

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2009-02792**

**BETWEEN**

**RAZACK MOHAMMED**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** 1<sup>st</sup> Defendant

**PC MICHAEL CHARLES NO 10208** 2<sup>nd</sup> Defendant

\*\*\*\*\*

**Before: Master Alexander**

**Appearances:**

**For the claimant: Mr Ryan Cameron**

**For the Defendants: Mr Sarfraz Alsaran**

**REASONS**

**I. INTRODUCTION:**

1. I am required in this matter to assess the claimant's damages for assault, false imprisonment, malicious prosecution and to determine his entitlement to aggravated and exemplary damages. The claimant sought these reliefs by way of claim form and statement of case filed on 31<sup>st</sup> July, 2009. The defendants filed their defence on 31<sup>st</sup> March, 2010 and judgment on liability was entered for the claimant by consent on 18<sup>th</sup> January, 2011 before About J.

## II. THE TRIAL OF THE ASSESSMENT

2. The defendant led no evidence at the assessment and, in fact, elected not to cross examine the claimant. The claimant's evidence was unchallenged and as follows:
  - (i) Sometime in early August, 1998 the claimant was approached by a friend, Nazir Mohammed, also called 'Nazo', who had been working as a police informant for the last 6 years (hereinafter "Nazo"). Nazo sought the assistance of the claimant to work along with the police in a "sting operation" aimed at securing the arrest of 2 suspected drug dealers, Azard Mohammed and Karim Mohammed, who were known to the claimant (hereinafter "Azard and Karim").
  - (ii) The claimant had several meetings with Nazo and a named police officer whereby he was asked to play the "middle man" in the sting operation set up to purchase cocaine from Azard and Karim with the aim of procuring their arrest. For his role, he was promised payment in the sum of TT\$4,000.00 and told not to worry.
  - (iii) Following upon the execution of the pre-arranged plan, he was arrested together with Azard and Karim on 25<sup>th</sup> August, 1998 and charged with possession of dangerous drugs namely cocaine for the purpose of trafficking. The weight of the cocaine was 11.538 kg with an estimated street value of \$2,000,000.00
  - (iv) After his arrest, he was refused bail by a magistrate and remanded in custody. Subsequently, he secured bail before a judge in the sum of \$1.5 million with 2 sureties to be approved by the Registrar of the Supreme Court. He was also ordered to surrender his Trinidad and Tobago passport and prohibited from leaving the jurisdiction without permission from the court and to report to the San Juan police station twice per week. Upon completion of the Preliminary Inquiry, he was committed to stand trial at the next sitting of the Criminal Assizes. He remained in the custody of the State for approximately 8 weeks i.e. 4 weeks prior to accessing bail during the Preliminary Inquiry and 4 weeks prior to accessing bail after his committal.

On 11<sup>th</sup> April, 2008 the State Prosecutor informed the court that no evidence would be tendered against him and he was discharged.

### III. THE ASSAULT:

3. The claimant gave evidence that when he was accosted at Grand Bazaar Shopping Mall (hereinafter “Grand Bazaar”) on the day of his arrest, the police officers, with their guns drawn, pushed him roughly several times, used obscene and abusive language and threatened to shoot him. Although he protested his innocence, he was ordered to put his hands in the air and had a gun pointed at his head. He states that he was extremely afraid and feared for his life. He also experienced extreme embarrassment as his arrest was in full view of several patrons of Grand Bazaar. It is also his evidence that there were over 20 police officers on the scene that day.
4. As a rule, where the result of an assault and battery is physical injury to a claimant, the damages will be calculated as in any other action for personal injury. See **McGregor on Damages**.<sup>1</sup> The same heads of general damages such as pain and suffering, loss of amenities, loss of expectation of life and loss of earnings are, therefore, applicable:

*However, beyond this, the tort of assault affords protection from the insult which may arise from interference with the person. Thus, a further important head of damage is the injury to feeling, the indignity, mental suffering, disgrace and humiliation that may be caused. Damages may thus be recovered by a claimant for an assault, with or without a technical battery, which has done him no physical injury at all.*

5. Counsel for the defendants has submitted that in the instant case, the claimant was not physically beaten but merely pushed several times and assaulted by words. He goes on to submit further that in fact, the claimant may not have suffered physical damage so much as injury to his feelings and insult. Counsel then pointed to the fact that there was no medical reports or other documentary evidence to support any injuries sustained and posited further that whilst he, “may be entitled to be compensated for the insult consequential upon interference to his person, however in the absence of any evidence in his witness statement or

---

<sup>1</sup> McGregor on Damages 18<sup>th</sup> edition paragraph 37-001

otherwise giving a better illustration as to the insult and injury to his feelings, the Honourable Court should be guided to only award him a nominal amount of damages.”

6. With respect to the issue of nominal damages, counsel for the defendants sought to rely on **McGregor on Damages**<sup>2</sup> where it is stated that:

*“The best statement as to the meaning and incidence of nominal damages is given by Lord Halsbury L C in the Medina where he said:*

*“Nominal damages” is a technical phrase which means that you have negative anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed.”*

7. On the basis of the above learning, the following authorities were suggested and that an award of nominal damages for assault be in the sum of \$1,000.00:

- ***Vincent Taylor v Joseph***<sup>3</sup> - where in April, 2005 nominal damages of \$1,000.00 was awarded.
- ***Michael Francis v Cheryl Griffith***<sup>4</sup> - where Narine J awarded \$1,000.00 in nominal damages.
- ***Salim Karim v Hyatoon Karim***<sup>5</sup> - where Narine J awarded \$500.00 in nominal damages.

8. I am minded to accept the defendants’ submissions on this limb with respect to the award of nominal damages for the assault but not in the sum suggested (discussed below). I note that the claimant in his submissions did not separate his claim for assault from the damages sought under the other limbs. Nevertheless, I have elected to treat with the various limbs separately for convenience.

9. The learning is clear that trespass to the person, whether by assault, battery or false imprisonment, is actionable without proof of actual damage. Thus, in all cases of trespass

---

<sup>2</sup> **McGregor on Damages** 18<sup>th</sup> edition paragraph 10-002

<sup>3</sup> *Vincent Taylor v Joseph and anor* Civ App No 84 of 2001

<sup>4</sup> *Michael Francis v Cheryl Griffith* HCA No 1528 of 1995

<sup>5</sup> *Salim Karim and ors v Hyatoon Karim* HCA No 1233 of 2001

nominal damages at least are recoverable, and substantial damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved. Where physical injury does result from the trespass, the damages will be calculated as in any other action for personal injury. Damages for emotional shock which does not result in physical illness may be recovered where there is other physical injury or no physical injury, as in the case of an assault without any battery, provided it is substantial and not too remote. An award of aggravated damages may be made in an action for trespass to the person, unlike an action in negligence. Further, exemplary damages may be awarded in an action for trespass to the person where the trespass falls within one of the three categories in which such damages are generally available.

10. In the present case, I accept the evidence of the claimant that on arrest he was rough handled, in the full glare of the patrons of Grand Bazaar, which is a popular local mall and always heavily patronized. I also accept his evidence that throughout the entire episode and public display, he was “extremely embarrassed.” No doubt, he would have suffered emotional shock and trauma, given that his role there was to aid the police in the execution of the sting operation to arrest Azard and Karim. Whilst there was no proof of actual physical injury to the claimant, I accept that he would have suffered injury to feelings and dignity and is entitled to fair compensation for same.
11. For the assault at the hands of the police officers, I am prepared to and do award a sum of \$5,000.00 as nominal damages to the claimant.

#### **IV. FALSE IMPRISONMENT**

12. General damages for false imprisonment are usually assessed in this jurisdiction on the basis of two basic elements: “injury to liberty” and “injury to feelings.” In Mc Gregor on Damages, it was noted that, *“The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury’s or judge’s discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status.”*<sup>6</sup>

---

<sup>6</sup> Mc Gregor on Damages 18<sup>th</sup> edition

13. As an offshoot of these two basic elements and also to be considered is **injury to reputation**, as confirmed in **Walter v Alltools**<sup>7</sup> where it was stated that, “*a false imprisonment does not merely affect a man’s liberty it also affects his reputation.*” These principles governing damages for false imprisonment locally were outlined by Moosai J in **Kamal Samdath Ramsaran v Romiel Rush and the Attorney General**<sup>8</sup> thus:

*The principal heads of damage for false imprisonment would appear to be the injury to liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. Also damages may be given for any injury to reputation, for as Lawrence L J said in **Walter v Alltools** (1944) 61 TLR 39, 40, “a false imprisonment does not merely affect a man’s liberty; it also affects his reputation.”*

14. Hence, the measure of monetary compensation that can be awarded as damages for false imprisonment in private law is wider than an award at public law, and includes damages for loss of reputation. This was confirmed by Lord Diplock in **Maharaj v The Attorney General**<sup>9</sup> to wit, “[F]inally, their Lordships would say something about the measure of monetary compensation recoverable under section 6 where the contravention of the claimant’s constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment under which the damages recoverable are at large and would include damages for loss of reputation.” See also **Mc Gregor on Damages**.<sup>10</sup>

15. In **Kamaldaye Maharaj v P C Hobbs and ors**<sup>11</sup> it was noted that, “[I]n a case of false imprisonment a successful Plaintiff may recover damages for injury to liberty. Damages may also be recovered for injury to feelings, that is to say, indignity, mental suffering, disgrace and humiliation suffered by the Plaintiff as well as for any physical injury as well as injury to reputation. With respect to pecuniary loss, such loss which is not too remote is recoverable...”

16. Of note also is the principle that general damages should be a single compensatory figure inclusive of aggravated damages, “[T]hat is damages which are meant to provide compensation for the

---

<sup>7</sup> (1944) 61 TLR 39, 40 (CA)

<sup>8</sup> Moosai J in **Kamal Samdath Ramsaran v Romiel Rush and the Attorney General** HCA No S-1597 of 1986 at page 43

<sup>9</sup> **Maharaj v The Attorney General** [1978] 30 WIR 310

<sup>10</sup> **Mc Gregor on Damages** 14<sup>th</sup> ed para 1357 -1358.

<sup>11</sup> **Kamaldaye Maharaj v P.C. Hobbs, P.C. Charles & the A.G.**, HCA No 2587 of 1998 @ page 10-11 per Mendonca J

*mental suffering inflicted on the Plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called mental suffering are included such matters as the affront to the person's dignity, the humiliation that he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.” See **Thaddeus Bernard v Nixie Quashie**<sup>12</sup>*

17. I will now examine the learning above in light of the present facts before me. In so doing, I do not propose to compartmentalise the various elements of the shock or trauma suffered by the claimant during his false imprisonment but to arrive at a global figure. In this regard, I am guided by the words of Chief Justice De La Bastide (as he then was) in **Josephine Millet v Sherman McNicholls**<sup>13</sup> who warned of the absurdity of assessing damages for false imprisonment for 132 days by mathematical calculation or compartmentalizing different elements of the shock and trauma:

*The absurdity of such an approach is demonstrated by the fact that on the basis of awards in comparable cases it was submitted in the Court below that the hourly rate for detention was \$20,000.00. Multiplying that by the number of hours for which the appellant was detained produces a figure in excess of \$2.6 million!*

*We have already indicated in the case of Bernard v Quashie our disapproval of this mathematical approach to the assessment of general damages in a case of this sort. We are told that in England, juries have been instructed that they may adopt a specific hourly rate in assessing damages for wrongful detention. Well, we do not have juries in civil cases in this country, and I say unhesitatingly that this is an approach which this Court will not adopt or approve.*

18. In **Josephine Millet** (supra) it was submitted that damages should be considered in light of the initial shock suffered on being taken into custody and then the length of incarceration. There was one view that the initial shock would wear out as the person adjusted to his surroundings and then another view that the ordeal and frustration would be exacerbated with increasing time. However, De La Bastide CJ said, “[I]t is important that judges approach the assessment of damages in cases like this in the round. I do not think that one can divide the award strictly into different compartments, one for initial shock, the other for length of imprisonment and so on. All the factors have to be taken into account and an appropriate figure arrived at.”

---

<sup>12</sup> Per Chief Justice de la Bastide in *Thaddeus Bernard v Nixie Quashie*, CA No 159 of 1992.

<sup>13</sup> *Josephine Millet v Sherman McNicholls*

19. Counsel for the defendants has submitted that apart from the principles outlined above, account must also be taken of the change in the purchasing power of the local currency; the local economic situation and that this is a once and for all award. This is accepted. See *Elease John, an infant by her mother and friend Ucilla John v John Solomon*.<sup>14</sup>

### **Injury to liberty**

20. With respect to the injury to his liberty, the claimant's evidence is that he was unlawfully detained for 8 weeks prior to accessing bail. The defendants submitted that he was unlawfully detained from 4:30 pm on 24<sup>th</sup> August, 1998 until the 25<sup>th</sup> August, 1998 when he was taken before a magistrate and refused bail, which amounts to approximately 15 hours. Counsel for the defendants asked that it be noted that the period during which he was remanded into custody pursuant to a judicial discretion is outside the scope and authority of the defendants. See **section 4(6) of the State Liability and Proceedings Act, Chapter 8:02.**

### **When does a claim for false imprisonment arise?**

21. Generally false imprisonment arises up to the point in time when a claimant is brought before a judicial authority and the discretion exercised to remand him into custody or afford him bail. The judicial act operates as a divider between the loss of liberty due to the false arrest and the continued detention of the claimant. It was thus unnecessary to justify any period subsequent to the exercise of this judicial discretion in assessing the actual length of false imprisonment for which damages are to be awarded.
22. Stollmeyer JA in *Terrance Calix*<sup>15</sup> stated that, "... in the circumstances I have come to the view that the grant of bail by the Magistrate, although not accessed by the appellant, is in law a sufficient ground in this case to disentitle him to an award under this head. I say so for two basic reasons. The first is that granting bail interposes a judicial act between the prosecution and the continued detention of the accused. The prosecution is no longer the cause of the deprivation of liberty. That deprivation is caused by the judicial act." See also *Darren Mc Kenna*<sup>16</sup> where a claimant was held for 3 days at the Scarborough Police Station, Tobago before being granted bail but was unable to secure bail for a further 2 weeks. Stollmeyer J did not consider the additional period as a factor in that case.

---

<sup>14</sup> *Elease John, an infant by her mother and friend Ucilla John v John Solomon* HCA 919 of 1977

<sup>15</sup> *Terrance Calix v The AG of T&T* Civ App No 61 of 2007

<sup>16</sup> *Darren Mc Kenna v PC Leslie Grant #1662 and The AG of T&T* CV2006-03114, formerly HCA T51 of 2004.



23. I have, therefore, applied the Stollmeyer dicta to the instant case and, so accepted the submissions of the defendants that the refusal of bail “... *interposes a judicial act between the prosecution and continued detention of the accused.*” See **Ahmed v Shafique**<sup>17</sup> where the court refused to award damages for the period after the claimant was remanded in custody by a magistrate. See also a recent decision of this court **Chabinath Persad v PC Deonarine Jaimungal and the Attorney General**<sup>18</sup> where this principle was applied.

### **Injury to feelings/reputation**

24. With respect to the injury to his feelings and reputation, if any, I considered the period of detention and the circumstances of his arrest and incarceration. The claimant’s evidence is that following upon his arrest at Grand Bazaar, he was taken in handcuffs to his home and in the presence of his wife and two children his house was searched, without a warrant being produced, and that although no illegal substance was found it was done in the full view of neighbours who had gathered outside looking on. I note that there was no real evidence of any major injury done to his feelings or reputation apart from the above, nor was there any claim of ill-treatment meted out at the hands of the arresting officer. To my mind, the arrest and search of his premises, in the presence of family, friends and neighbours would have caused him shame, humiliation, embarrassment and emotional trauma. Nevertheless, there was insufficient evidence before me to rule conclusively on this or to find fault with the manner of arrest itself.

25. The claimant gave evidence that whilst in prison; he was made to endure inhumane conditions in the cells. He stated in his witness statement that, “[T]he lighting in the cells was very poor. The quality and quantity of the meals were deplorable and inadequate. There was a constant stench of urine and human excrement emanating from the pails in the cells which served as toilets. I had to sleep on the ground which was often damp and filthy and which caused a rash on my skin. The cells were also overrun with small cockroaches to the extent that I and other occupants had to ensure that our bodies were adequately covered before going to sleep. The cells were also overcrowded and I often had to contend with homosexual advances from other inmates. I also had to endure frequent violent outburst and fights among inmates which created in me a constant fear and anxiety concerning my safety.”

---

<sup>17</sup> *Ahmed v Shafique* [2009] EWHC 618. See also *Diamond v Minter & Ors* [1941] 1 KB 656 @ 663

<sup>18</sup> *Chabinath Persad v PC Deonarine Jaimungal and the AG* CV2008-04811 judgment dated 15<sup>th</sup> November, 2011

26. He gave further evidence that, *“I suffered scorn, ridicule, and contempt from my extended family, friends and members of my community in which I had a good reputation. I was looked upon as a drug dealer and my neighbours and friends with whom I had enjoyed a close relationship, kept a distance from me. My marriage was placed under tremendous strain as a result of aforesaid charges and subsequent incarceration and as a consequence my wife left me around 2003 and migrated to the United States of America with our children.”* He further gave evidence that his children who were attending St Joseph TML School, *“were often mocked and taunted by their friends who frequently referred to me as a “Criminal” and a “drug Pusher”. They would often come home and complain to me in tears about the harassment at school. This of course caused me severe anguish and guilt.”*

27. I accept the claimant’s evidence on the cramped, inhumane and deplorable conditions of the cells; that he used a pail as a toilet; he witnessed frequent acts of violence and was subjected to unwanted homosexual approaches and feared for his safety. I also accepted that the arrest and prosecution caused his previously good reputation to be affected and placed a huge strain on his marriage and family, and also impacted negatively on his social life and standing in his community. Also accepted is his evidence that prior to this and since then, he has never been arrested and that consequent upon this arrest, he has had to change his name by Deed Poll from Abdool Razack Mohammed to Razack Mohammed to remove the negative stigma attaching to his former name.

28. In considering the quantum to award for the 15 hours detention, counsel for the defendants suggested as reasonable the sum of \$35,000.00 on the basis of the following cases –

- ***Mario Richards v AG***<sup>19</sup> where C Kangaloo J (as he then was) on 17<sup>th</sup> March, 2008 awarded \$25,000.00 to a claimant who was detained unlawfully for 15 hours at a police station to ‘assist’ police with their investigations.
- ***Wayne Clement v AG***<sup>20</sup> where Gobin J on 28<sup>th</sup> July, 2009 awarded \$50,000.00 to a claimant who was falsely imprisoned for 17 hours, inclusive of an award for aggravated damages.
- ***Sookdeo Harricharan v AG***<sup>21</sup> where Deyalsingh J on 19<sup>th</sup> December, 2006 awarded \$50,000.00 for false imprisonment of 10 hours.

---

<sup>19</sup> *Mario Richards v AG* CV2006-02973  
<sup>20</sup> *Wayne Clement v AG* HCA 2218/2008

- *Kamaldaye Maharaj v PC Hobbs and AG supra* where Mendonca J (as he then was) on 28<sup>th</sup> June, 2001 awarded \$10,000.00 for false imprisonment of 6 hours and 10 minutes.
- *Charran Francis v AG*<sup>22</sup> where Rampersad J on 30<sup>th</sup> June, 2009 awarded \$35,000.00 for false imprisonment of 8 hours.
- *Nankishoer Rajpath v AG*<sup>23</sup> where Charles J in December 2010 awarded \$35,000.00 for false imprisonment of 15 hours.
- *Maurice Koon Koon v AG of T&T*<sup>24</sup> where Kokaram J awarded \$35,000.00 inclusive of aggravated damages to a claimant who was falsely imprisoned for 32 hours. The claimant was not assaulted and the period of detention was uneventful, except for the deplorable condition of the cell.

On the basis of the authorities cited above, I am of the opinion that the sum of \$50,000.00 is a just and reasonable award for 15 hours unlawful detention.

## V. MALICIOUS PROSECUTION

29. The claimant gave evidence that the prosecution of the charges against him for possession of a dangerous drugs namely cocaine has severely injured his credit, character and reputation and led to him suffering considerable mental and bodily pain and anguish as well as put him through trouble, inconvenience, anxiety and expense. Counsel for the claimant has submitted that damages for malicious prosecution are at large and pointed to the learning in **Civil Actions Against the Police**<sup>25</sup> where the learned authors stated, “[I]n malicious prosecution cases the damage suffered must be a legally recognised kind. Once some damage is established, however slight, damages are “at large” and the Plaintiff is not limited to recovering compensation for the damage he has actually proved.”

---

<sup>21</sup> *Sookdeo Harricharan v AG* HCA 3068/1999  
<sup>22</sup> *Charran Francis v AG* HCS 268/2003  
<sup>23</sup> *Nankishoer Rajpath v AG* CV2007-01245  
<sup>24</sup> *Maurice Koon Koon v AG*, CV2007-02192/HCA S-1554 of 2004  
<sup>25</sup> Civil Actions Against the Police 3<sup>rd</sup> edition, paragraph 8-015

30. Generally, there are 3 types of damage which would be sufficient to support an action for malicious prosecution as spelt out by Holt CJ in the case of **Saville v Roberts**<sup>26</sup> to wit, “[T]here are three sorts of damages to a plaintiff any one of which is sufficient to support an action for malicious prosecution: first damage to a man’s fame, as if the matter whereof he is accused be scandalous. Secondly, such as are due to his person; as where a man is put in danger to lose his life, or limb or liberty. Thirdly ... damage to a man’s property as where he is forced to expend his money in necessary charges to acquit himself of the crime of which he is accused.”
31. This principle was confirmed in **Berry v British Transport Commission**<sup>27</sup>. Further, it was noted in **Sim v Stetch**<sup>28</sup> that the accusation that the plaintiff was guilty of the crime of which he was subsequently not convicted must have been one which ‘tended to lower him in the estimation of right thinking members of society generally.’
32. It is to be noted also that **McGregor on Damages** states:

*The principal head of damage here is to the fair fame of the plaintiff, the injury to his reputation. In addition it would seem that he would recover for the injury to his feelings, i.e. for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him. No breakdown however appears in the cases. Holt CJ’s second head was the damage by being put in danger of losing one’s life, limb or liberty. It therefore seems that the plaintiff can recover in respect of the risk of conviction: this is basically injury to feelings. If there has been an arrest, and imprisonment up to the hearing of the cause, damages in respect thereof should also be included and would be the same as would be recoverable in an action for false imprisonment.”*

Damages for malicious prosecution are awarded for injury to reputation; injury where a person is in danger of losing his life or liberty; and for money spent in defending the charges.<sup>29</sup>

### **Damage to fame and person**

33. The claimant was acting as an informant, assisting the police in a sting operation, when he was arrested and charged. His arrest was highly publicized in the local newspapers. He was exonerated some 10 years after the charge was preferred against him. I accept that consequent

---

<sup>26</sup> *Saville v Roberts* (1698) 5 Modern reports 405

<sup>27</sup> *Berry v British Transport Commission* [1961] 1 QB 149

<sup>28</sup> *Sim v Stetch* [1936] 2 AER 1237 at 1240

<sup>29</sup> **McGregor on Damages**, 17<sup>th</sup> edition at paragraph 38-002 on page 1405

on this he would have suffered humiliation, embarrassment, mental anguish, distress and inconvenience. Further, given the seriousness of the charge and particularly as the full force of the criminal law was set in motion against him in a baseless prosecution; he has suffered injury to his reputation and now must live with that stigma for the rest of his life.

## VI. AGGRAVATED DAMAGES

34. With respect to ‘aggravated damages’, this head of damages is discretionary and forms part of the compensatory measure of damages i.e. it is an uplift of general damages. Generally, compensation for all tortious liability should take the form of a global figure and not separated under different heads as seen in *Herman Lightbourne’s case*.<sup>30</sup> Despite this, however, this award is usually separated from exemplary damages.

*Under this head of what I have called “mental suffering” are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.*<sup>31</sup>

35. On aggravated damages, the comment of Woolf MR in *Thompson*<sup>32</sup> is also to be noted:

*Such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.*

36. Further, in *Commissioner of Police for the Metropolis v Gerald*<sup>33</sup> where Auld stated that, “[T]he Common Law is still bedevilled with the overlapping notions of aggravated and exemplary damages. Aggravated damages are a supplement to basic damages to compensate for any particularly bad behaviour of the

---

<sup>30</sup> *Herman Lightbourne v Lionel Joseph, Est. Cpl. No 411 and Public Transport Service Corpn* HCA No 2402 of 1982

<sup>31</sup> *Bernard v Quashie* Civ App No 159 of 1992 per de la Bastide CJ

<sup>32</sup> *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 @ page 516

<sup>33</sup> *Commissioner of Police for the Metropolis v Gerald*, The Times 26 June 1998

*Defendant causing distress, including humiliation and loss of dignity, to the Plaintiff in addition to the other injuries for which he or she is entitled to recover damages. However, such damages carry with them, as do basic damages, an element of punishment for the Defendant.*

37. In executing my responsibility to determine the compensation payable, I accept that the evidence was unchallenged. I also accept that the second defendant who was actuated by malice must compensate the claimant for the damage suffered<sup>34</sup> consequent upon the baseless prosecution. Further, in my view this is a fitting case for an award of aggravated damages.

## VII. CASE LAW

38. To determine a just award for malicious prosecution, I considered the following cases:

- ***Sookdeo Harricharan v The Attorney General*** (supra) where Deyalsingh J in December 2006 awarded \$50,000.00 for false imprisonment and \$75,000.00 for malicious prosecution for approximately 10 hours in custody (inclusive of aggravated damages).
- ***Mario Richards v The Attorney General***<sup>35</sup> C Kangaloo J on 17<sup>th</sup> March, 2008 awarded a claimant \$25,000.00 as compensatory damages for 15 hours unlawful detention to “assist” the police with their investigations.
- ***Wayne Clement v The Attorney General*** (supra) where Gobin J on 28<sup>th</sup> July, 2009 awarded \$50,000.00 for 17 hours false imprisonment and aggravated damages.
- ***Felix Hyndman v The Attorney General***<sup>36</sup> where Tam J in July 2001 awarded \$85,000.00 as general damages for assault, false imprisonment for 20 days and malicious prosecution, inclusive of aggravated damages and a further sum of \$25,000.00 for exemplary damages. The plaintiff was arrested and charged for possession of a dangerous drug i.e. cannabis sativa.

---

<sup>34</sup> The ingredients of the tort of malicious prosecution are set out in Clerk and Lindsell *on Torts* 16<sup>th</sup> edition, page 1042, para 19-05. See also *Wills v Voisin* (1963) 6 WIR 50 @ 57A which set out the main ingredients of this tort.

<sup>35</sup> *Mario Richards v The Attorney General* CV2006-02973

<sup>36</sup> *Curtis Gabriel v The AG of T&T* HCA No S-1452 of 2003 decision given 4<sup>th</sup> June 2008.

- ***Ted Alexis***<sup>37</sup> where cocaine was planted on a plaintiff and he was imprisoned for 2 ½ months and was awarded \$100,000.00 for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages and \$25,000.00 as exemplary damages to mark the court’s disapproval of the officer’s conduct.
- ***Stephen Seemungal v The Attorney General***<sup>38</sup> where Boodoosingh J gave \$100,000.00 as general damages inclusive of aggravated damages and \$60,000.00 as exemplary damages for unlawful detention, on an invalid warrant, of 12 days.
- ***Kedar Maharaj v The Attorney General***<sup>39</sup> where Boodoosingh J in February 2010 awarded \$280,000.00 as general damages and \$50,000.00 as exemplary damages for false imprisonment arising from wrongful detention in a mental institution of 29 days despite a court order for his immediate release.
- ***Brahim Rampersad v The Attorney General***<sup>40</sup> where Paray-Durity M awarded \$190,000.00 as general damages inclusive of aggravated damages and \$30,000.00 as exemplary damages for wrongful arrest, false imprisonment and malicious prosecution for being in possession of a stolen vehicle.
- ***Kamaldaye Maharaj v PC Hobbs and ors*** (supra) where Mendonca J in June, 2001 awarded \$10,000.00 as general damages for 6 hours detention.
- ***Charran Francis v The Attorney General*** (supra) where Rampersad J on 30<sup>th</sup> June, 2009 awarded \$35,000.00 as compensatory damages for false imprisonment of 8 hours.
- ***Nankishoer Rajpath v The Attorney General*** (supra) where Charles J in December, 2010 awarded \$35,000.00 for unlawful arrest, false imprisonment of 15 hours and breach of constitutional rights.
- ***Thaddeus Bernard and anor v Nixie Quashie***<sup>41</sup> where de la Bastide CJ (as he then was) stated that included in mental suffering are, “*such matters as the affront to the person’s dignity, the humiliation which he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.*”

---

<sup>37</sup> *Ted Alexis v The AG of T&T & Ors* HCA No S-1555 of 2000 decision given 17<sup>th</sup> March 2008.

<sup>38</sup> *Stephen Seemungal v The Attorney General and John Rougier The Commissioner of Prisons* CV2009-1832

<sup>39</sup> *Kedar Maharaj v The Attorney General* CV2009-1832

<sup>40</sup> *Brahim Rampersad v The Attorney General* HCA No. S-1578 of 2002

<sup>41</sup> *Thaddeus Bernard and anor v Nixie Quashie* Civ App No 159 of 1992

- ***Ricardo Watson v The Attorney General***<sup>42</sup> where Stollmeyer J (as he then was) on 31<sup>st</sup> July, 2008 awarded \$35,000.00 as general damages for malicious prosecution inclusive of aggravated damages.
- ***Curtis Gabriel v The Attorney General***<sup>43</sup> where Rajkumar J on 4<sup>th</sup> June, 2008 awarded \$125,000.00 for malicious prosecution inclusive of aggravated damages.
- ***Eileen Williams***<sup>44</sup> where Jamadar J (as he then was) awarded \$50,000.00 for assault, false imprisonment, wrongful arrest and malicious prosecution, inclusive of aggravated damages and \$15,000.00 for exemplary damages, especially as she was never informed of her constitutional right to consult, retain or instruct an attorney.

### VIII. EXEMPLARY DAMAGES

39. In ***Commissioner of Police for the Metropolis v Gerald***<sup>45</sup> Auld LJ after commenting on aggravated damages (see above) stated, “*Exemplary damages, on the other hand, are solely intended to punish, or to mark the Court’s disapproval of, the Defendant’s exceptionally bad behaviour and, even then, only if and to the extent that basic and aggravating damages are inadequate for that purpose. This muddled jurisprudential amalgam of categories of damage, two of which are compensatory, all three of which are capable of punishing and one of which is only punitive or a mark of disapproval, are confusing enough to the lawyer.*”
40. Exemplary damages may be awarded, therefore, where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty, with high awards being reserved for cases involving assault and battery. In ***Rookes v Barnard*** (supra), Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied –
- where there is oppressive, arbitrary or unconstitutional conduct by servants of government;
  - where the defendant’s conduct had been calculated to make a profit; and
  - where it was statutorily authorised.

The instant case falls into the first category.

---

<sup>42</sup> *Ricardo Watson v The Attorney General* CV2006-01668

<sup>43</sup> *Curtis Gabriel v The Attorney General* HCAS-1452 of 2003

<sup>44</sup> *Eileen Williams v The Attorney General of Trinidad and Tobago*, HCA No T 70 of 1996.

<sup>45</sup> *Commissioner of Police for the Metropolis v Gerald*, The Times 26 June 1998



41. I accept that the function of exemplary damages is not to compensate but to punish and deter and that such an award can appropriately be given where there is oppressive, arbitrary or unconstitutional action by servants of the government. See *Thaddeus Bernard* (supra). Further, I note the words of Lord Carswell in the Privy Council case of *Takitota v The Attorney General of Bahamas*<sup>46</sup> that, “[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...”

42. To be noted also is the comment of Lord Nichols in *Kuddus v Chief Constable of Lecestershire*<sup>47</sup> that:

*The availability of exemplary damages has played a significant role in buttressing civil liberties, in claims for false imprisonment and wrongful arrest. From time to time cases do arise where awards of compensatory damages are perceived as inadequate to achieve a just result between the parties. The nature of the defendant’s conduct calls for a further response from the courts. On occasions conscious wrongdoings by a defendant is so outrageous, his disregard of the plaintiff’s rights so contumelious that something more is needed to show that the law will not tolerate such behaviour. Without an award of exemplary damages justice will not have been done. Exemplary damages, as a remedy of last resort, fill what otherwise would be a regrettable lacuna.*

43. According to Lord Devlin, “[E]xemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and to deter. ... Moreover, it is very well established that in cases where the damages are at large the ... judge ... can take into account the motives and conduct of the defendant where they aggravate the injury done to the Plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the Plaintiff’s proper feelings of dignity and pride.”

44. Of relevance also is the statement of Holt CJ in *Saville v Roberts*<sup>48</sup> which was cited by Diplock J in *Berry v British Transport Commission*<sup>49</sup> to wit that:

---

<sup>46</sup> *Takitota v The Attorney General of Bahamas* Privy Council Appeal No 71 of 2007

<sup>47</sup> *Kuddus v Chief Constable of Lecestershire* [2002] AC 122 at paragraph 63

<sup>48</sup> *Saville v Roberts* [1968] 1 Ld. Raym 374

<sup>49</sup> *Berry v British Transport Commission* [1961] 1 QB 149 @ page 160

*There are three sorts of damages, any of which would be sufficient ground to support this action. 1. The damage to a man's fame, as if the matter whereof he is accused be scandalous ... 2. The second sort of damages, which would support such an action, are such as are done to the person; as where a man is put in danger to lose his life, or limb, or liberty. 3. The third sort of damages, which will support such an action, is damage to a man's property, as where he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused.*

45. It is clear that an award of exemplary damages can attach where an agent of the State uses his powers oppressively, illegally and/or to gain his ends since, “[I]n the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service.”<sup>50</sup>

46. In the instant case, I find that the actions of the second defendant were oppressive, arbitrary and inimical of the rights of the claimant. I have considered all the circumstances of this arrest and prosecution and formed the view that it is a case that deserves an award of exemplary damages. To determine this, I took account of several cases including:

- ***Anima Garcia v The Attorney General***<sup>51</sup> where Kokaram J in March 2011 awarded \$45,000.00 as general and aggravated damages and \$20,000.00 as exemplary damages to a prisoner who was beaten by 2 prison officers for being found in possession of a cellular phone.
- ***Frankie Jamal Bartholomew v the Attorney General***<sup>52</sup> where Jones J on 13<sup>th</sup> January, 2011 awarded \$60,000.00 as general damages inclusive of aggravated damages and \$20,000.00 for exemplary damages to a prisoner for superficial injuries (laceration and bruises) sustained during a fracas in the holding cells.
- ***Sean Wallace v The Attorney General***<sup>53</sup> where Des Vignes J in October 2009 awarded \$160,000.00 as general and aggravated damages and \$70,000.00 as exemplary damages to a prisoner beaten with a regulation prison rod, resulting in him defecating

---

<sup>50</sup> *Rookes v Barnard* Supra

<sup>51</sup> *Anima Garcia v The Attorney General* CV2009-04755

<sup>52</sup> *Frankie Jamal Bartholomew v the Attorney General* CV2009-04755

<sup>53</sup> *Sean Wallace v The Attorney General* CV2008-04009

on himself and being doused with water containing offal. Following the assault, he was hospitalized for 4 days, taunted and harassed by prison officers.

- ***Anthony Bullock v The Attorney General***<sup>54</sup> where Master Paray-Durity awarded in March, 2010 \$130,000.00 general and aggravated damages and \$50,000.00 exemplary damages to a prisoner who was severely beaten, kicked and cuffed by 4 prison officers that his jaw was broken; 6 teeth were lost and he was hospitalized and placed on a liquid diet until the fracture healed.

## IX. SPECIAL DAMAGES

47. It is trite law that special damages, “*must be claimed specially and proved strictly.*”<sup>55</sup>

48. The following claims have been pleaded and proved and are allowed:

- Legal representation at the Magistrate Court - \$50,000.00
- Legal representation at High Court - \$24,000.00
- Obtaining passport lost by Registrar, Supreme Court - \$ 250.00

### 49. Legal representation/bail application –

The claim of \$30,000.00 was made but no evidence was provided in the form of receipts. The claimant states that due to passage of time he was unable to find the receipt issued to him and the attorney could not provide a copy. I accept that items of special damages need not always be proven to a hilt, see ***David Sookoo v Ramnarace Ramdath***.<sup>56</sup> In my view, however, some form of documentary evidence may have been obtained from the attorney in question attesting to the payment of this bill and in the absence of same, no award is made hereunder.

### 50. Loss of earnings

The claim of \$139,200.00 was made by the claimant, who was required to surrender his passport, so could not ply his trade of travelling to purchase items of clothing, perfumes and cosmetics. No documentary evidence was provided in support of this business, whether by

---

<sup>54</sup> *Anthony Bullock v The Attorney General* CV2006-01766

<sup>55</sup> *Mario's Pizzeria Ltd v Hardeo Ramjit* CA 146 of 2003 as well as *Uris Grant v Motilal Moonan* CA 162 of 1995

<sup>56</sup> *David Sookoo v Ramnarace Ramdath* CA 43 of 1998

way of receipts, accounting records, bank statements or other corroborating evidence. In my view, a claimant does not have an automatic right of recovery for whatever he claims as special damages but must prove his losses. I am, thus, only prepared to allow the claim for loss of earnings to the extent that it was substantiated by the requisite evidence and in this case, none was provided. This claim is disallowed.

## **X. CONCLUSION**

51. It is thus the order of this court that the defendants do pay to the claimant –

- (i) General damages for assault, false imprisonment and malicious prosecution inclusive of aggravated damages in the sum of \$145,000.00 with interest at the rate of 8% per annum from 31<sup>st</sup> July, 2009 to 9<sup>th</sup> May, 2012.
- (ii) Special damages in the sum of \$74,250.00 with interest at the rate of 5% per annum from 24<sup>th</sup> August, 1998 to 9<sup>th</sup> May, 2012.
- (iii) Exemplary damages in the sum of \$20,000.00.
- (iv) Costs on the prescribed basis in the sum of \$44,887.50.

Dated                    9<sup>th</sup>        May,                    2012

**Martha Alexander**  
**Master (Ag)**