

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-03955

BETWEEN

KELLOY KOON KOON
KAREEM WALTERS
KEON FRANCIS

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Date of delivery: March 27, 2019

Appearances:

For the claimants: Mr Mark Seepersad instructed by Mr Terrence Davis

For the defendant: Mr Sanjeev Lalla and Mr Roshan Ramcharitar instructed by
Mr Ryan Grant

DECISION

BACKGROUND

1. On July 14, 2014, the claimants were prisoners detained at the Maximum Security Prison under remand awaiting trial when, during the course of a routine search, they were assaulted and unlawfully beaten by unidentified masked officers. These claimants were housed in separate cells when the tortious acts of assault and battery occurred. It would appear that the prison officers kicked, cuffed and beat the claimants with batons. The physical attack seemed to have been unprovoked and the claimants alleged that they suffered multiple injuries ensuing from the battery. This

led the claimants to approach the courts for compensation, inclusive of aggravated and exemplary damages. The claimants sought relief by claim filed on November 17, 2015 for the assault and battery during their incarceration by the State. The non-response by the defendant to this claim, specifically by failing to file a defence, led to judgment in default being entered against it. Then, on December 16, 2016, the matter was referred to this assessing court for disposition.

2. As there was an absence of a defence, there were no counter allegations challenging the facts pleaded by the claimants. At the assessment, they were required to prove the facts that affected the quantum of damages. Given that liability for assault and battery had crystallized by means of the default judgment, this court then turned to the evidence to determine the quantum to award each claimant.

THE EVIDENCE

3. The evidence came by way of witness statements, medical records covered by a hearsay notice and viva voce evidence, their counsel having consented to the cross-examination of the claimants. As the evidence of the second and third claimants was uneventful and straightforward, there was no cross-examination undertaken of the third claimant. Further, apart from a minute issue of the spelling of the name of the second claimant, he too was not subjected to cross-examination. Their evidence as to their injuries upon the battery went in unchallenged.
4. The main thrust of the second claimant's evidence was that he was given several lashes with a baton to his head and face, which he blocked with the use of his hand. It would appear that he resorted to the use of his hand to avoid being hit in the head with the baton. Consequent on this

battering, the second claimant pleaded that he had sustained multiple soft tissue injuries about the body. This resulted in pain, swelling and discomfort of the ring and little fingers and right eye. He averred to experiencing, subsequently, some limited use of the left hand. In support, his medical evidence pointed to the second claimant having suffered blunt trauma to the left lateral area, right frontal area of the scalp and right cheekbone. He was diagnosed with a fracture of the 5th digit of the right hand. This fracture was seen through the head of the proximal 5th phalanx. Translucency was noted in the distal proximal phalanx of the third finger. The report noted complaints of pain to the right side of the face, left hand and chest. He experienced pain for months “shooting up from the ring and little fingers” towards the outside of the palm of his hand. As the pain persisted, he had difficulty grabbing things with any kind of force.

5. As to the third claimant, his pleaded injury was a broken tooth. He pleaded that the continuing effect of the battery was blurred and limited vision in the right eye, as well as pain and swelling of same. The medical evidence noted that he had received blunt trauma to the face including the right periorbital area (region around the eye). The battery led the third claimant to suffer a fracture of the right upper incisor with exposed pulp, bruising to the right eye and right cheek, edema and tenderness to the lateral aspect of the right eye. From these injuries, the third claimant experienced blurry and diminished vision in the right eye, mild photophobia, pain in the right eye, tooth and right side of the face, nausea, dizziness and headache on the left side of his face. However, the blurriness in his eyes seemed to have cleared up after a few days. By August, 2014, his vision was not fully normal, but became so by October 16, 2014. His evidence as to his pain was very limited, save that his pain in the mouth and eye felt as if it were not going away, with the jaw and tooth pain continuing for weeks.

6. The first claimant was the recipient of two separate sets of licks, initially at the hands of the masked officers then subsequently by a recruit, in the presence of other officers. While the battering received by the first claimant, at the hands of these officers, was more sustained than the other claimants, his physical injuries were not of any greater severity than the other claimants. In addition to his bodily injuries, he suffered the indignity of having his plaits ripped out of his head, which added a further dimension to his pain and suffering. In terms of his injuries, the first claimant pleaded that he had suffered a $\frac{3}{4}$ inch laceration to the back of his head; multiple soft tissue injuries; abrasions in the back, left knee and upper thigh; and bruising in the chest. Consequent on these injuries, he pleaded pain and swelling about the body (including back, neck, ear, upper thigh and foot); pain in the chest; loss of several plaits of hair that caused headaches; difficulty sleeping and discomfort about the body. His medical evidence stated that he was diagnosed with soft tissue injuries. It was noted in the medical documents that he had tenderness to the chest and rib anterior area, bruising and swelling to the right thigh lower area, and contusion to the left upper forehead. His injuries seemed to be to the rib and chest areas, his thigh and about the body.

7. A better insight into the first claimant's pain and suffering was gleaned from his evidence in chief. The first claimant stated that after the first beating by the masked men, he was in pain all over his body. He described his battery as consisting of kicks and cuffs by ten to twenty officers, for twenty to thirty minutes. He then admitted that he was unsure about the time but that the beating lasted for at least twenty minutes. In response to a question posed by this court, he claimed that he had received about one hundred lashes. He was beaten a second time by a recruit in the presence of masked officers, and it was at this point that his plaits were

ripped out of his head, causing pain. This evidence was adjusted during cross-examination to being beaten by six officers, then to uncertainty as to how many participated in the whipping. He averred further that the pain made him unable to walk back to his cell, so officers carried him there. He remained in pain that night but was taken first to the infirmary where he got painkillers, and then to the hospital the next day. He remained with pain for over seven days thereafter. In the view of this court, the evidence of the first claimant contained an elevated level of embellishment, and it was clear that it was calculated to influence the award of this court.

LAW

8. Compensation for assault and battery cases causing bodily injuries is determined in the same way as in any claim for personal injury¹. These claimants are entitled to both pecuniary and non-pecuniary damages. With respect to general damages, the applicable principles were set out in ***Cornilliac v St Louis***². In the present matter, relevant only would be the first three limbs, as there was no case advanced as to losses sustained in terms of the latter. This court viewed the evidence led through the lens of these limbs and other principles on assessments. These injuries were neither life threatening nor severely debilitating, and their nature, extent and any lingering disability were proved to this court's satisfaction.

CASES

9. Counsel suggested numerous cases for consideration; the bulk of which did not reflect injuries on par with those sustained by the claimants. Nevertheless, this court considered each case presented:

¹ *Mahadeo Sookhai v The Attorney General* CV2006-00986

² *Cornilliac v St Louis* (1965) 7 WIR 491 (a) nature and extent of injuries sustained (b) nature and gravity of the resulting disability (c) pain and suffering endured (d) loss of amenities and (e) extent to which pecuniary prospects were materially affected.

- ***Ijaz Bernadine v AG***³ where for a right eyebrow laceration, ecchymosis of the right eye and soft tissue injuries, an award was made of \$55,000.00.
- ***Seaton v AG***⁴ where for soft tissue injury to the left wrist, knee, upper back; swelling to left forehead; bruising to right forehead; and multiple superficial abrasions to the left elbow, an award of \$45,000.00 was made.
- ***Ivan Neptune v AG***⁵ where an award of \$25,000.00 was made for multiple haematoma to the scalp; left facial swelling; left peritoneal haematoma; haematoma to the left anterior shoulder; soft tissue injuries to the abdominal and chest walls; and large haematoma to the right thigh.
- ***Kerron Welcome v AG***⁶ where a claimant suffered broken teeth at the top, bottom and front of his mouth, requiring surgery, and an installation on the crown of one of his tooth had fallen out. He also suffered a cut to his lip; bruises on his nose, face, wrists, knees and legs. His chest and stomach were swollen and also bruised. He was awarded \$50,000.00 in general damages inclusive of aggravated and \$20,000.00 exemplary.
- ***Dwain Kirby Henry v AG***⁷ where for laceration to the left ear; swelling and tenderness to the right occipital area; right forearm abrasions, an award of \$35,000.00 was made.
- ***Bartholomew v AG***⁸ where a claimant suffered: a 1cm laceration to his left eye that was swollen and tender; a swollen right elbow; tender, swollen right forearm and left forearm; and a puncture wound visualized to posterior aspect of left forearm. He also suffered a tender mildly swollen anterior aspect of left foot and left ankle; 0.5 cm superficial abrasion to anterior aspect of left foot; tender swollen anterior aspect of right foot;

³ *Ijaz Bernadine v AG* CV2010-02956 delivered on October 2, 2013 by Rajkumar J

⁴ *Russell Seaton v AG of T&T* CV2009-3667 delivered on September 17, 2014 by Sobion M

⁵ *Ivan Neptune v AG* CV2008-03386 delivered on November 14, 2011 by des Vignes J

⁶ *Kerron Welcome v AG of T&T* CV2012-00144 delivered by Alexander M on May 12, 2014

⁷ *Dwain Kirby Henry v The AG of T&T* CV2008-03079 delivered on February 18, 2010

⁸ *Bartholomew v AG* CV2009-04755 delivered on January 13, 2011

and a 0.5 cm laceration to the anterior aspect of right foot. He was awarded \$60,000.00 as general damages, inclusive of aggravated.

- **Randy St Rose v AG⁹** where there were *inter alia* a swollen knee and forearms and \$25,000.00 was awarded as general damages, inclusive of aggravated, and exemplary damages of \$20,000.00.
- **Leon King v AG¹⁰** where a claimant suffered a 1 cm laceration to the right side of the forehead; bruises about the body (right side of back); bruise over an old retained bullet right side of upper sternum; and soft tissue injury to the lateral aspect of his left hand. He was awarded \$35,000.00 as general damages, inclusive of aggravated, and exemplary of \$20,000.00.
- **Terrell Toney v AG¹¹** where for soft tissue injuries to both forearms and left thigh and a shallow laceration, an award was given of \$25,000.00 inclusive of an uplift for aggravated and exemplary damages of \$20,000.00.
- **Chet Sutton v AG¹²** where a claimant in prison suffered a sustained attack for at least fifteen minutes resulting in jaw injury, requiring a soft diet, and soft tissue injuries about the body and was awarded \$70,000.00.
- **Lester Pitman v AG¹³** where a claimant was beaten in the condemned division of the prison by officers using closed fists, and with one using his riot staff. He suffered soft tissue injuries, not broken bones, and was awarded \$90,000.00 as general and \$30,000.00 as exemplary damages.
- **Lincoln Marshall v AG¹⁴** where a claimant responded to a prison officer who had used obscene language at him, and was beaten by three officers. He suffered loss of two teeth and four were broken. He also sustained about his body welt marks, haematomas and swelling as well as swelling of the face and jaw, inability to eat food and difficulty talking. There was

⁹ *Randy St Rose v AG CV2009-04756*

¹⁰ *Leon King v AG CV2009-04757*

¹¹ *Terrell Toney v AG CV2010-00513*

¹² *Chet Sutton v AG CV2011-01191* delivered by Alexander M on September 30, 2015

¹³ *Lester Pitman v AG CV2009-00638* delivered on December 18, 2009 by Jones J

¹⁴ *Lincoln Marshall v AG CV2009-03274* delivered on October 01, 2010, by Rajnauth-Lee J

bleeding from the jaw area and soft tissue injury about the body. He was awarded \$100,000.00 in general damages, inclusive of aggravated, and \$50,000.000 as exemplary.

- ***Martin Reid v AG***¹⁵ where the claimant suffered a serious and vicious assault from prison officers, sustaining a broken middle index finger, two cuts to the back of his head and cuts and bruises all over his body. During the attack he was kicked; hit on the head, hands and back; poked and prodded with a staff until he fell to the ground bleeding and unconscious. He suffered post-concussion syndrome from the blunt head trauma and, at the assessment, still suffered blackouts, pain and headaches. He was denied proper medical treatment following the beating, initially being treated by the prison infirmary and returned to his cell, without any pain medication. While in his cell, the cuts on his head continued to bleed causing the sheets on his bed to be stained. It took two days after the incident before he was seen by the prison doctor and then transferred to the hospital where he was warded for five days. He gave clear and cogent evidence of the severe pains from his injuries. He awarded \$65,000.00 as general damages and \$45,000.00 as exemplary.
- ***Tesfer Jones v AG***¹⁶ where the claimant was beaten with staves for about twenty minutes and experienced pain while urinating, lifeless legs for a few days, and marks on his body for a few months. He was diagnosed with soft tissue injuries to the lower back and lower limb. There was no evidence of lasting injuries or resulting physical disability. He was awarded damages inclusive of aggravated of \$35,000.00 and exemplary of \$25,000.00.
- ***Fabian La Roche v AG***¹⁷ where a claimant, while performing his morning prayers, was dragged out of his cell and beaten by ten masked officers who inflicted slaps, kicks and lashes about his body with their staves or batons.

¹⁵ *Martin Reid v AG* CV2006-02496 delivered on June 6, 2007 by Jones J

¹⁶ *Tesfer Jones v AG* CV2008-00036

¹⁷ *Fabian La Roche v AG* CV2008-0038

He suffered bruises, swelling, pain and discomfort to his head, neck, back, abdomen and groin areas. He was awarded general damages inclusive of aggravated of \$30,000.00 and exemplary of \$40,000.00.

- ***Shahleem Shazim Mohammed v AG***¹⁸ where from a beating, a claimant suffered swelling to the neck and an injury to one of his knees. He was awarded \$25,000.00 in general damages and \$45,000.00 as exemplary.
- ***Corneal Thomas v PC Llewellyn Bethelmy & AG***¹⁹ where a claimant was savagely beaten about the head until he fell unconscious. On regaining consciousness, officers threatened to shoot him if he attempted to run when the cell doors were open. He was diagnosed with soft tissue injury to his neck and left shoulder, muscle spasms, stiffness and pain to those areas. He was also found to have suffered a brief loss of consciousness from the head injury, placed in a cervical collar and on an IV. He remained bed-ridden for two days, suffering severe pain, and was awarded \$35,000.00 in general damages and \$20,000.00 in exemplary.

DISCUSSION

10. On the present facts, it would appear that the injuries suffered by these claimants were not of the severity and spread as some of the above cases. Nevertheless, the cases were of comparative value to this exercise, as these claimants suffered multiple soft tissue injuries as well as, in one case, a fractured finger and, in another, loss of a tooth. Greater scrutiny was placed on the cases that were similar to the one at bar, which aided in arriving at the award, and these were viewed in the context of the evidence of pain and suffering provided. It was considered that the fractured finger must have been painful, more initially than as healing progressed, as was the injury to the tooth.

¹⁸ *Shahleem Shazin Mohammed v AG* CV2010-04969

¹⁹ *Corneal Thomas v P.C Llewellyn Bethelmy & AG* CV2012-05160

11. Before pinning the awards, consideration was given to aggravating factors.

It was accepted that where there was mental suffering, including elements of humiliation, damage to reputation, loss of dignity and the like, an award for aggravated damages would be made. It was felt that despite their incarceration, these claimants must have suffered mentally from the beatings. Consideration was given, in particular, to the humiliation that would have been faced by the first claimant in having his plaits ripped viciously out of his head. The indignity caused to him by this act, when met with the pain endured, would have been like a double-edged sword to the first claimant. This court noted, however, that there was little to no evidence led as to aggravating factors. In considering aggravation, the decision in *Hafeez Ali v AG*²⁰ was noted, where the Court of Appeal applied an award under this head on threadbare evidence. In the peculiar circumstances of this case, where there was clear indignity, emotional turmoil and humiliation caused to these claimants, who were whipped puppy-like by masked prison officers, it felt reasonable to make an award with an uplift for aggravated damages.

EXEMPLARY DAMAGES

12. Exemplary damages would apply where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action and a court wanted to show its displeasure. These terms must be read disjunctively²¹. The offending act must have been done by one exercising governmental power, and the award would only be given if compensatory damages were inadequate to punish the defendant or deter others. It would also be given

²⁰ *Hafeez Ali v AG* CA Civ 278 of 2012

²¹ *Rookes v Barnard* [1964] AC 1129; *Holden v Chief Constable of Lancashire* [1987] QB 380 at 388

as a mark of the court's disapproval (the "if but only if" test)²²; and where it was clear that the defendant had not acted in good faith and the claimant has not caused or contributed to the behaviour complained of²³.

13. The conduct of the masked officers in beating these claimants was highhanded, inexcusable and arbitrary. The officers' conduct was, to my mind, motivated by bad faith. The first claimant was given two portions of thrashes and several of his plaits were rooted out of his hair, in what essentially was an unprovoked, vicious attack. The other two claimants were battered mercilessly also by these masked vigilantes, who in the conduct of a routine search felt it necessary to exercise their power and authority over prisoners in their charge by means of these brutal attacks. While the claimants obtained compensation for their injuries, this court felt that what was required was a further flag of its displeasure, as a mark of denunciation of such actions. This egregious behaviour was not only condemned, but must be discouraged, and halted. To this end, a clear indicator must be sent from this court that officers, who persisted in abusing their powers in such ways, would not be allowed to use the judicial system to buffer their actions. The courts would neither act as shock absorbers nor covers for the unlawful actions of officers of the State. The actions of such officers would always be called out and tagged with punitive awards, until these cease, and the lives of citizens who come into the charge of such officers are no longer threatened with violence. In fixing this award, it was borne in mind that there must be moderation and restraint and prior compensation taken into account, and that those awards included an element of aggravated damages. Against this backdrop, this court made a global award of \$40,000.00.

²² *Broome v Cassell* [1972] AC 1126 *Broome v Cassell* [1972] AC 1126 per Lord Diplock

²³ *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498

ORDER

14. It is ordered that the defendant do pay the claimants as follows:

- (i) General damages for assault and battery to -
 - a. the first claimant in the sum of \$38,000.00;
 - b. the second claimant in the sum of \$50,000.00; and
 - c. the third claimant in the sum of \$25,000.00.

All awards are inclusive of an uplift for aggravated damages, with interest at the rate of 2.5% per annum from November 19, 2015 to March 27, 2019.

- (ii) Exemplary damages in the sum of \$40,000.00, (with \$17,500.00 for the first claimant, \$17,500.00 for the second claimant and \$5,000.00 for the third claimant).
- (iii) Costs prescribed in the sum of \$20,022.61.

Martha Alexander

Master