new pain medication.

*The nature and gravity of the resulting physical disability*

4. The gravity of the resulting physical disability is extensive scarring and deformity as follows:
  - a) When examined by Dr Balkaran Ramkissoon on 6<sup>th</sup> March, 2008 (6 ½ years after the incident) Timmy had scars and deformities on the right upper quadrant of the abdomen.
  - b) Timmy had 9 x 3cm hypertrophic, hyper-pigmented area of deep scarring to the right subcostal region. This scar is tethered to the underlying muscles creating an obvious contour deformity.
  - c) Timmy also has several small scars lateral to this scar, the largest of which measured 2.5cm x 2cm. These were also hyper-pigmented and minimally hypertropic.
  - d) The scarring is mature and permanent.

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<sup>2</sup> *Cornilliac v St Louis* (1965) 7 WIR 491

- e) No further significant spontaneous improvement is expected. Some of the scarring and deformity can be improved by reconstructive surgery which in 2008 was estimated to cost \$20,000.00 and which might reduce the area of scarring by 60-70%.
- f) Timmy continues to suffer from the injuries sustained in the incident including emotional and psychological shock and trauma.

*The pain and suffering which had to be endured*

5. Timmy has suffered an exceptional amount and intensity of pain and suffering. He gave evidence that when he was in the ambulance heading to the hospital, he kept thinking that he was going to die. His vision was blurry and he was experiencing a lot of pain in his chest and abdomen area and was falling in and out of consciousness in the ambulance. He claimed he still has excruciating pains and cramps, which last between 1 - 1 ½ hours on each occasion. During the rainy season, however, his pains occur every day. According to him, these incidents of pain have been so painful that they have resulted in him going to the hospital for treatment and management of his pain. He claimed he has had to go to the hospital on about 5 occasions and each time he has received an injection for the pain and was kept overnight for observation. He stated:

*I have had recurring nightmares of the said incident and I am always fearful of being out at night up to this present time. I still have scarring all over the front of my body and therefore feel embarrassed whenever I change at home which involves removing my top as people stare at me and I feel very uncomfortable as a result. People I meet ask me if I am a bandit as soon as I tell them that the scarring is a result of gunshot wounds. ... Since the incident I have never gone swimming as I am embarrassed to remove my vest in public due to the stares that I know I will receive which will make me feel very bad about myself. I feel that everyone else looks normal whilst I have a big scar ....*

He claimed that this incident has been a source of continuing pain, suffering, distress and expense and the defendant has not offered any compensation for this to date.

*The loss of amenities suffered*

6. Timmy has testified to the loss of amenities he has suffered as including recurring nightmares of the said incident and continuing fear of being out at night, which has handicapped his social

life. The extensive scarring over the front of his body only adds to his feelings of isolation, embarrassment and discomfort. He described how he used to enjoy swimming at Maracas, Carenage, Toco and Manzanilla very often with his family. However, since the incident, he no longer goes swimming as he is embarrassed to remove his vest in public due to the stares that he is afraid to receive. He also used to play basketball before the incident but no longer does so as he worries that he will be injured in his stomach or chest.

*The extent to which pecuniary prospects have been materially affected*

7. This incident has resulted in grave pecuniary loss for Timmy. He is currently unemployed and has only been able to secure short term employment which he often loses because of the effects of the incident on him. He stated it thus:

*Whilst I have attempted to source alternative work since the incident and have obtained short-term employment such as plumbing and masonry work I find that I am unable to maintain a job for very long as I constantly having flash backs of the incident whilst on duty and tend to lose focus on the job. I then forget the task that I was supposed to do and start doing the wrong thing.*

As a result of this, his employers become frustrated with him and tend “to discipline and then fire” him. At job interviews once he points out that he was previously shot, many potential employers are reluctant to hire him. Since the incident it has been very difficult for him to locate and maintain any new job. He has not maintained any new job for longer than a couple of months. He, therefore, relies on NIS payments to survive. He has not provided any evidence of the jobs he lost or was not hired for because of his injuries and his medical evidence is silent in this respect.

8. Several cases were used as a guide to determine damages payable including:
  - ***Nigel Mayers v The Attorney General***<sup>3</sup> – where a claimant was shot multiple times about his body (leg and chest) by the police. He suffered 2 punctured lungs, a broken rib and laceration to the thigh. He was in a coma for 2 days and spent approximately 35 days at the Chest Clinic at the Mt Hope Hospital. He, however, made a full

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<sup>3</sup> *Nigel Mayers v The Attorney General* CV2007-02297

recovery save for intermittent pains in the chest and thigh. He has no lingering disability. He was awarded general damages for assault and battery in the sum of \$250,000.00 inclusive of aggravated damages. The injuries in *Mayers* are far more extensive and severe than in the present case; his sojourn at the hospital was also longer which was indicative of the serious nature of the injuries and he was in a coma for at least 2 days unlike Timmy. The quantum, therefore, represents a more high-end award than should be awarded in the case at bar.

- *Ganesh Vickram Mungal v Boysie Lackoo*<sup>4</sup> (unreported) where a claimant received multiple injuries as a result of assault and battery occasioned by the defendant and was awarded damages for pain, suffering and loss of amenities in the sum of \$180,000.00 and loss of future earnings in the sum of \$50,000.00.
- *Kenton Sylvester v The Attorney General et al*<sup>5</sup> where for assault by prison officers in which multiple injuries were caused an award of \$200,000.00 was made.

9. Counsel for Timmy is seeking compensation of \$200,000.00 for his injuries based on the above authorities. The severity of injuries in those cases as reflected in the length of hospitalization and continuing disabilities are graver than in the present case. It is clear that Timmy, having been shot in his abdomen received a serious wound that was life threatening. He remains with some of the foreign matter in his tissues. The report of Dr Ramkissoon pointed to his wound being allowed to heal conservatively. I note, however, that Timmy has remained with deformity and major scarring, but some of which (60-70%) could be removed with corrective surgery. I bear in mind, his emotional and psychological pain and suffering experienced because of the deformity and scarring but note that the physical pain may have been largely resolved, especially as his claim for pain reliever medication is almost non-existent. I considered that compensation cannot be perfect but must be fair and that Timmy is not to be unjustly enriched from this incident. I concluded that fair and reasonable compensation for Timmy's injuries which consisted largely of scarring and some deformity would be \$140,000.00.

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<sup>4</sup> *Ganesh Vickram Mungal v Boysie Lackoo* CV2011-04303

<sup>5</sup> *Kenton Sylvester v The Attorney General et al* HCA No 4025 of 2002

## Special Damages

10. He claimed special damages as follows:

- Loss of earnings -

He is seeking loss of earnings from 17<sup>th</sup> August, 2001 to 31<sup>st</sup> January, 2002 at \$920.50 per fortnight. He provided a copy of his pay slip which reflects a gross salary of \$824.25. At the time of the incident he was working for 6 – 9 months and it was the first job he had held. This claim for 5 ½ months loss of earnings is reasonable and is allowed. From the gross sum of \$9,066.75 is deducted 25% for taxes and other contingences of life. Timmy is thus awarded the sum of **\$6,800.07** under this head.

- Transportation

He claims cost of transportation from San Fernando to Port of Spain outpatient clinic in the sum of \$100.00. This sum is reasonable and is allowed.

- Jewellery

He claimed he was wearing jewellery namely a silver chain and 3 silver rings at the time of the incident. When he woke up in the hospital, these items were missing and he has not been able to locate same since. He was unable to produce receipts as these would have been misplaced over the passage of time. His claim for \$350.00 to replace these items was deemed reasonable and is allowed in full.

- Medical expenses

He claimed the sum of \$16.00 for pain medication and provided a receipt dated 30 April, 2002. This is allowed. He claimed for services at EWMSC the following sums \$77.00 + \$66.00 and provided receipts. These sums are allowed. He claimed for a medical report the sum of \$37.50 and provided a receipt so it is allowed. He provided a statement of account from EWMSC showing a balance of \$262.00 outstanding. He is allowed this as having been incurred and remains outstanding. He provided receipts from Dr Balkaran Ramkissoon for \$400.00.

He is allowed special damages in the global sum of **\$8,108.57**.

Loss of future earnings/handicap on the labour market

11. Timmy is seeking compensation for loss of future earnings based on his inability to keep a job as he has had flashbacks of the incident and acts in ways that invite his employers to discipline then fire him. He has been living on NIS payments. I am not satisfied on the medical evidence that Timmy is unable to work or is likely to suffer any loss of future earnings. It is clear he has been able to get jobs but is unable to keep them because of his behaviour. He links this to his injuries but provides no medical evidence to substantiate this claim. On the evidence provided, I remained unconvinced. Further, the evidence is not satisfactory that he is a handicap on the labour market so no award is made under this head.

Cost of future surgery

12. He has provided the necessary medical evidence in support of this: see report of Dr Ramkissoon dated 6<sup>th</sup> March, 2008. This sum is allowed.

### **Order**

13. It is thus the order of this court that the defendant do pay the plaintiff -
  - (i) Damages in the sum of **\$140,000.00** with interest at the rate of 9% per annum from 4<sup>th</sup> September, 2006 to 14<sup>th</sup> March, 2014.
  - (ii) Special damages in the sum of **\$8,108.57** with interest at the rate of 6% per annum from 17<sup>th</sup> August, 2001 to 14<sup>th</sup> March, 2014.
  - (iii) Cost of future surgery in the sum of **\$20,000.00**.
  - (iv) Costs to be taxed by the Registrar in default of agreement.

Dated 14<sup>th</sup> March, 2014

**Martha Alexander**

**Master**