

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

**CV 2008-02487
(formerly 1053 of 2005)**

BETWEEN

**DAVID BABOOLAL
RONALD DE FREITAS**

Claimants

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Defendant

Before: Master Margaret Y Mohammed

Appearances:

Mr. Prem Persad Maharaj for the Claimants

Mr. E Pierre instructed by Ms P Cross for the Defendant.

DECISION – ASSESSMENT OF DAMAGES

THE BACKGROUND

1. The facts which gave rise to this assessment of damages are on December 5, 2002 at approximately 7:30 pm the claimants were outside the home of Patricia Baboolal, the mother of the first claimant, at Caroni Savannah Road, Chaguanas when it is alleged that a neighbour reported to the police that loud music was being played from a vehicle. Two uniformed police officers visited the premises in a jeep to investigate the complaint.

2. The claimants were arrested without any arrest warrant and taken in the police jeep to the Chaguanas police station. They were not informed of their rights to consult an attorney. At the station they were required to kneel down on steps with their hands in the air for 10-15 minutes and threatened with physical violence. They were searched and their pants were allegedly pulled down until their buttocks were exposed. They were detained at the police station for a little over an hour and were denied access to their parents.
3. On these facts the claimants issued proceedings in this matter on June 10, 2005 against the defendant as the representative of the State of Trinidad and Tobago for damages for wrongful arrest and false imprisonment, assault and battery, aggravated and /or exemplary damages, costs and interest.
4. On March 22, 2010 the Honourable Madame Justice Charles entered judgment for the claimants for their claim and transferred the assessment of damages to a Master.
5. At the end of the hearing of the evidence both parties agreed to file written submissions. The claimants filed their submissions on May 2, 2011 and the defendant replied on May 17, 2011.

THE EVIDENCE

6. The claimants filed 4 witness statements namely, the claimants, the mother of the second claimant, Ms Dharmawatie Samuel and Dr Hari Maharajh all of whom were called to give evidence and were cross-examined. The defendant did not call any witnesses on its behalf. I will now deal with the evidence of the claimants' witnesses
7. Both claimants gave evidence that they were friends and on the evening of December 5, 2002 they were at the home of the first claimant since it was Patricia Baboolal's birthday party. While the party was going on, both claimants and the first claimant's 10

year old sister, Nicholette were sitting in a car in the garage of Mrs Baboolal eating cake and listening to music in the car from a recently purchased CD.

8. Around 7:30 pm a police jeep pulled up and 2 officers described by the claimants as “ a fat one and a slim one” exited the jeep. The “fat officer”, Officer Chadee shouted “who is David”. The first claimant answered. The said officer demanded that the gate be opened which Nicholette complied with before she ran off to alert the first claimant’s mother and stepfather of the officers’ presence. The mother and stepfather requested the officers to “give us a chance” as it was just a birthday party.
9. Officer Chadee said he did not care, entered the yard, requested the claimants to increase the volume of the said music on full and then requested all the compact disc (CDs) in the presence of the parents.
10. Officer Chadee then ordered both claimants into the said jeep. When asked by the second claimant why he had to go into the jeep, there was no response from officer Chadee. When the second claimant attempted to put on his shoes, he was ordered by officer Chadee not to do so. One of the officers indicated to the claimants that they were going to be charged since a next-door neighbour had reported that the loud music was disturbing his ill mother and that the claimants had refused his request to turn down the music. The second claimant denied that this request was made.
11. The other officer, Officer Gomez, then drove the jeep off with a speed towards the Chaguanas police station with the claimants in it. On the way to the station the police officers cursed the claimants and Officer Chadee instructed the claimants to not speak the truth on the number of patrols the police make in their village. When they refused the officer who was driving stopped the jeep suddenly which startled the claimants.
12. Upon arrival at the police station the second claimant was made to walk barefoot into the station. Officer Chadee was told by another officer to take the claimants to

“upstairs in 999”. On the way to the stairs the claimants were stopped and told that if they walked too fast they would get “licks”. The claimants were then put to kneel down on the stairs for 10-15 minutes. Officer Chadee then instructed them to put their hands up in the air. One of the officers threatened to “kick their heads together and buss it”. Two army officers who were coming down the stairs then said that they thought that the claimants were put there for them to kick down.

13. Upon the arrival of the claimants’ parents at the station, the second claimant heard officer Chadee telling his mother that “if your son got arrested in Toco am I supposed to call you” to which his mother replied “if you arrest him legally you are supposed to call”. Officer Chadee responded “legally my ass” as he ran her from the station. Officer Chadee then searched the claimants and struck the second claimant on his shoulder and said “all yuh get away...I will remember you”. When the second defendant’s mother told officer Chadee that she would “get Douglas Mendez involved” officer Chadee said that he could “kiss his sword”.
14. As a result of the incident the claimants were traumatized. They felt fear, helplessness and horror. They were deeply embarrassed, hurt over the incident and had recurring nightmares. Shortly after the incident, both claimants sought the services of Dr Hari Maharajh, a psychiatrist to assist in dealing with the trauma of the incident. Dr Maharajh diagnosed both claimants as suffering with Post -Traumatic Stress.
15. Under cross-examination both claimants were consistent that they were instructed to kneel on stairs that were filthy with dirt, dust and stale pelau. However, both claimants’ evidence differed on the time spent at the police station. Both claimants gave evidence that they arrived at 7:30 pm but the first claimant stated that they spent approximately 45 minutes there and the second claimant stated that they spent about 1 ½ hours there and left about 9:00 pm but he was not certain.

16. While there was some inconsistency in the time spent at the police station, I do not find the difference to be of material significance. However there is another material inconsistency which was revealed in the cross-examination of the claimants.
17. The first claimant stated in his evidence that while being searched by the police officers his pants were pulled down causing part of his buttocks to be exposed in full view of the persons present at the front desk. However in cross-examination he could not remember if the second claimant's pants were pulled down since he was not concentrating on the second claimant at that time. The second claimant gave no evidence of his pants being pulled down by any of the officers.
18. Ms Dharmawatie Samuel, the second claimant's mother, under cross-examination also gave evidence of witnessing both claimants being stripped in full view of the public. She estimated that the whole incident took a little over an hour and they left the station at approximately 9:00 pm.
19. In light of the evidence, I find that the claimants spent a little over an hour at the police station. I also accept that the first claimant's pants was pulled down, while he was searched by the police officers, in full public view causing part of his buttocks to be exposed. However, I am not so convinced that this happened to the second claimant. While Ms Samuel was adamant that she witnessed both claimants' pants being pulled down the second claimant gave no evidence to this effect. The first claimant could not even recall witnessing the second claimant's pants being pulled down. The second claimant was able to recall details of the incident some 6 weeks after to Dr Maharajh but he did not remember to have this included in his witness statement. In my view such a harrowing experience at a tender age would have been indelibly etched in the second claimant's memory if indeed it did happen.
20. As a result of the ordeal Dr Hari Maharajh diagnosed both claimants with Post-Traumatic Stress Disorder and he prescribed therapy for both of them.

21. In cross-examination Dr Maharajh indicated that his prognosis for the first claimant was “guarded”. He indicated that the treatment he recommended for the first claimant was group therapy where he would have been given the opportunity “for honest self disclosure and taking a personal inventory of himself”. He also stated that while he referred the first claimant to group therapy at his office the first claimant did not attend. I note that at the time of the hearing of the assessment of damages there was no updated medical assessment of the first claimant.

22. With respect to the second claimant, under cross-examination Dr Maharajh stated that the second claimant responded well to the 2 sessions of therapy he had with him but he had not seen him since January 15, 2003.

23. In light of the evidence there can be no doubt that the claimants who were 14 years at the time were traumatized by the incident on December 5, 2002. They suffered disgrace, mental anguish and humiliation. However, apart from the diagnosis by Dr Maharajh in January 2003 I do not have any evidence before me to indicate the present mental condition of the claimants. I note that the first claimant did not heed the advice of the doctor for group therapy and therefore it is not surprising to me that Dr Maharajh’s prognosis is “guarded”. I also note that the second claimant having attended 2 therapy sessions showed improvement. If there was no improvement of the mental state of the claimants they would have continued with the therapy or sought further medical assistance from Dr Maharajh. As such I conclude that their mental conditions must have improved in some degree since their last visit to Dr Maharajh.

SPECIAL DAMAGES

24. In this action paragraph 7 of the statement of claim sets out the claim for special damages as the costs of travelling from home to the Chaguanas Police Station in the sum of \$60.00 and for the costs of visits to Dr Hari D. Maharajh at \$225.00 per visit for three (3) visits \$675.00

25. Although this claim was specifically pleaded, no evidence was presented by the claimants to prove the sums claimed and therefore are not recoverable.

GENERAL DAMAGES

26. The claimants submitted that in light of the evidence the first claimant should be awarded \$85,000 for general damages and \$50,000 for exemplary damages. The second claimant should be awarded \$100,000 and \$50,000 respectively.

27. In response, the defendant submitted that the sums to be awarded for both claimants for the assault and battery should be \$20,000, \$12,000 for the false imprisonment, \$20,000 for aggravated damages and \$40,000 for exemplary damages.

28. The primary object of an award of damages is to compensate the claimant for the harm done to him. The secondary object is to punish the defendant for his conduct of inflicting harm.

29. In a case of false imprisonment a successful claimant may recover damages for injury to loss of liberty. Damages may also be recovered for injury to feelings that is to say indignity, mental suffering, disgrace and humiliation suffered by the claimant as well as for any physical injury and injury to reputation. With respect to pecuniary loss such loss which is not too remote is also recoverable¹.

30. In determining the primary award to compensate the claimant the Privy Council in **Tamara Merson v the Attorney General of the Bahamas**², recommended that a court ought to make a separate award of damages for the assault and battery and the false imprisonment. It was also recommended that a distinction should be made between

¹ Mc Gregor on Damages 15th ed para 1619 to 1612

² PC Appeal No 61 of 2003

compensatory damages (which would include aggravated damages) and exemplary damages and the elements attributable to these awards are to be identified. More recently Des Vignes J in **Sean Wallace v the Attorney General of Trinidad and Tobago**³ applied the said recommendations.

31. Accordingly in considering the compensatory award which I should make to the claimants I shall take into account the aggravating features but I will not separately identify an amount for aggravated damages since I do not wish to blur the fact that what is being awarded is a single figure intended to compensate the claimants for the physical and mental suffering and damage they endured.
32. In considering the range of possible awards for similar assault and battery, malicious prosecution and false imprisonment, when I look at the recent local decisions I am of the view that the sums submitted by the claimants are outside the range of possible awards.
33. In assessing the quantum of general damages to be awarded I considered the following cases referred to me by the parties:
 - (a) In **Bernard v Quashie**⁴ the period of detention was approximately 7 hours. The plaintiff had been beaten badly. The causes of action were malicious prosecution, false imprisonment and assault and battery. The total sum awarded as compensatory damages inclusive of aggravated damages by the Court of Appeal in 1997 was \$40,000 and \$12,000 as exemplary damages.
 - (b) In **Robert Naidike v The AG**⁵. This was a constitutional motion where the claimant was arrested in broad daylight. Whilst seated in a motor vehicle he was choked, beaten, and handcuffed to the steering wheel. He bumped his head and when he

³ CV 2008-04009 at para 45

⁴ Civ Appeal 159 of 1992

⁵ CV 2006-03600 Decision of Rajnauth-Lee J

awoke he was in a pool of water in a cell with his shirt torn and bloodied. In 2007 the court awarded the sum of \$250,000 as compensatory damages and \$50,000 as vindicatory damages.

- (c) In **Mahadeo Sookai v The AG**⁶ there were 2 allegations of assault and battery by a police officer and a civilian and the other of false imprisonment for ½ hour. The claimant was beaten mercilessly. He was in excruciating pain, bleeding from his nostrils and mouth. He had a fractured nose, bruises to both knees and left lower chest tenderness. In October 2007 the court awarded \$25,000 damages for the assault and battery. Aggravated damages of \$10,000. Exemplary damages of \$20,000 and \$6,000 for the ½ hour false imprisonment.
- (d) In **Mario Richards v The AG**⁷ the claimant was unlawfully arrested and taken to the Freeport Police Station where he was stripped and searched and detained for just under 12 hours. The police had reasonable grounds to arrest. In March 2008 the court awarded \$25,000 for the unlawful detention and \$25,000 as compensatory damages.
- (e) In **Curtis Gabriel v The AG**⁸ the plaintiff was assaulted by police officers to extract a confession. He was acquitted after spending 84 days in prison. In June 2008, the plaintiff was awarded \$125,000 compensatory damages which included an element of aggravation and \$50,000 for exemplary damages.
- (f) In **Rajesh Ravi Harry v The AG**⁹ . This award was made in 2009. The claimant was badly beaten by the police and he was detained for 2 days. The claimant was awarded \$40,000 for assault and battery and \$40,000 for aggravated damages,

⁶ CV 2006-00986 Decision of Moosai J

⁷ CV 2006-02973 Decision of Colin Kangaloo J

⁸ HCA 2544 of 2003 Decision of Rajkumar J

⁹ HCA 3651 of 2002 Decision of Rampersad J

making a total of \$80,000 as compensatory damages and \$40,000 as exemplary damages.

34. I also considered the more recent decision in **Adesh Maharaj v The AG**¹⁰ which was an award made in May 2011. This was a constitutional motion where the applicant was awarded \$20,000 for being detained in a cell in a police station for a period of 3 hours with the attendant distress and inconvenience.

35. I am mindful that in considering the comparative awards the damages assessed in private law cases are not the same as in public law cases, where the former have been higher than the latter. In making the award for compensatory damages, I took into account that the claimants were minors at the time. They were threatened and cursed by the police officers on the journey to and at the police station. They were put to kneel on filthy steps with their hands up in the air for 10 minutes. While kneeling they were threatened by 2 army officers to be kicked down. All this took place in the absence of their parents. The claimants were searched and the first claimant's pants was pulled down so that part of his buttocks was exposed to the full view of the public. I have also noted that in the instant case unlike the authorities referred to above that the claimants were not beaten, the period of detention was relatively brief and they were not placed in a cell at the police station.

36. It will always be difficult to put a dollar figure to the pain, suffering and humiliation experienced by a claimant who has been assaulted, prosecuted and unlawfully deprived of his liberty. Taking into account the decided cases and the evidence, I award the sums of \$22,000 and \$20,000 respectively to compensate the first and second claimants for the assault and battery and malicious prosecution. These sums include an element of aggravation since the aggravating factors include the public humiliation, the threats by the police officers, the post traumatic stress syndrome and the feeling of

¹⁰ S 788 of 1998 decision of Pemberton J

fear of police officers. The sum awarded to the first claimant is more than that awarded to the second claimant since I am of the view that he suffered a greater degree of humiliation having been subjected to his pants being pulled down causing part of his buttocks to be exposed in full public view.

37. Further, I am of the view that an award of \$ 7000 for each claimant would be adequate compensation for each claimant's loss of liberty for a little over 1 hour with the attendant distress and inconvenience.

EXEMPLARY DAMAGES

38. It is settled law that exemplary damages are awarded where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action¹¹. The courts will usually award exemplary damages where¹²:

- (a) The awards for compensatory damages are perceived as inadequate to achieve a just result between the parties.
- (b) The nature of the defendant's conduct calls for a further response from the courts.
- (c) The conscious wrongdoings by a defendant is so outrageous that something more is needed to show that the law will not tolerate such behaviour.
- (d) Without an award of exemplary damages justice will not be done otherwise.
- (e) It is usually a last resort to fill a "regrettable lacuna".

39. Having regard to the aforesaid cases cited, I agree with the sum submitted by the defendant as exemplary damages for the claimants and I award the sum of \$ 20,000 to each claimant to show this court's serious disapproval of the behaviour of the police officers, in particular officer Chadee. In arriving at this sum I took into account that I have made an award for aggravated damages which includes a punitive element.

¹¹ Rookes v Barnard (1964) AC 1129

¹² Kuddus c Chief Constable of Leceistershire (2002) AC 122 at para 63

INTEREST

40. The award of interest on damages is discretionary pursuant to section 25 of the Supreme Court of Judicature Act Chap 4:01. The state of the local authorities on the applicable rate of interest is now in a state of flux¹³ having regard to the prevailing economic situation. In the absence of any evidence being led as to the appropriate rate of interest, a reasonable rate of interest for the award of general damages is 9% per annum from June 10, 2005 to June 14, 2011.

ORDER

41. General damages is awarded to the first claimant in the sum of \$49,000 of which sum \$20,000 represents exemplary damages.

42. General damages is awarded to the second claimant in the sum of \$47,000 of which sum \$20,000 represents exemplary damages.

43. Interest is awarded on these sums at the rate of 9% per annum from the date of the action (June 10, 2005) until judgment (June 14, 2011).

44. The defendant to pay the claimant prescribed costs and Dr Maharajh's fee in the sum of \$1200 for attending court to give evidence which was unchallenged by the defendant.

Dated this 14 June 2011.

Margaret Y Mohammed
Master (Ag)

¹³ CV 2008-04009 Sean Wallace v The Attorney General of Trinidad and Tobago per Des Vignes J at paragraphs 69 and 70.