

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2012-01932

BETWEEN

HAMID MOHAMMED

Claimant

AND

ALLAN BULLOCK

First Defendant

ADRIAN BULLOCK

Second Defendant

RAWLINS SAMLAL

Third Defendant

ALVIN SAMLAL

Fourth Defendant

KEVON BACHOOLAL

Fifth Defendant

NIGEL SAMMY

Sixth Defendant

Before: Master Alexander

Appearances:

For the Claimant: Mr Dassyne instructed by Mr Madan Ryan Narine

The Third, Fourth, Fifth and Sixth Defendants appearing in person and unrepresented

DECISION

1. The substantive claim on which this assessment is grounded is an assault and battery that arose from a fracas on 19th September, 2009. This assessment proceeded against the 3rd, 4th, 5th and 6th defendants only, as a settlement was arrived at with the 1st and 2nd defendants. The claimant (“Hamid”) pleaded that after being kicked and cuffed by the defendants, he was struck on his head with an iron pipe by the 1st defendant, which rendered him unconscious. His injuries were severe and included traumatic brain injury secondary to cranio-facial trauma; right temporal skull fracture;

right retro-orbital haematoma leading to loss of vision in the right eye; multiple facial bone fractures and left-sided partial paralysis. These injuries led to multiple complications including loss of sight in the right eye; inability to control his bowel movements; limitations with his memory and cognitive skills; failed erection; phantom pains from the trauma to his head; sleeplessness; nightmares and difficulty in movement so he now walks with the support of a cane. He was assessed with 100% permanent disability for future employment and 80% permanent partial disability for normal day to day activities.¹ I will treat below with the compensation that Hamid would attract for this assault and battery.

Assault and battery

2. In dealing with assault and battery resulting in bodily injuries, this court is guided by the principles mapped out in *Cornilliac v St Louis*² in making its award for damages.

The evidence

It is not in dispute that Hamid was subjected to a public beating at the hands of these defendants that left him in both physical pain as well as psychologically scarred. He testified to being beaten like “*some kind of animal*” and that during the ordeal, he felt scared, humiliated and at some point became unconscious. Since then, he has been having challenges with ambulation; continuing pains from the trauma to his head; nightmares and sleeping problems; seizures on the left side of his body and difficulty tying his shoelaces. He also has to remove his shoes every ½ hour due to cramps in his foot. Hamid averred that his balance is completely off, rendering him incapable of even standing to put on his pants. This mundane task is now one that he must lie on his bed to perform. He also spoke of the pains and stiffness he experiences from being in air-conditioned rooms. In his evidence, he described getting bed sores while at the Community Hospital because of the lengthy period for which he was bedridden. He no longer has control of his bladder or bowel movements; and experiences an inability to get a penile erection and memory loss. Hamid stated that a catheter was placed, initially in his penis, but now, in his stomach and that he is forced to wear pampers if he has to venture out of his home. This catheter resulted in a restriction of his urinary tract because of the lengthy period it remained in his penis, causing him now to require corrective surgery. He

¹ Medical reports dated 14th July, 2015 from Dr A Maharaj and 18th August, 2015 from Dr J Leach document the vision and urinary complications respectively.

² *Cornilliac v St Louis* (1965) 7 WIR 491

averred further that even friends abandoned him and members of the public would make fun of him or frown because of the unpleasant scent of urine emanating from him.

3. Consequent on his injuries, Hamid has suffered a huge loss of amenities. His injuries have affected him mentally, changing his once outgoing personality (demonstrated by a high involvement in parties and beach “limes”) into being more withdrawn. He also linked the many complications arising from his injuries to his girlfriend leaving him. He claimed that he has lost the hope of ever getting married or having a family. It has caused him to be frustrated, depressed and suicidal. His loss of amenities is vividly captured in his evidence in chief when he stated, “*I am a completely different person now. I am only 32 years old and I am unable to work, have a social life or even enjoy a full meal without complications. I am frustrated and require a lot of medical assistance to recover from my suffering, but I cannot afford same.*”

Case law

4. The nature of his injuries and continuing disabilities, his pain and suffering and the dramatic impact on his enjoyment of the ordinary things in life entitle Hamid to compensation that will be fair and just. Counsel for Hamid directed this court to consider the cases of ***Yudhistra Jadoo v Jaroop & Ors***³ which attracted an award of \$263,500.00 (updated to \$310,000.00) as general damages; ***Nigel Mayers v The Attorney General***⁴ where \$250,000.00 was granted as general damages inclusive of

³ *Yudhistra Jadoo v Jaroop & Ors* CV2010-00606 delivered on 19th October, 2012 where there was evidence of multiple injuries viz. closed head trauma; an open fracture on the right thigh and left leg; fracture on the right and left wrist; tenderness on the right and abrasions on the left side of the chest; chest trauma and lung contusion with respiratory difficulties; broken upper and lower teeth with bleeding; tenderness on mandible; abrasions around the neck; diffuse swelling of the left face; mandibular fracture of the right parasymphysis and left condylar regions and a maxillary dento-alveolar fracture involving the upper incisors; 3cm oblique scar to the right lower lip extending down to the chin and connecting to a 4.5cm transverse scar across the lower chin; 13cm, 12cm and 4cm vertical hyperpigmented surgical scars to the upper, middle and lower lateral thigh respectively and several small scars on the knee and lower leg; a 5 x 2.5cm depressed area of hyperpigmented scarring to the mid-medial region; right chest wall showed an irregular scarring of about 3cm in diameter. He was left with deformities to the wrist, a shorten limb and now walks with a limb.

⁴ *Nigel Mayers v The AG* CV2007-02297 delivered on 8th January, 2013 where there was unchallenged evidence as to the nature and extent of the injuries arising from several gun shots, one to his left leg and multiple times in the chest area. The injuries included 2 punctured (collapsed) 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 Mount Hope. In treating him: tubes were inserted into his chest; he received blood transfusion and intravenous drips; was bedridden; used a catheter to perform bodily functions; was unable to eat solid foods for a period; experienced breathing problems; expectorated blood in his urine and mucus; had an internal ruptured bleeding haemorrhoid causing him to bleed from his anus; developed bedsores and was unable to pass stools due to his initial inability to eat. Apart from intermittent pains in the chest and thigh, he made a full recovery.

an uplift for aggravated damages and *Sean Wallace v The Attorney General*⁵ where general damages amounted to \$160,000.00.

Discussion

5. In attempting a comparative analysis of the cases, it is important to note that no one case was a replica of the injuries suffered by Hamid. In *Yudhistra Jadoo* there were numerous fractures, head trauma, chest and mouth injuries as well as scarring. The wide ranging nature of those injuries is reflective of the breadth of injuries sustained by Hamid. I considered that to this extent these cases are similar. I was cognizant also that apart from the extensiveness and varied nature of the injuries in both cases, their effects were severely debilitating. In addition, I bore in mind the dissimilarities in both matters particularly, that Hamid suffered psychologically from his public beating, both during and after its occurrence. In fact, he was clear that his humiliation has never abated but is continuing through the treatment meted out to him by the public because of his ongoing health problems. I also accepted his uncontested evidence that he has even contemplated suicide. To my mind, Hamid is at least entitled to an award in the range of *Yudhistra Jadoo*.

6. Like Hamid's, the case of *Nigel Mayers* arose from a cause of action of assault and battery and resulted in serious injuries. The police officers in *Nigel Mayers* had stood over the claimant and, placing their booted feet on him, pumped several bullets at close range into his body. He was in a coma for 2 days and his injuries included 2 collapsed lungs, inability to eat solid foods for a period, breathing problems, an internal ruptured bleeding haemorrhoid causing him to bleed from his anus, bedsores and an inability to pass stools. He also was required to use a catheter to perform his bodily functions. While the range and severity of the injuries in that case were different but comparable to Hamid's, that claimant had no lingering disability from his injuries (save for the continuing

⁵ *Sean Wallace v The Attorney General* CV2008-04009 delivered 2nd October 2009 by Des Vignes J who awarded \$160,000.00 as general damages inclusive of aggravated damages and \$70,000.00 exemplary damages. The claimant was beaten and kicked 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 body. He experienced severe pains and was hospitalized for four days. He was then forced 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. This claimant also defecated on himself consequent on this beating. He also sustained 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 wheals over the right scapula, decreased range of motion in his right shoulder, tender right lateral lower rib, swelling with ecchymosis, bilateral renal angle tenderness, multiple large wheals over calves, thighs, both arms, back (especially his right scapula, chest etc. (everywhere), bilateral flank tenderness in his abdomen, tender swelling on his left calf and lost a tooth.

intermittent pains in the chest and thigh) and had in fact made a full recovery as at the date of the assessment. In contrast, Hamid's injuries were extensive, severe and debilitating to the point of rendering him a near handicap in all aspects of his life. There is also no possibility of him making any recovery therefrom. In the circumstances, I formed the view that his quantum should at least top that of the claimant in *Nigel Mayers*.

7. Then there was *Sean Wallace*, another case of assault and battery, but which to my mind was not representative of a suitable comparator either in terms of injuries or psychological suffering. The claimant in *Sean Wallace* was subjected to a level of torture or debasement that finds no comparative twinning with the case at bar but the injuries that flowed were minor in comparison to the present case. In the circumstances, its usefulness in this comparative exercise was miniscule. The claimant in *Sean Wallace*, like Hamid, suffered a severe beating which, in addition to the personal injuries which resulted, also caused psychological trauma in terms of the embarrassment and fear felt. However, the actual physical injuries sustained by the claimant in *Sean Wallace* paled in comparison to those experienced by Hamid. The claimant in *Sean Wallace* suffered mostly soft tissue injuries manifested in the form of tender haematomas, abrasions, lacerations, wheals and swelling. He was diagnosed with decreased range of motion in his right shoulder; swelling with ecchymosis; bilateral renal angle tenderness and bilateral flank tenderness in the abdomen. He also lost a tooth as a result of the beating and subsequently suffered a ruptured hernia for which he had to undergo surgery. In comparison, it was felt that the injuries suffered by Hamid were more severe, long-lasting and enfeebling. Moreover, the effects of Hamid's injuries necessitated more invasive procedures, which caused more medical complications, along with increased pain and suffering for Hamid, who will continue to endure same for the rest of his life. On the other hand, the claimant in *Sean Wallace* was able to recover fully from his injuries. From this comparative analysis, it is clear that Hamid is deserving of a compensatory award which is higher than that given in *Sean Wallace*.
8. The uncontested medical evidence in the instant case supports Hamid's claim of continuing to suffer serious disabilities, pain and losses. As a witness, Hamid presented as credible and trustworthy as he discussed the impact of his injuries. This court could accept that this public beating was harsh, unrelenting and life altering, given the range and severity of his injuries. Further, this court accepted that Hamid was impacted psychologically during the beating; and that afterwards, his humiliation

continued because of the negative public reaction to his medical condition. Also accepted is his claim of feeling that his quality of life has deteriorated to the extent where he even lost the will to live. At the end of the day, Hamid is a young man in the prime of his life whose future has taken a momentous shift consequent on a public whipping at the hands of these defendants. While monetary compensation cannot, in his case, cause him to revert to his perfect state of health prior to the assault and battery, the mandate of this court is to seek to place him in that position by this award of damages. In doing so, it is understood that the quantum must be reasonable, fair, appropriate and full. It means that Hamid is not to be overcompensated or unfairly enriched for his injuries, as dire as they were, but receive compensation that is adequate for his loss. Having considered the evidence, the cases and the continuing impact of his injuries, I concluded that it would be reasonable to award general damages for pain and suffering and loss of amenities in the sum of \$265,000.00, which includes an uplift for aggravation.

Special Damages

9. Under this head, I will treat only with the claims that were pleaded and pursued. Thus, while Hamid pleaded domestic care (by his mother), this claim was not pursued by the provision of any form of evidence. Similarly, he gave evidence in chief of being in need of corrective surgery to remedy the damage done by the prolonged use of the catheter but failed to supply medical evidence of the need for such procedure; proof of its cost or even mention it in the submissions filed on his behalf. I turn now to the claims that were pleaded, particularized and pursued as follows:

(a) Loss of earnings

10. Hamid pleaded that since the assault and battery, he has been permanently disabled from work and his medical evidence supports this contention. Prior to the injuries, he was a fisherman, registered with the Ministry of Food Production, Land and Marine Affairs. He provided a copy of his registration certificate, which is stamped 15th November, 2010. He averred that he owned a fishing boat, which was bought with a loan from the Agricultural Development Bank and paid the sum of \$760.00 per month for 3 years towards this debt. He provided copies of the promissory note and receipts evidencing payments towards this loan. He also averred that he earned an average net salary of \$15,000.00 per month from the sale of fish. He has not adduced any documentary evidence to corroborate his claim as to his monthly earnings. His counsel conceded Hamid's failure to provide

any documentary support for this aspect of his claim but argued on the basis of the Court of Appeal decision of *Singh v Johnson Ansola*⁶ that this court should not reject the unchallenged evidence of Hamid in this respect, as there is no cogent reason for so doing.

11. I am satisfied that given his level of disability and the medical evidence, it would be impossible for Hamid to continue in his pre-injury employment or find work on the open job market. I also accepted that as a self-employed fisherman, he would not have pay slips or a job letter or even receipts to furnish in corroboration of his claim. I considered, however, that in the absence of such documents, Hamid could have supplied bank deposit slips or evidence of payment of income tax. He could have given evidence of the type of fish he sold and/or the average unit price it attracted. He could have called other fishermen to corroborate the average earnings of fishermen who fish in the same general area, albeit exactitude in that regard would have been difficult to achieve. He could even have called in support of his case, his habitual customers to whom he allegedly sold his stock of fish. This would have provided some insight into the regularity of such sales, the type of fish he sold and the pricing; and so provide some support of his claim as to his earnings. Instead, he chose not to bring any evidence in support. He chose to rest on his belief that this court will not have any compelling reason to doubt his word so this entitled him not to prove his case. But this burgeoning approach to treating with proof of special damages cannot be accepted. It cannot be that he can fail to make any attempt to supply proof of his pleaded case and this can be found as excusable, especially as documentary evidence is not the only means of corroboration. This is particularly more so as the fishing industry is cyclical in terms of its demand and this calls into question the fixed income pleaded by Hamid since it would have been subjected to rise and fall, based on the season.

12. This court was challenged also with Hamid's silence on and/or failure to lead any evidence on what became of his boat. It was unclear whether, following his injuries, this boat was sold or has been hired out to someone else to work and what, if any, income he continues to derive from this source. This is unfortunate, as such evidence would have assisted this court in arriving at a fairer assessment of his losses. In light of his silence, it is only reasonable for this court to infer that Hamid's boat may still be operational and generating income. Further, there was no evidence as to downtime, if any, and given that his was a profession that was fairly hazardous and subjected to intemperate

⁶ *Singh v Johnson Ansola* Civ Appeal No 169 of 2008 and 121 of 2008 per Mendonca JA at para. 97

weather conditions, I considered that there are times when Hamid's income would have fluctuated, especially during illness, inclement weather, environmental disasters or when his boat was undergoing repairs. I considered also that a claimant who claims pecuniary losses is charged with the responsibility of bringing the evidence in support. It is woefully inadequate to come empty-handed before an assessing court and tell it that it has no cogent reason for refusing to accept the unchallenged and/or viva voce evidence. It remains the duty of an assessing court to require the sufficiency of evidence and ensure that it is satisfied before making an award. In this present case, Hamid avers he earned a fixed income and that he now relies on family for handouts. He even failed to bring them to give evidence in support of his claim. It is not that Hamid could not prove his claim; he chose not to.

13. Despite the deficiencies identified above, I noted that the medical evidence, which was untested, assigned him a 100% permanent disability from future employment, excluding him from working completely. I was swayed by this into not wholly rejecting his evidence in chief as to his loss of earnings. It was contemplated that despite the failure to prove his alleged fixed monthly income, he has provided evidence of how his actual earnings were expended, and it appears that bank savings were not part of this usage. It was contemplated also that his testimony otherwise was consistent, convincing and plausible, particularly in light of him providing proof of being a registered fisherman and his ownership of his boat. In the circumstances, the lack of concrete documentary evidence as to his exact earnings or the fate of his boat was not held to be detrimental against him getting an award under this head. However, it was felt that any sum recoverable must take account of the evidentiary thinness and other loopholes, the nature of his employment and the vagaries of life.
14. Counsel for Hamid addressed this court on 2 approaches that could be taken to assess Hamid's loss of earnings, in light of the admitted evidentiary paucities. These included: an award based on a reduced monthly sum for peak and off-peak periods⁷ in the range of 50% or a global lump sum approach. This court was minded to make an award in the round to compensate Hamid and was guided by *David Paul Eden v West & Company*⁸. In that case, the trial judge, faced with a paucity of evidence in respect of loss of earnings, commented that the claimant had, "*simply fail[ed] to*

⁷ *Peter Seepersad v Theophilus Persad & Capital Insurance* Civil Appeal 136 and 137 of 2000. See also *Singh v Johnson Ansoala*
⁸ *David Paul Eden v West & Company* [2002] EWCA Civ 991

provide any earning history at all” and declined to make any award under this head. The judge felt that any estimate he made in the circumstances would be, “*wild, unhelpful speculation*”. The Court of Appeal disagreed with this conclusion since the medical evidence was agreed; it was unchallenged that the claimant had been working in the period before the accident and schedules of invoices detailing prior payments to the claimant had been submitted. Given the inadequacy of the evidence, however, the Court of Appeal found that the case could only be approached on a global basis and so a global sum was awarded for loss of earnings. A similar approach was stated to be justifiable in **Willemse v Hesp**⁹ by the Court of Appeal which mentioned that if a Blamire award had been made by the trial judge, it would not have been reversed. This discussion gives further credence to the submission that such an award can be extended to pre-trial loss of earnings whereas it was previously used in relation to future financial loss. On the above premise and in the face of evidentiary insufficiencies, this court was willing to make a global award to cover Hamid’s loss of earnings¹⁰. Considering the cyclical nature of the fishing industry, the evidentiary deficiencies and the medical evidence that supports total incapacity, I felt it only fair to award the lump sum of \$200,000.00 to defray the loss of earnings suffered.

Transportation

15. The pleaded case is that Hamid expended approximately \$13,550.00 in transport to the hospital. The receipts provided reflect the sum of \$13,300.00. This claim is allowed in the sum of \$13,300.00.

(b) Medication, supplies, toiletries and a “B” Scan

16. It was claimed that Hamid spent approximately \$5,000.00 in medical expenses and toiletries. He also pleaded and proved expenditure of \$330.00 on a “B” scan. While some receipts were provided, the total sums reflected by these receipts were \$669.60. This was inclusive of the \$330.00 claimed for the “B” scan for which a receipt was provided. The sum of \$669.60 is allowed.

Loss of Future Earnings

⁹ *Willemse v Hesp* [2003] EWCA Civ 994

¹⁰ The range of awards in the following cases also provided guidance: *Cindy Kanbai v Miguel Mohammed & ors* CV 2006-01087, *La Verne La Guerre v Kern Medina & ors* CV2011-00332 and *Ian Gonzales v Scaffolding Manufacturers (Trinidad) Limited & ors* CV 2009-03527

17. Hamid, who was approximately 32 years 6 months as at the date of the assessment, claims loss of future earnings, based on his medical evidence that assessed him with a 100% permanent disability for future employment. This claim is affected also by the dearth of evidence in proof of actual earnings, which stymied this court's ability to arrive at the relevant award. In the circumstances, I opted to make a Blamire lump sum award. In fixing this award, I took into account that he was self-employed; medically assessed as being totally disabled from future employment; he still had a working life of at least 32 years and as a fisherman had an earning capacity above the minimum wage which is currently set at \$15.00 per hour¹¹. In the circumstances, it was felt that a global award of \$350,000.00 would meet the justice of this case.

Order

18. It is ordered that the 3rd, 4th, 5th and 6th defendants do pay the claimant (Hamid) as follows:

- i. General damages for pain and suffering and loss of amenities inclusive of an uplift for aggravated damages in the sum of **\$265,000.00** with interest at the rate of 2.5% per annum from 2nd June, 2012 to 19th July, 2016;
- ii. Special damages in the sum of **\$213,669.60** with interest at the rate of 2% per annum from 19th September, 2009 to 19th July, 2016;
- iii. Loss of future earnings in the sum of **\$350,000.00**.
- iv. Costs as assessed in the sum of **\$60,234.82**.
- v. Stay of execution 42 days.

Dated 19th July, 2016

Martha Alexander

Master

¹¹ If the minimum wage is used as the basis of calculating his loss, he could attract an award in the sum of \$343,200.00 (\$31,200.00 per year x 11 years).