

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-01152

BETWEEN

JASON SUPERVILLE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Appearances:

For the claimant: Mr Gerald Ramdeen

For the defendant: Mr Neil Byam

REASONS

1. This was a claim for damages for assault and battery, false imprisonment and consequential loss suffered by the claimant as a result of the actions of the servants and/or agents of the State on 26th December 2010. His claim for damages included aggravated and exemplary damages, special damages, interest and costs. A claim form and statement of case were filed on 31st March, 2011. The defendant entered an appearance but failed to file a defence. Judgment was entered against the defendant on 16th September 2011.

2. On the hearing of the assessment of damages this court, by Order dated 17th June 2012, ordered as follows:

The defendant do pay to the claimant –

- (i) General damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of **\$40,000.00**; and for assault and battery the sum of **\$65,000.00** both sums to attract interest at the rate of 6% per annum from 31st March 2011 to 17th July 2012;

- (ii) Exemplary damages in the sum of **\$20,000.00**;
- (iii) Costs on the prescribed basis in the sum of **\$17,477.10**;

Facts

3. On or about 26th December 2010 at approximately 11pm the claimant, a labourer, was standing near his home when a marked police vehicle approached him. Some police officers came out of the vehicle and began to beat and assault the claimant. The claimant was kicked, cuffed, slapped and beaten all over his body by the officers with wooden batons. During the attack, the claimant fell into a state of unconsciousness. There was no mention of humiliation or of persons being present during the attack and arrest.

Damages

Assault and battery

False imprisonment

4. In assessing the award of damages I was guided by the factors set out by Wooding C.J. in **Cornilliac v St Louis (1965) 7 WIR 491**. The factors of relevance to this case were essentially:
 - the nature and extent of the injuries suffered;
 - the nature and gravity of the resulting physical disability; and
 - the pain and suffering endured.
5. It is the claimant's evidence that on 26th December, 2010 he left home at approximately 10:30pm to go to a wedding reception. He was waiting for transport when a marked police vehicle approached him and officers came out of the vehicle. He gave evidence thus, "When the officers jumped out of the vehicle I was surprised. I thought that the officers were going to ask me for someone." Instead, he gave evidence of an unprovoked attack, which commenced with him being asked by one of the officers where he was going. "I tried to tell the officer that I was going to a wedding reception but before I could say anything one of the officers who was dressed in police uniform came up to me from behind and hit me a lash to my head with a wooden baton. I was surprised when I got this lash it was so sudden I was wondering what was going on. I immediately started to turn around but before I could turn around another officer began to beat

me from the front with his baton. When I got this second lash I bawled out and told the officers you all have the wrong man I did not do anything.”

6. It is his evidence that the officers kept asking him about where he was going, all the while hitting him about his face and head. He recounted in his evidence in chief, the measure of pain and suffering he underwent as a result of this beating, “When the officers hit me the slap across my face I felt a burning sensation across my entire face and I felt like my whole body was getting warm. ... While the two officers were holding my hand behind my back another two officers were cuffing me in my stomach and rib area. Each time the officers hit me in my stomach area my legs would get weak and I would feel like I was going to fall to the ground.” The claimant was cuffed in the mouth and described the sensation thus, “This was extremely painful and when the officer hit me this lash I started to taste blood in my mouth. Blood was running down from my lips into my mouth dripping down my chest and on my clothes. The sight of the blood on my clothes made me terrified.”

7. The claimant’s lips were swollen and bleeding. “I was in a lot of pain at this time I could hardly stand up from the pain I was experiencing in my stomach area, and my face was swelling all over from the cuffs and slaps of the officers.” The officers then made the claimant bend over the car and hit him with a baton on his waist. “I was hit a number of times with the metal baton on my waist on the left side. Each time that I was hit I felt like my skin cut on the left side. ... I could feel my side burning and I could feel my skin swelling as the officer was beating me with the baton.” When the claimant fell to the ground, one of the officers rubbed his boots on his cuts. It is his evidence that he was in extreme pain; frustrated and frightened, “I did not do anything to deserve this treatment. The officers were insulting me and doing things to deliberately humiliate me and spite me.” When the claimant tried to get off the ground, one of the officers took out his baton and approached him. The claimant begged him to stop the battery. The claimant was then hit in his belly and head with the baton. Another officer then began kicking him in his side. The officers took their batons and stabbed the claimant in his back. “I would feel like each time they did this something would burst inside me. On one of these occasions, one of the officers took his baton and jammed it into my belly and with this lash I urinated on myself immediately. This was very humiliating.” The claimant eventually fell unconscious.

8. When he awoke, he was in a cell at the police station. He was clothed with only his underwear. It is his evidence that he felt ashamed and humiliated and was in intense pain and could not sleep. He received no assistance while in the cell. He asked for clothes but nothing was given to him. “As the time went by I was extremely worried about my family and what they might think has happened to me. ... I asked one of the officers to allow me to make a telephone call but my request like all others before fell on deaf ears.” The claimant begged for panadol for the pain which he claims was not easing, but this was not provided. He testified thus, “My whole body was aching and I could not stand up because of the pain I was in. Hours went by and I was not being told anything about what was going to happen to me. This only made the pain I was feeling worse.”
9. The claimant was eventually released from the cell. The claimant further gave evidence that the officer took money from his pocket (\$500.00) and his Nokia phone. According to him on his release, his jeans, shirt, hat, watch, shoes, money and cell phone were not returned to him. The claimant was forced to leave the station wearing only his underwear, “I never felt so ashamed in my life. Many persons passed me on the road and were staring at me while I was walking on the road. Some people I knew and others I did not know. I could not even walk fast because of the pain I was in at the time. I had to limp my way home with no assistance from anyone. This was the most humiliating experience in my life. I felt worthless, empty and dejected.”
10. The claimant was taken to the Arima Hospital by his family. After the doctors examined him, they advised that he visit the Mount Hope Medical Sciences Complex for x-rays of his chest. He did this the following day. When the claimant returned home, he could not sleep for the next few days because of the pain he was experiencing and since then, he fears the police. He still suffers severe headaches and breathing problems. He states, “I am a young person and I like to lime a lot. Before this incident I would go out almost every night with my friends. Since this incident my whole outlook on life has changed and I have been forced to change my lifestyle.” The claimant no longer goes out at night and is in constant fear.
11. To his claim form and statement of claim, he annexed a medical report dated 24th January, 2010 from Eric Williams Medical Sciences Complex which diagnosed him with soft tissue injury. The

injuries sustained by the claimant and the pain and suffering endured during and after the beating are listed in his statement of claim as follows:

- Laceration to the claimant's head and lips
- Laceration to the left side of body above waist
- Welt marks all over body
- Bruises about the body (back, buttocks, ribs, waist, arms, calves)
- Extensive pain and tenderness to the chest
- Tender swelling to the face and back
- Major swelling to the head
- Extensive scars over the body

12. The claimant relied on a number of authorities, the following of which I found to be of particular relevance:

- **Michael Bullock v AG CV 2007-01766** – the claimant suffered a fractured jaw, loss of several teeth and many other superficial injuries about the body. He was not given medical attention until the following morning. Master Paray-Durity awarded the claimant \$130,000.00 as general damages, inclusive of aggravation, and \$50,000.00 exemplary damages. To be noted is that the injuries in this case are far more severe than in the one at bar, as there was no evidence of any fracture or loss of teeth.
- **Sean Wallace v AG CV 2008-04009**, delivered 2 October 2009, where Des Vignes J awarded the sum of \$160,000.00 general damages inclusive of aggravated damages and \$70,000.00 exemplary damages. Here the claimant was beaten (slapped, choked, cursed) by three prison officers in connection with a bag that was thrown over the prison wall. He was then taken upstairs by another officer and mercilessly beaten with a staff all over his face and body in like manner to the instant case. He fell to the ground and was kicked in the face with the officer's booted foot, causing him to defecate on himself whilst lying on the ground. The beating continued unabated until ordered to use filthy, smelly, faeces contaminated water taken from the prisoners' slop pail to wash his bleeding mouth and on being unable to lift his hand to do so, had the water poured over his head. The claimant suffered the

following injuries: tender haematomas over the left occiput, abrasions over his right eye, small laceration on his inner lower lip, tender swelling over his right shoulder blades with extensive welts over the right scapular, decreased range of motion in his right shoulder, tender right lateral lower rib, swelling with ecchymosis, bilateral renal angle tenderness, multiple large welts over calves, thighs, both arms, back, bilateral flank tenderness in his abdomen, tender swelling on his left calf. He also had to have an operation for a hernia in October 2008 and it was found that the hernia was as a result of the beating he sustained in prison. He was admitted to a Ward at the hospital for four days. In my view, the beating and assault of the claimant in *Sean Wallace* would have been far worse than in the instant case. The claimant in *Sean Wallace* was hospitalized; he had to undergo surgery flowing from his injuries; he was forced to endure the torture and humiliation of having faeces water poured over his head. This is not to minimize what has been done to the claimant at bar but puts his beating into a context for the purpose of assessing his damages.

13. I accept that the nature and manner in which the claimant was assaulted must have surely resulted in mental agony and distress necessitating an additional award of aggravated damages. With respect to his imprisonment, I bore in mind that this tort is established on the fact of imprisonment as well as the absence of lawful authority to justify that imprisonment. See **Clerk and Lindsell on Torts, 18th edition, 2003 paras 13-19**. I noted some inconsistencies with respect to the timelines¹ given in the claimant's case as regards his incarceration at the Malabar Police Station. The unchallenged evidence, however, is that he was incarcerated for approximately 13 hours, from 10pm on 26th December, 2010 to 11am on 27th December, 2011, which is accepted. In deciding the quantum to award, I considered several authorities furnished by counsel for the claimant, the most helpful being:

- ***Rajesh Ravi Harry v The Attorney General of Trinidad and Tobago and Ors, HCA No3651 of 2002*** – where Rampersad J awarded for a 3 ½ hours detention the sum of \$20,000.00.

¹ In his statement of case, he pled that he was incarcerated from 10pm on 26th December, 2010 until 11am on 27th December, 2010 and in his witness statement his evidence is that he left home at 10:30pm on 26th December, 2010

- *Joyce Haradaye Kowlessar and Keith Kowlessar v The Attorney General Civ App No 167 of 2005* – where Kangaloo JA awarded for a 3 hours detention the sum of \$8,000.00.
- *Ivan Neptune v The Attorney General CV2008-03386* – where des Vignes J awarded for a 7 ½ hours detention the sum of \$25,000.00.

14. For the false imprisonment, I was minded to award the sum of \$40,000.00, which I felt, would meet the justice of the case. Having considered the past awards made, particularly in *Sean Wallace* where the claimant suffered more severe injuries than that in the instant case, and taking into account the particular circumstances of this case, I found the claimant was entitled to the global sum of \$105,000.00 in general damages (consisting of \$65,000.00 for the assault and battery) inclusive of an uplift for aggravated damages for the physical and mental suffering endured.

Exemplary damages

15. In my view, this was also appropriate case for exemplary damages as it clearly satisfies the *Rookes v Barnard [1964] AC 1129* criteria. The undisputed facts showed that the officers' conduct was oppressive, arbitrary and plainly reprehensible. The manner of the attack and the nature of the injuries suffered evidenced the degree of viciousness and malice towards the claimant. Counsel for the claimant, based on the case of *Owen Goring CV2010-03643*, suggested an award of exemplary damages in the sum of **\$100,000.00**. He invited this court to make a higher end award to “drive home the warnings of the Judges that such behaviour will not be tolerated [and] ... bring home to the Executive that such actions by prison and police officers will not be tolerated.” It is the view of this court that this sum is wholly extravagant, excessive and out of bounds of what is reasonable within the context of the present facts. In coming to my determination, I considered several cases where awards were made for exemplary damages, including *Sean Wallace* (supra). I was cognizant that these awards range in certain cases from \$10,000.00 to \$50,000.00 and \$60,000.00 or even lower and recently have been elevated to \$70,000.00 and \$100,000.00 (*Sean Wallace* and *Owen Goring* cases respectively) to send a strong signal from the courts to the various Commissioners of State Departments and their men. I bore in mind, in arriving at the appropriate award in the case at bar, the need for **moderation**

and restraint in making an award of exemplary damages. I also took account of the awards that I have already made by way of compensation, which included an element of aggravated damages. Whilst I note counsel for the claimant's call to make a like award in the instant case as was made in *Goring*, I was not convinced that the present facts justified same for the following reasons:

- a. First, *Goring* was based on its own peculiar facts which justified the response of that court to make a high end award.
- b. Secondly, an award of exemplary damages must never be irrational in the context of the end sought to be achieved. In making the award for exemplary damages in the present case then, I was guided by the Canadian case of *Whiten v Pilot Insurance Company* [2002] 5 LRC, which noted that the rationality test applied to both the questions of whether an award of punitive damages should be made and its quantum. In this case Binnie J analyzed this award such:

A second major aspect of the controversy surrounding punitive damages is related to the quantum. Substantial awards are occasionally assessed at figures seemingly plucked out of the air. The usual procedural protections for an individual faced with potential punishment in a criminal case are not available. Plaintiffs, it is said, recover punitive awards out of all proportion to just compensation. ... They are handed a financial windfall serendipitously just because, coincidentally with their claim, the court desires to punish the defendant and deter others from similar outrageous conduct. Defendants on the other hand say they suffer out of all proportion to the actual wrongs they have committed. Because the punishment is tailored to fit not only the 'crime' but the financial circumstances of the defendant (i.e. to ensure that it is big enough to 'sting') defendants complain that they are being punished for who they are rather than for what they have done. Retribution, denunciation and deterrence are the recognised justification for punitive damages and the means must be rationally proportionate to the end sought to be achieved. A disproportionate award overshoots its purpose and becomes irrational. A less than proportionate award fails to achieve its purpose.

- c. Thirdly, an award of exemplary damages should have regard to the rule of proportionality. In the local Court of Appeal decision of *Torres v Point Lisas Industrial Port*

Development Corporation Ltd (2007) 74 WIR 431 it was held that an award of exemplary damages had to be proportionate to a defendant's conduct. If a defendant misused his ascendancy or trust against another in vulnerable position then an award to express public outrage and to deter further breaches ought to be made; if a defendant had already been punished or was likely to face punishment then that factor ought to go towards reducing the amount. **The award ought not to be extortionate.** The defendant had, therefore, not to be unfairly prejudiced. A proper award had to look at proportionality in several dimensions. Mendonca JA opined:

In Rookes v Barnard it was said that the court must ask itself whether the sum awarded as compensation is adequate to serve the punitive aspects as well. If but only if that sum is insufficient to do so should a sum by way of exemplary damages be added to it. ... In determining what further sum should be added some consideration should be given to the means of the parties particularly the means of the person liable to pay the damages. Restraint must be exercised in the assessment. In the end as was stated in the **Whiten** case the award must be rational and proportionality is the key to the permissible quantum. [emphasis mine]

16. In the circumstances and upon consideration of the wider scope of case law, as well as the guidance of the above cases, I considered it appropriate to signal the court's continued disapproval of this reprehensible type of conduct by an award that would not be outrageous but adequate to serve the justice of the case. To this end, I bore in mind that "*proportionality is the key to the permissible quantum.*" To signal my strong disapproval of the behaviour of these particular officers, and to fill the existing lacuna, I awarded the instant claimant exemplary damages in the amount of \$20,000.00.

Dated 20th May, 2013

Martha Alexander

Master