

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2010-04093

Between

ANTONIO SOBERS

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before Master Patricia Sobion Awai

Appearances:-

Mr Gerald Ramdeen for the Claimant

Mr Duncan Byam for the Defendant.

REASONS

BACKGROUND

1. This is an assessment of damages for assault and battery of the claimant who was a prisoner at the Golden Grove State Prison in Arouca on November 11, 2006 when officers of the protective services carried out an exercise at the remand prison. The claimant's case was one of 57 claims brought by inmates of the remand prison as a result of the actions of the protective services on that day.
2. On 9th July 2012 the court ruled in favour of the claimant ordering that damages, inclusive of exemplary damages, and costs be assessed by a Master.

THE EVIDENCE

3. At the assessment, the claimant relied on his witness statement filed on October 7, 2011, which had been used at the trial on liability.
4. The parties agreed that the transcript of the cross-examination of the claimant before the trial judge would form part of the evidence in the assessment.

5. Additionally an Agreed List and bundle of Documents was filed on December 12, 2014 in compliance with my directions This consisted of the following:
 - i. Extract of Station Diary Day Duty dated November 11, 2006
 - ii. Medical records from Eric Williams Medical Sciences Complex of injuries suffered by the claimant on November 11, 2006
 - iii. Medical records of the Claimant from Golden Grove Prison.

Claimant's witness statement

6. The claimant's version of the events surrounding the assault on him by officers was as set out below.

7. At around 7 pm on November 11, 2006, he was in a cell with 3 other inmates engaged in Arabic Islamic studies when he heard gun shots nearby. He went to the gate of the cell and observed an armed officer in front of the cell. He retreated but the officer pointed a gun at him and shot him in the face. He lost consciousness.

8. He awoke to the smell of tear gas and realised that he was bleeding from his face. He was in the cell surrounded by inmates. He was in extreme pain, he could not move his jaw and he was not able to talk.
9. Officers opened the cell gate and dragged him out into the corridor causing his pain to worsen. While he was in the corridor, the officers beat him and kicked him all over his body. He tried to block the blows to his head with his hands.
10. The claimant managed to get up and run for a short distance and was shot again on the left side of his waist. He fell to the ground and the officers continued to beat him as before kicking him all over his body. He was pushed against a railing and fell onto concrete ground about 8 feet below spraining his left arm. While he was on the ground, the officers started to beat him again.
11. The claimant was eventually taken to the infirmary and then was placed in a cage with 3 other inmates for some 3 hours before he was transported to the Mount Hope Hospital.

12. While at the hospital the claimant received treatment for his injuries. He was handcuffed to the bed all the time which was uncomfortable and he was placed on a liquid diet.
13. Upon discharge, he was sent to the infirmary and was given medication and a liquid diet.
14. He claimed that his entire life changed since the incident. He was unable to enjoy eating ice cream or having cold drinks. He often remembered the incident, the feelings of loss and despair and the pain he was made to suffer on November 11, 2006.
15. Annexed to the claimant's witness statement was a statement which he made at the prison on November 24, 2006. It read as follows:

"I Antonio Sobers hereby state for your information that on the 11th November 2006 I was shot by a soldier at the Remand Prison. I obtained injuries to my mouth and eye. The incident took place about 7.30 pm while officers were conducting an operation. I was taken to the Mt Hope

Hospital late that night where I received medical treatment. I was taken to the Sangre Grande Magistrate Court on the 24th November, 2006 and was also taken to the Sangre Grande Hospital where I also received medical treatment. I was brought back to the Remand Prison on the evening of 24th November, 2006 and the incident was reported and this statement was taken."

Medical evidence

16. The medical evidence consisted of the following:

- i. Discharge summary and Notes relating to the claimant's treatment at the Eric Williams Medical Sciences Complex (EWMSC) from October 12, 2006 to October 20, 2006.
- ii. Report dated November 20, 2006 from Dr Candy Naraynsingh an oral and maxillofacial surgeon attached to the North Central Regional Health Authority.

Discharge summary and Notes from EWMSC

The claimant was admitted to hospital on the 12th November 2006 and discharged on the 20th November 2006. On admission he was diagnosed

with 1) gunshot wounds to the face (rubber pellets) and 2) comminuted displaced fracture of left maxillary sinus and upper left dento-aveolar segment. Upon admission to hospital the claimant was given a CT scan, a chest X-Ray and a Dental Pantomogram.

On November 15, 2006, he was operated upon under general anesthetic. Treatment consisted of reduction and fixation of the left maxillary and upper left dento-aveolar segment. He was discharged with his jaw wired.

Progress Notes from EWMSC

The Progress Notes for November 12, 2006 revealed that the claimant had lacerations to his upper lip, tenderness over the left cheek, soft tissue swelling to left cheek and blurred vision in left eye. He had soft tissue injury consisting of extensive laceration of the aveolar with the area appearing to be shattered and hard tissue injury consisting of loss of teeth.

Sangre Grande Hospital medical report

The records revealed that on November 24, 2006 the claimant was seen at the Sangre Grande

Hospital. He was unable to open his mouth properly. He was administered painkillers and discharged the same day.

Analysis of the Claimant's evidence

17. The claimant's own evidence must be assessed in conjunction with the medical evidence and the findings of fact made by the learned judge who tried the matter on liability. Although the claimant was successful in relation to his claim, the judge questioned the credibility of some parts of the claimant's evidence, particularly in relation to the extent of the beating he endured and the injuries he sustained at the hands of the officers. At paragraphs 22, 88 and 89 of the judgment, the learned judge accepted that the claimant was shot in the face at close range but found that he greatly exaggerated the assault by officers.

18. At paragraph 22 of the judgment, the judge found that the claimant's evidence at the trial was inconsistent with a written statement he made at the prison on November 24, 2006 in the following passage:

"In that statement [dated Nov 24, 2006] Sobers states that he was shot by a soldier

in the remand prison and suffered injuries to his mouth and eye. That statement contains no allegation of any beating or further injuries. Although the statement is annexed to his witness statement no explanation has been proffered by Sobers with respect to the inconsistencies between this statement and his evidence before me."

19. At paragraphs 88 and 89 of the judgment, the learned judge refers to the absence of supporting medical evidence as follows:

At paragraph 88

"I have no doubt however that there is an element of exaggeration by Sobers with respect to the beating he suffered at the hands of the officers. For example there is no medical evidence confirming the sprain to his left hand as he alleges. This, coupled with the contents of his statement made on 24th November, suggests to me that he has greatly exaggerated the assault received at the hands of the servants of the Defendant.

And at paragraph 89

"I do not however accept his evidence of being shot a second time or falling over the railing onto the lower level and spraining his hand. If this were the position in my opinion there would have been some medical evidence in support of this claim."

21. Based on the evidence before me, I concurred with the findings made by the trial judge. In summary, I accepted that the claimant was shot in the face at close range with rubber bullets and that he was dragged from the cell. I did not accept that he beaten and kicked all over his body nor that he was shot a second time in the waist, nor that he fell from a height of 8 feet. In effect, the claimant exaggerated the injuries he suffered at the hands of the officers.

GENERAL DAMAGES (PAIN AND SUFFERING)

22. The relevant principles for assessing general damages in personal injuries claims were set out in ***Cornilliac v. St. Louis*** (1965) 7 WIR 491 by Wooding CJ. They are:

- i. The nature and extent of the injuries sustained;
- ii. The nature and gravity of the resulting physical disability;
- iii. The pain and suffering which had to be endured;
- iv. The loss of amenities suffered; and
- v. The extent to which the plaintiff's pecuniary prospects have been materially affected.

Nature and Extent of Injuries.

23. The claimant suffered a gunshot wound to the face from rubber bullets and had a comminuted displaced fracture of the left maxillary sinus and upper left dento-alveolar segment and blurred vision in his left eye. He also suffered loss of teeth.

The Nature and Gravity of the Resulting Physical Disability.

24. At paragraph 14 of his witness statement, the claimant outlined some of his ongoing complaints. He said his mouth swelled when the weather was cold and at times his left eye got blurry and he would experience sudden severe

pain. He was unable to eat on one side of his mouth because of the loss of teeth.

25. There was no objective medical evidence to support these complaints but it was reasonable to expect that the loss of teeth would result in difficulty in chewing food. Given the claimant's tendency to exaggerate, I declined to accept his evidence relating to the other complaints in the absence of corroborating medical evidence.

Pain and Suffering.

26. There could be no doubt that the claimant experienced extreme pain after being shot in the face at close range and dragged out of the cell. He was not immediately taken to the hospital but instead was kept for some hours in a cage bleeding and in pain. At the hospital, the claimant underwent a surgical procedure after which his jaw was wired and he was placed on a liquid diet.

27. Apart from his physical pain, the claimant would also have experienced mental anguish because of the unprovoked and unjustified nature of the

attack by the officers. I accepted that he experienced feelings of loss and despair.

Loss of Amenities.

28. The claimant lost the enjoyment of eating ice cream and having cold drinks. Apart from that, there was little to support his assertion that his entire life had changed since the incident.

The extent to which the plaintiff's pecuniary prospects have been materially affected.

29. The claimant suffered no loss of pecuniary prospects.

Comparable cases

30. The claimant relied on cases in which awards ranged from \$65,000.00 (***Martin Reid v AG*** CV2006-2496) to \$394,000.00 (***Joseph v AG*** CV2008-415).

31. I have considered the cases cited by the Claimant and other cases from this jurisdiction and found the following cases to be most relevant to the present circumstances:

Owen Goring v The Attorney General of Trinidad and Tobago CV 2010-03643. The claimant was

severely beaten by four prison officers. At first he was kicked and slapped about his body. Then he was then beaten with the base of a broom. The officers then fashioned a whip out of two bucket handles and then beat the claimant with the makeshift whip. As a result of the beating the claimant suffered lacerations to his face, welt marks about his body, swelling and soft tissue injury. The claimant was awarded \$100,000.00 in general damages and \$100,000.00 in exemplary damages.

Hakim Braithwaite v The Attorney General CV 2009-03485. The claimant was beaten to the point of losing consciousness. The officers then splashed a bucket of water onto his face to revive him and then continued beating him. The claimant urinated on himself after being kicked in his belly. He begged another officer for help but he was ignored. The other officer then sounded the alarm to which other prison officers responded. They were wearing masks. Three of those officers proceeded to beat the claimant about his body with their batons. The claimant sustained trauma to his chest and abdomen. He was warded at the Port of Spain hospital for four days. He was

awarded \$100,000.00 in general damages and \$40,000.00 exemplary damages.

Michael Bullock v The Attorney General C.V. 2007-01766. The claimant was beaten by several prison officers. He sustained a fractured jaw and the loss of some of his teeth. He had to be placed on a liquid diet as a result of the injuries to his jaw bone. He was awarded \$130,000.00 in general damages inclusive of aggravated damages and \$50,000.00 in exemplary damages.

La Roche, Greene and Andrews v The Attorney General of Trinidad and Tobago CV 2007-2000. Anthony Andrews suffered a gunshot wound during the attacks. He was awarded the sum of \$160,000.00

Barry Barrington v The Attorney General CV 2009-03272. The claimant was shot by the officers during the riot. One week later he was beaten by prison officers. Awarded \$250,000.00 in general damages inclusive of aggravated damages and \$70,000.00 in exemplary damages.

32. Guided by the awards given in the above cases and having regard to the evidence in this case,

I found that a fair award was \$125,000.00 in general damages inclusive of aggravated damages.

EXEMPLARY DAMAGES

33. The evidence before the court was that the claimant was shot in his face with rubber bullets at close range by officers and dragged out of the cell for no good reason. Although he sought to exaggerate the extent of the assault and of his injuries, the trial judge ruled that the claimant was entitled to exemplary damages.

34. Taking into account all the circumstances of the case, I considered an award of exemplary damages in the sum of \$25,000.00 was appropriate to mark this court's disapproval of the unjustified actions of the officers toward the claimant.

THE ORDER

35. In the premises, the following order was made by the court on September 29, 2016:

- 1) The defendant shall pay the claimant general damages assessed in the sum of \$125,000.00 with interest at the rate of 4%

per annum from October 11, 2010 to September 29, 2016.

- 2) Exemplary damages are assessed in the sum of \$25,000.00.
- 3) The defendant shall pay the claimant's costs on the prescribed scale.

Dated this 5th day of September, 2018

Master P. Sobion Awai