

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-00123

BETWEEN

JUDSON MOHAMMED

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 13<sup>th</sup> April, 2017

**APPEARANCES**

Ms. Saira Lakhan Attorney at law for the Claimant.

Ms. Ronnelle Hinds instructed by Ms. Kezia Redhead Attorneys at law for the Defendant.

**JUDGMENT**

1. The Claimant is a police officer who sustained injuries on the 14<sup>th</sup> January 2011 while working at the Cell Block section of the San Fernando Magistrate's Court. He instituted the instant action seeking damages; aggravated and/or exemplary damages;

interest at a rate of 12% on general damages and 6% on special damages from the date of the incident to the date of judgment; costs; and such further and/or other relief as to the Court may deem just.

2. The Claimant alleged that on Friday 14<sup>th</sup> January 2011, he reported for work at the San Fernando Magistrates Court where he was responsible for performing duties at the Cell Block section of the Magistrates' Court in the area where the prisoners are kept and secured. Whilst on duty a prisoner named Derek Salina who was a known leader of a gang referred to as 'the blood gang' called out to the Claimant and asked him to purchase some "doubles". The Claimant refused to comply with the request and indicated to Derek Salina that the State would provide him with breakfast. Derek Salina thereafter threatened him.
3. Later during the same day, the Claimant had to remove 2 prisoners from the cell in which the said Derek Salina was secured. As soon as the Claimant opened the gate to the said cell, Mr. Salina ran out and struck the Claimant on his head with what appeared to be a sharp metal object causing him to fall to the ground. A struggle between the Claimant and Mr. Salina ensued whereby the Claimant attempted to recover the sharp metal object. However, the Claimant was unsuccessful and he was slashed above his left eye with the sharp metal object and several other prisoners joined in and repeatedly cuffed and kicked the Claimant about his body ("the incident").
4. The Claimant was thereafter rescued by some of his colleagues and he was then placed in a marked police vehicle and taken to the San Fernando General Hospital where he received treatment. The Claimant claims that the Defendant was negligent since it:

- i. Failed to provide the Claimant with adequate instructions, a handbook and/or any specialized training in any safety workshops on how to safely work and in particular how to work safely in the Cell Block section or in Court when managing prisoners who are violent or in particular on how to handle prisoners on a daily basis;
- ii. Failed to provide adequate and efficient metal detectors or other updated technological devices which could have been used to detect unauthorized devices/possession concealed by prisoners in their hair, clothing or anus which can be a danger to the Claimant, other prisoners and members of the public.
- iii. Failed to provide adequate staff or police officers on a regular basis to manage and control the San Fernando Magistrates' Court Support Unit thereby placing the lives of prisoners, police officers, members of the public and employees of the San Fernando Magistrates' Court at risk on a daily basis.
- iv. Failed to provide adequate batons, locks for cells and handcuffs to properly and safely manage prisoners. At the material time of the incident, there were 5 batons (1 of which was broken and taped together with masking tape) and 15 pairs of handcuffs to manage up to 100 prisoners or more regularly who fight almost daily.
- v. Failed to provide training in the absence of metal detectors and other equipment on how to conduct proper searches on prisoners and how to manage prisoners in order to improve the level of performance in safe management of prisoners.
- vi. Failed to provide any training on how to deal with dangerous prisoners or sick prisoners with contagious illnesses in the Cell Block or to manage prisoners during riots or any form of revolt.

- vii. Failed to take any reasonable care to prevent injury or damage to the Claimant from unusual dangers or working with violent prisoners which the Defendant ought to have known that can be potentially hazardous.
- viii. Caused or permitted the San Fernando Magistrates' Court to be left in a dangerous condition since it is not in compliance with the **Occupational Safety and Health Act, 2004** ("the OSH Act"). At all material times, there were no fire extinguishers or fire escape plan or strategy, no adequate anti-riot plan or strategy, no proper first aid equipment or training, no virus or infections and inadequate drinking water and toilet facilities for staff and prisoners.
- ix. Failed to upgrade or properly maintain the prisoners' Cell Block. Prisoners would often break off pieces of metals from the rusting cells, parts of the broken light bulbs and broken toilets bowls and use it as weapons to sometimes stab and injure other prisoners.
- x. Failed to provide the Claimant with adequate supervision and to supervise and/or regularly inspect and/or ensure that the San Fernando Magistrates Court and its Cell Block was maintained or created in a safe manner so as to prevent the risk of injury to its police officers and/or other employees of the Government of Trinidad and Tobago.
- xi. Failed to have appropriate measures to ensure proper Health and Safety are maintained at all times.
- xii. Failed to set up and implement a safe system of work and/or a safe work environment for its employees.
- xiii. Failed to provide the Claimant with a safe place of work and/or safe equipment or protective gear to safely carry out his duties.

- xiv. Failed in all the circumstances to take reasonable care for the safety of the Claimant.
- xv. Failed to ensure that the environment or atmosphere at the San Fernando Magistrates' Court is a safe and healthy environment.
- xvi. Failed to have training sessions for police officers to educate them about their statutory obligations with respect to reports of accidents to the Defendant and to the Occupational Safety and Health Authority.
- xvii. Exposed the Claimant to an unnecessary foreseeable risk of injury by failing to provide the Claimant with a safe place of work, safe plant and equipment, adequate training and adequate supervisions.
- xviii. Failed to have proper procedures in place for emergency response thereby placing the Claimant at further risk of injury and failed to have any first aid kit in place for injured prisoners or police officers to be treated.
- xix. Provided inadequate prison cells to house prisoners for various types of cases such as juvenile cases, charge cases, sexual offence cases, traffic offence cases, maintenance case and high-risk prisoners.

5. The Claimant pleaded that the Defendant breached its statutory duty since it:

- i. Failed to ensure the safety, health and welfare at work of all employees pursuant to section 6 of the OSH Act and it failed to provide adequate information and training on the potential hazards associated with working with dangerous prisoners;
- ii. Failed to provide a safe plant and system of work pursuant to section 6(2)(d) of the OSH Act;

- iii. Failed to provide adequate instructions, training and supervision as is necessary to ensure, so far as practicable, the safety and health at work in convention of section 6(2)(d) of the OSH Act;
- iv. Failed to provide a safe place of work so far as reasonably practicable as required by section 6 (2) ( e) of the OSH Act;
- v. Failed to conduct a suitable and sufficient risk assessment contrary to section 13 A of the OSH Act as amended;
- vi. Failed to conduct suitable and sufficient annual assessment of the risks to the safety and health of its employees as required by section 13A(1) of the OSH Act.
- vii. Failed to establish a Safety and Health Committee pursuant to section 25 of the OSH Act as amended and consequently it acted in breach of sections 25F and 25K of the OSH Act.
- viii. Failed to make a suitable and sufficient assessment of the risk to the safety and health of the Claimant to which he might be exposed whilst at work pursuant to section 25G(1)(a) of the OSH Act;
- ix. Failed to report the accident contrary to section 46 (1) and 46A of the OSH Act.

6. The Defendant version of the events was that on the morning of the incident the Claimant and another officer Police Constable Hall Regimental Number 15702 (“PC Hall”) was on duty at the Cell Block section of the San Fernando Magistrates’ Court. Sometime between 9:30 am and 10:15 am that morning, PC Hall and the Claimant were in the process of separating the prisoners for movement to the Magistrates Court by handcuffing and taking prisoners out of their cells. The police officers entered the Cell Block and the Claimant gave PC Hall 2-3 pairs of handcuffs and instructed him to attend to the “charge cell prisoners” whilst the Claimant kept the rest of the

handcuffs for himself. PC Hall proceeded to the “charge cell area” by himself and was in the process of handcuffing the prisoners when he heard raised voices coming from the direction of “the big cell”, which was to the east of where PC Hall was standing.

7. PC Hall looked towards the direction of the noise and saw the Claimant and Derek Salina, Cyril Salina and another prisoner at the entrance of the cell with the gate partially opened. PC Hall observed that none of those prisoners were handcuffed.
8. When PC Hall reached the cell area, he noticed the Claimant and the prisoner gesticulating and shouting towards each other and observed that more prisoners were gathering at the entrance of the cell gate and that the Claimant and the initial three prisoners had moved from the entrance.
9. Upon realizing this PC Hall grabbed the gate and tried to close it. He placed his foot at the bottom of the gate of the cell, thus preventing the prisoners from pushing their way out of the cell while at the same time using his hands to hold on to the gate thereby creating a wedging effect on the gate. However this was to no avail.
10. Whilst PC Hall was attempting to keep the cell gate closed to prevent the other prisoners from exiting the cell he heard loud noises which sounded like punches. He eventually lost grip of the gate and turned towards the Claimant and observed that the Claimant had a cut above his eye.
11. Subsequently, other officers entered the Cell Block area and escorted the Claimant to the San Fernando General Hospital.

12. The Defendant denied that it breached its duty of care to the Claimant and therefore it denied liability. It averred that it has complied with its duty as an employer to the Claimant to provide a reasonably safe place of work, safe plant and equipment, adequate training and adequate supervision. The Defendant stated that it fulfilled its duties as follows:

- a. At the Police Training College, officers are generally trained on how to deal with and handle prisoners.
- b. There was a briefing on the workings of the Cell Block.
- c. The Guard and Emergency Branch provided extra training to police officers and police officers from this Branch were used in case of emergencies.
- d. There are two functional hand scanners which on occasions have detected items store by the prisoners in their persons.
- e. Extensive searches are done to the prisoners.
- f. There were 5 batons and 15 pairs of handcuffs.
- g. All of the nine cells were fitted with pad locks and tower bolts are used.
- h. On the day of the incident, there were approximately 7-10 police officers which would have been sufficient to deal with the number of prisoners. If there is a shortage of staff adjustments are made to the strength to ensure the safety of the officers.

13. The issues that arise for determination are as follows:

- a. Whether the Defendant breached its duty of care as an employer to the Claimant as an employee?
- b. If it is found that the Defendant breached its duty, whether the Claimant was contributory negligent in the circumstances?

- c. What measure of damages would the Claimant be entitled to if it is found that the Defendant breached its duty of care?

14. At the trial the Claimant gave evidence on his behalf and PC Hall gave evidence for the Defendant. A witness summary was filed for Retired Police Sergeant Keith Sylvester (“Sergeant Sylvester”) but he did not appear at the trial to give evidence.

**Whether the Defendant breached its duty of care as an employer to the Claimant as an employee?**

15. According to **Munkman on Employer’s Liability**<sup>1</sup> an employer owes an employee a duty of care to safeguard his health and safety in the context of his employment.

16. An employer’s duty under the common law is explained under four heads. An employer owes a duty of care to his employees to provide competent staff, to provide and maintain safe equipment, a safe place of work and a safe system of work. According to **Clerk and Lindsell on Torts**<sup>2</sup>:

*“These heads provide a useful framework for analysing the duty but it should be remembered that they are part and parcel of one duty within the law of negligence.”*

17. Lord Hoffman in **White v Chief Constable of South Yorkshire Police**<sup>3</sup> noted that:

*“The liability of an employer to his own employees for negligence.... is not a separate tort with its own rules. It is an aspect of the general law of negligence.”*

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<sup>1</sup> 15<sup>th</sup> Edition Para 2.44

<sup>2</sup> Para 13:07

<sup>3</sup> [1999] 2 AC 455 at 506

18. The duty on the employer is not absolute. In **General Cleaning Contractors Ltd v Christmas**<sup>4</sup>, the Court stated that there is no absolute obligation upon employers to devise a system for their employees which will be free of risk. The only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers that are necessarily inherent in the operation. Lord Reid further stated that in devising a suitable system where the dangers or risk vary from job to job, it may be reasonable to leave a great deal to the individual workman to take the initiative in devising and using precautions.
19. In **Winter v Cardiff Rural District Council**<sup>5</sup>, Lord Oaksey stated that:
- “...where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workman on the spot...A good leader of men leaves to his men as much discretion as he can, otherwise unforeseen circumstances will upset the best laid plan. The question is in each case; is it a matter for the employer’s decision or for the man’s?”*
20. **Clerk and Lindsell** at paragraph 13-22, in examining the standard of care required by an employer states that *“the mere foreseeability of a risk does not give rise to breach of duty if it is one which could be met by employees taking obvious precautions”*.
21. The burden of proving negligence in torts such as employers’ liability is on the Claimant who must show that he was injured by a negligent act or omission for which

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<sup>4</sup> [1953] AC 180 per Lord Tucker at page 191

<sup>5</sup> [1990] 4 AER 819

the Defendant is in law responsible. According to **Halsbury's Laws of England**<sup>6</sup> the onus on the Claimant "... involves the proof of some duty owed by the defendant to the claimant, some breach of that duty, and an injury to the claimant between which and the breach of duty a causal connection must be established".

22. It was submitted on behalf of the Claimant that his injuries were caused as a direct result of the State's negligence and his injuries could have been prevented if there were adequate police officers in attendance, proper training on managing prisoners and adequate resources and safety measures in place on the day of the incident.
23. The Defendant has not disputed that as an employer it was under a non-delegable duty to ensure that a safe system of work, safe equipment, competent staff and a safe environment were provided to the Claimant. The Defendant's case was that it was not foreseeable that the Claimant in the circumstances as he was, would open a cell by himself without the assistance of another police officer who was within walking distance from him when he was fully aware of the threat made to him by the notorious gang leader, Derek Salina.
24. The Claimant's complaints against the Defendant in negligence can be broken down into 5 categories namely inadequate staff; lack of equipment; inadequate physical facility and lack of emergency response.
25. The Claimant's evidence was that on the morning of the incident a known gang leader Derek Salina called out to him and asked him to purchase some "doubles". He refused to comply with the prisoner's request and as a result the prisoner extended his arm

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<sup>6</sup> Volume 78 (2010) para 62

and pointed in his direction and said in a loud tone *"I go do for you"*. The Claimant was subsequently assaulted by the said prisoner as soon as he opened the gate to the cell in which said prisoner was secured. Based on the Claimant's evidence he alone was assaulted even though he was accompanied by PC Hall in the holding bay area.

26. The Claimant's evidence to support his allegation that the Defendant failed to provide adequate staff or police officers on a regular basis was set out at paragraph 8 of the Claimant's witness statement. According to the Claimant on the day of the incident he observed that there was a shortage of police officers present to properly manage the prisoners. He also stated that throughout the period he worked at the San Fernando Magistrate's Court he never observed a full complement of police officers reporting to duty at the Cell Block area nor the full complement of cells being used. The Claimant acknowledged under cross examination that even after pleading that there was a shortage of staff, he had failed to state how many officers were present on the day of the incident as well as how many officers were required to be on duty to prevent him from being injured. Therefore there was no evidence from the Claimant of the full complement of officers required to ensure that the risks of him being injured was minimized on the day of the incident.

27. The Claimant's evidence to support his allegation that there was a lack of equipment was set out at paragraph 13 of his witness statement. According to the Claimant, on the day of the incident and on the days leading up to the incident he recalled that there were 5 batons (1 of which was broken and taped together with masking tape) and 15 pairs of handcuffs to manage up to 100 prisoners or more and who fought regularly almost daily. He also stated that since there were inadequate metal detectors and it was impossible to efficiently and effectively conduct thorough examinations on prisoners with inadequate police officers attached to the Court and Process Branch

and inadequate equipment or up to date technological devices to conduct the said searches. In cross examination the Claimant admitted that it was incorrect to state that the shortage of locks caused the prisoners to escape from the cell.

28. Notably the Claimant did not state how many metal detectors were available on the day of the incident and the system which was used for searching prisoners due to his allegation of the shortage. In my opinion the Claimant's evidence on this matter was broad and general and he failed to convey to the Court how the presence of more metal detectors would have minimized the risk of his injury.
29. The Claimant also asserted that the Defendant failed to provide proper training on how to handle prisoners in the Cell Block section or in Court; failed to provide training on how to conduct proper searches of prisoners in the absence of metal detectors; and it failed to train and educate the police officers of their statutory obligation to report accidents to the Defendant and to the Occupational Safety and Health Authority. The Claimant denied that he was briefed by Sergeant Sylvester on the 13<sup>th</sup> January 2011. He stated that he was never informed of, given training in, any strategic positions to stand when handling prisoners or strategic ways to hold cells. He admitted to speaking privately to Sergeant Sylvester on a few occasions about shortcomings which he observed in the way things were done at the Cell Block section and that he made certain suggestions to Sergeant Sylvester.
30. The Claimant also stated that he was never briefed on the operation, functions and procedures at the Cell Block Section. He testified that while training at the Police Training Academy he was taught about the Police Service Regulations and the Police Service Standing Orders which deal with care and custody of prisoners and their property and that neither of these documents outlined strategies and procedures for

functioning in the prison environment and at no time he was ever trained to function in the prison or cellblock environment.

31. In cross examination, the Claimant admitted that:
- a. At the time of the incident he was a police officer for 10 years.
  - b. He was attached to the San Fernando Magistrates Court for approximately 7 months and was previously attached to the San Fernando High Court Cell Block.
  - c. There is a small hole called the pigeon hole to allow handcuffing of prisoners in the cells.
  - d. He had instructed PC Hall to deal with prisoners in the “charge cell”.
  - e. There were more than three prisoners in the cell he was going to open.
  - f. He did not handcuff Derek Salina nor Cyril Salina.
  - g. He admitted that he did not wait for assistance from PC Hall before opening the cell.
  - h. The Claimant was aware of a Police Service Regulation that states that a cell should not be opened by less than 2 officers.
  - i. He agreed that the said Regulation is still applicable in 2016.
  - j. The Claimant agreed that the Regulation applies to all cells in which police officers detain prisoners.
32. In my opinion the Claimant failed to demonstrate what training would have better equipped him to deal with the incident bearing in mind the experience he possessed as a police officer for some 10 years and he had experience working at the Cell Block at the San Fernando Magistrate’s Court and the San Fernando High Court. Even if the Claimant had not received the training, he alleged which would have assisted him, he would have been exposed to such training by virtue of his work experience at both

the San Fernando High Court and from working at the Cell Block of the San Fernando Magistrate's Court. In any event the Claimant admitted that he was aware of the **Police Service Act Regulation** which states that at least 2 police officers must be present before a cell containing prisoners is opened.

33. To support his claim the Claimant produced three documents. The Claimant's report of the incident to the Senior Superintendent of the Southern Division of San Fernando<sup>7</sup> ("the Claimant's report"); the Police Station Diary Extract for the Cell Block dated 14<sup>th</sup> January, 2011<sup>8</sup> ("the station diary extract") and a report from the Occupational Safety and Health Authority dated 19<sup>th</sup> April, 2012 ("the OSHA Report").<sup>9</sup>
  
34. The station diary extract was made at 10:15 am on the day of the incident. It was the most contemporaneous document. It stated that both PC Hall and the Claimant were in the holding bay at the Cell Block preparing prisoners to be taken to the First Court when prisoner Derek Salina attacked the Claimant injuring him over his left eye. A struggle ensued between the Claimant and Derek Salina during which time the Claimant's keys to the cell fell it was retrieved shortly after minus a handcuff key. The station diary extract supported the Claimant's evidence to the extent that both he and PC Hall were in the Cell Block area when Derek Salina attacked him. While I accept that there were some inconsistencies between the station diary extract and the Claimant's evidence, there was no evidence that the entry in the station diary extract was made by the Claimant.

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<sup>7</sup> "J.M.2" at page 206 of Trial Bundle 2

<sup>8</sup> "J.M.2" at page 206 of Trial Bundle 2

<sup>9</sup> "J.M.3" at page 208 of Trial Bundle 2

35. The Claimant's report was dated 4 days after the incident. In a large part it supported the Claimant's version of the incident. In the Claimant's report he stated that PC Tilluck asked him to assist him to convey certain prisoners to the Second Court which he agreed. He and PC Hall spoke and they went into the cell area called the Base. He had to remove 2 prisoners from the cell Derek Salina was in and as he opened the gate to the cell, Derek Salina ran out and struck him. Notably, the Claimant did not mention PC Hall's location when he was opening the cell Derek Salina was in. However the substance of the Claimant's report supported the Claimant's evidence.

36. The OSHA report made the following findings:

- There was a contravention of section 6(2)(a) of the OSH Act. **The Police Service Regulations** provided that cells in which prisoners are confined shall be opened by not less than 2 police officers. This system was not followed which indicated that the employer failed to provide a safe system of work by ensuring 2 prison officers enter the cell when taking possession of weapons from prisoners.
- There was a contravention of section 6(2)(d) of the OSH Act on the basis that adequate supervision was not provided because proper procedures for the detaining of prisoners were not conducted.
- There was a contravention of section 13A of the OSH Act since the employer failed to conduct a suitable and sufficient Risk Assessment.
- There was a contravention of section 46 (1) of the OSH Act. The basis for this finding was that a search of the OSH Agency's complaint and accident records indicated that the accident involving the Claimant was not reported by the employer. The accident was reported through the Occupational Safety and Health Agency's hotline by the Claimant and not by the employer on the prescribed form.

37. The OSHA report also concluded that there was a breach of section 10(1) of Part IX, “Custody and care of Prisoners” of the **Police Service Regulations**<sup>10</sup> which states that a prisoner shall be searched before entering the cell. The OSH Report found that the incident illustrated the importance of ensuring that proper procedures for the detaining of prisoners are developed and executed and that adequate supervision is provided. It also found that the Claimant’s injuries could also be attributed to the lack of a risk assessment and implementation of adequate procedures when dealing with violent prisoners.
38. The OSHA Report was not appealed or challenged by the Defendant. In my opinion this meant that it accepted the aforesaid findings which supported the Claimant’s assertion that the Defendant breached its duty statutory duty by failing to provide adequate staff before opening a cell, adequate supervision and proper procedures for searching prisoners before entering a cell.
39. PC Hall was the sole witness for the Defendant. He was the other officer who was in the Cell Block with the Claimant on the morning of the incident. The evidence of PC Hall was he has been a police officer for 24 years. On the 14<sup>th</sup> January 2011 he was attached to the Court and Process Branch at the San Fernando Magistrate’s Court Cell Block where he was responsible for separating prisoners for movement into court as well as other duties.
40. PC Hall testified that sometime between 9:30am and 10:15am on the date of the incident, the Claimant, PC Mohammed, and he were responsible for the process of separating prisoners from their cells for movement into court. They had to handcuff

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<sup>10</sup> Chapter 15:01

prisoners, take them out of their cells and hand them over to other officers to be escorted to the various courts.

41. According to PC Hall, on entering the Base, which is the entire holding bay area for the Cell Block, the Claimant instructed him to attend to the "charge cell" prisoners. The Claimant gave him about 2 or 3 handcuffs and kept the others for himself. He then proceeded to the "charge cell" area. PC Hall further testified that while he was in the process of handcuffing some of the prisoners, he heard raised voices coming from the direction of the "big cell" which was east of where he was standing. He finished handcuffing a prisoner and then he looked in the direction of the noise. He saw the Claimant, Derek Salina, Cyril Salina and another prisoner in the entrance of the cell with the gate partially open. He observed that these prisoners were not handcuffed.
42. According to PC Hall, he then proceeded in the direction of the Claimant and the said prisoners and as he approached, he heard shouting back and forth between them. He also observed that they were gesticulating towards one another. As he got closer he heard Derek Salina say something to the Claimant to the effect of "*why you have to be the only one moving so*".
43. PC Hall further stated that as he got closer to the big cell he saw more prisoners gather at the entrance of the cell. He soon realized that these prisoners were about to exit the cell. He then grabbed the gate and tried to close it. He placed his foot at the bottom of the gate in order to prevent them from pushing their way out of the cell. He also used my hands to hold on to the gate thereby creating a wedge effect on the gate. At this point in time, according to PC Hall, the Claimant and the initial 3 prisoners had moved past him at the entrance.

44. While attempting to close the gate, PC Hall said he heard loud noises which sounded like punches but he could not see what was happening because he was focused on keeping the other prisoners from getting out of the cell.
45. PC Hall then stated that, one of the prisoners who was pushing to keep the gate open called out to some other prisoners who were not participating to assist him in further pushing the gate open. A few other prisoners came and assisted in pushing. PC Hall stated that he was unable to hold the gate in the position any longer and he was shoved back causing him to lose his grip on the gate. PC Hall stated that upon losing his grip of the gate he turned and hurried in the Claimant's direction. He saw him close to the first cell and he notice that he had a cut above his eye. He then saw Derek Salina motion his arm towards the Claimant with a tight fist. He grabbed Derek Salina's arm to try and prevent him from striking the Claimant. He placed himself between the Claimant and Derek Salina and at the same time pushed the Claimant aside with his next hand. According to PC Hall, Derek Salina did not resist his restraint and he did not try to attack him or the Claimant.
46. Shortly after, PC Hall said he saw the other prisoners who had pushed the gate open gather in front of him a short distance away. He also heard other Cell Block officers at the main gate calling out to him and the Claimant. Soon after PC Hall said he heard them entering the Base. He observed Derek Salina fade into the group of prisoners who were in front of him and they all stood their ground until the Cell Block officers came in.
47. According to PC Hall, a couple of officers who entered the Base came over to where he and the Claimant were standing and assisted the Claimant out of the Base and as the situation simmered down some of Cell Block officers and him began placing some

of the prisoners back into their cells. Approximately 10 minutes later the Guard and Emergency Branch officers came and assisted them in putting the remainder of the prisoners back into their cells.

48. On the issue of training, PC Hall stated that he and other officers attached to the San Fernando Magistrate's Court were briefed on a routine basis by Sergeant Sylvester on the proper operational methods of the Cell Block which consisted of strategic movements to be used while in the cell block area. He was briefed on the best way to remove a prisoner from the cell. Prisoners must be handcuffed through the pigeon hole and then allowed to exit through the cell gate. The cell gate is opened while placing a foot at the bottom of the gate before opening. He was also briefed that there must be at least 2 or more police officers in the Base, 1 officer opens the gate after placing the handcuffs on the prisoner and the other officer is supposed to be in a strategic position to assist if someone tries to come out of the cell. According to PC Hall this was the system for removing a prisoner from a cell before taking him up to a Court.

49. In cross examination, on the issue of training, PC Hall stated that he did not receive training on how to manage violent prisoners; there was a lecture book at the Court but he was never given a lecture on handling multiple prisoners; when there is a shortage of police officers, 1 police officer will manage more than one prisoner and it was the practice for 1 officer to manage more than 1 prisoner when taking out prisoners out of a holding cell.

50. PC Hall also admitted in cross-examination that there are inadequate body scanners, batons and handcuffs at the San Fernando Magistrates Court. Notably PC Hall did not state how many body scanners he thought would have been adequate given that there

were 100 prisoners on the morning of the accident and how this would have reduced the Claimant's risk to injury.

51. On the issue of adequacy of staffing, PC Hall admitted in cross examination that he could not recall whether the turnout of officers on the morning of the incident was 7-10 police officers. However, he admitted that 10 police officers would have been inadequate to manage the Court and that during the period he worked at the Court, it was understaffed a few times. He stated that the San Fernando Magistrates Court has two floors. The first floor consisted of around 5-6 Court Rooms and the lower floor consisted of around 9 holding cells which housed the prisoners. All of the Courts were scheduled to start at 9:00a.m. The First and Second Courts are the larger Courts and there are holding cells for prisoners. In both of these Courts there are up to 8 prisoners in a holding cell and/or there are multiple prisoners. The Fourth Court has two police officers partially at the door since there are no holdings cells in this Court.
52. PC Hall also stated in cross examination that he was aware that police officers were complaining about the conditions they worked in at the San Fernando Magistrate Court. He recalled a police officer by the name of Bunny Ali was also injured by prisoners at the Court and that prisoners fought frequently amongst themselves and it was dangerous to break up the fights. He also admitted that there was inadequate supervision to prevent the injury the Claimant sustained on the morning of the incident.
53. PC Halls took very long periods of time to answer simple questions but I found that he was truthful in cross examination since he gave responses which even assisted the Claimant's case.

54. The unchallenged evidence of PC Hall was that police officers were briefed on a routine basis on the proper operational methods at the holding bay at the San Fernando Magistrates Court as well as the manner to remove prisoners from their cells with a requirement that prisoners be handcuffed through the pigeon hole and then allowed to exit the cell gate. PC Hall's evidence that the removal of prisoners required that the cell gate is opened while placing one's foot at the bottom of the gate before opening same and the requirement that there are at least 2 officers present strategically positioned so as to avoid a prisoner from trying to come out of the cell was also unchallenged. Notably, under cross examination when asked if sometimes 1 officer would take a prisoner from a cell, PC Hall honestly admitted that this happened sometimes but it was advised against.
55. The Claimant's and PC Hall's evidence on the training of police officers at the San Fernando Magistrate's Court to deal with prisoners was not consistent since PC Hall stated that there were briefings. Both PC Hall and the Claimant's evidence was that they were trained at the Police Training Academy on how to deal with prisoners and in any event by virtue of their work experience they would have acquired such training. Therefore I do not find that the Defendant failed in its duty to provide adequate training to the Claimant on how to handle prisoners. However the issue of training cannot be examined in isolation but must be considered in the context of the provision of adequate and competent staff and adequate supervision.
56. The Defendant's Defence was that there were 7-10 police officers on the morning of the incident and that the said number was sufficient to deal with the number of prisoners. However the Defendant failed to provide any records of the general attendance or compliment of police officers managing the San Fernando Magistrates' Court on the morning of the incident and at best PC Hall's evidence was that there

were between 7-10 police officers of which he was not certain. **Police Service Regulation 104** of the **Police Service Act**<sup>11</sup> stated that *“Cells in which prisoners are confined shall be opened by not less than two police officers.”*

57. According to PC Hall, the First and Second Courts required at least 2 police officers in each Court to manage the holding cells when multiple prisoners have to be placed in the cells. This would have been 4 police officers in total. The other 3 Courts required at least 2 officers present to manage the prisoners since there was no holding cell. This would have been 6 police officers in total. Therefore to manage all the Courts at least 10 police officers were required. This did not include the police officers who were downstairs managing the cells. Based on **Regulation 104** of the **Police Service Act**, at least 2 officers had to be present in the Cell Block when a cell was being opened to remove a prisoner. Therefore, a conservative estimate is at least 12 police officers were required on the morning of the incident.

58. In my opinion given PC Hall’s evidence, it would have been impossible for 7-10 police officers to move around in groups of 2 to the 5 different Courts where there were 100 prisoners. It was therefore clear from the evidence that there was a shortage of police officers on the morning of the incident. In my opinion, even if the Claimant had been adequately trained, it was highly probable that due to the shortage of police officers the Claimant followed the practice where 1 police officer and not 2 was present when a cell was being opened to remove a prisoner. Therefore, while the Claimant would have been aware of the procedure to be followed under the Regulations of the **Police**

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<sup>11</sup> Chapter 15:01

**Service Act**, the Defendant failed in its due to ensure that there was adequate and competent staff to assist the Claimant thereby minimizing his risk of injury.

59. The inadequacy of staffing also brings into focus the Defendant's duty to provide adequate supervision. It was argued on behalf of the Defendant that on the day of the incident the Claimant was allowed to make a decision whilst on duty on how to proceed with removing prisoners from cells at the San Fernando Magistrates Court. The Defendant submitted that it was natural and reasonable to leave this decision to the Claimant since it was not a complicated process and the removal of prisoners from cells were done on a daily basis by him who was an officer with 10 years' experience and who had previously worked in another Cell Block area. Therefore, the Claimant in the circumstances would have been required to make frequent on the spot decisions as to the best way to proceed with caution and sometimes whether or not to proceed at all. It was also submitted that in this case the decision was best left to the Claimant who was required to have regard for his own safety and that there was no breach of duty to the Claimant more so since he was fully aware of the threat made to him by the notorious gang leader, Derek Salina.
  
60. **Regulation 104** of the **Police Service Act** speaks about 2 police officers being present when a cell with prisoners is being opened. The evidence of PC Hall and the Claimant was that they were both in the Cell Block area but PC Hall was not strategically placed to assist the Claimant when he was opening the cell as PC Hall stated they were told in the briefings. It was not in dispute that PC Hall was dealing with "charge" prisoners based on instructions from the Claimant and it has not been established that the Claimant had any seniority to PC Hall to so instruct him.

61. In my opinion, adequate supervision of the Cell Block area would have minimized the Claimant's risk of injury since the supervising officer would have ensured that there were 2 officers present when the Claimant opened the cell. I do not agree with the Defendant's submission that such a decision was reasonable to leave to the Claimant. In my opinion the reason for Regulation 104 was to minimize the risks of injury to police officers since the consequences of failing to comply with the said Regulation are far reaching.
62. On the issue of adequacy of equipment, the Defendant stated in its Defence that there were at least 15 handcuffs at the Court. **Regulation 117** of the **Police Service Act** states that *"every escort shall be provided with handcuffs which shall be used as necessary"*. PC Hall stated that the Claimant gave him 2-3 handcuffs and the Claimant kept the rest. There was no evidence how many handcuffs the Claimant had on him at the time he was injured and it was not in dispute that he had handcuffs. In those circumstances, I am unable to find that the Defendant's breached its duty by failing to supply adequate handcuffs to the Claimant. Further, there was no evidence that the Claimant did not have a baton with him at the time of the incident and for this reason I am unable to find that the Defendant breached its duty by not providing adequate batons for the Claimant which may have minimized his risk of injury.
63. The findings in the OSHA Report was that the incident illustrated the importance of ensuring that proper procedures for detaining prisoners are developed and executed and that adequate supervision is provided. There was no finding in the OSHA Report that proper procedure for searching prisoners before entering a cell had to be only by the use of metal detectors. There was no evidence that if there were more metal detectors it would have minimized the risk of injury to the Claimant. In any event, I

have found that the Claimant would have been equipped by virtue of his experience as a police officer of 10 years to conduct manual searches of the prisoners to identify items hidden on their persons. Therefore, I am also unable to find that the Defendant breached its duty in failing to provide metal detectors.

64. For the aforesaid reasons, I have concluded that the Defendant failed in its duty to provide adequate staff and adequate supervision on the morning of the incident. In my opinion if there were adequate officers in the Cell Block and adequate supervision to ensure compliance with Regulation 104 the risk of injury to the Claimant would have been minimized.

**If it is found that the Defendant breached its duty, whether the Claimant was contributory negligent in the circumstances?**

65. In its closing submissions the Defendant acknowledged that a claim for contributory negligence was not pleaded in its defence. However it argued that despite having not specifically pleaded contributory negligence, based on the evidence the Court is entitled in the interest of justice to apportion liability between the parties. The Defendant submitted that the Claimant should be apportioned 75% liability.
66. The Claimant submitted that the Defendant's position was untenable since it failed to plead contributory negligence and in any event the Claimant did not admit that his injuries were partly his fault.
67. **Section 28 (1) of the Supreme Court of Judicature Act<sup>12</sup>**, governs the apportionment of liability in cases of contributory negligence and states as follows:

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<sup>12</sup> Chapter 4:01

*“Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a Claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the Claimant’s share in the responsibility for the damage...”*

68. In **Charlesworth and Percy on Negligence**<sup>13</sup> the general rule is that if the defendant intends to rely upon averments of contributory negligence, the allegations must be specifically pleaded (see **Fookes v Slaytor**<sup>14</sup>).

69. Although the Defendant conceded that it did not set out a plea for contributory negligence, it relied on the authority of **East Coast Berbice Village District Council v Shambool Hussain**<sup>15</sup>, where the court distinguished the requirement of the need to specifically plead contributory negligence as stated in the **Fookes** case on its facts. At paragraph c-d the Court of Appeal stated that<sup>16</sup>:

*“The first observation I make on Fookes v Slaytor is that the case does not appear to lay down any invariable rule of pleading, but it is intended (like the Scottish precedent that it followed) that it should be restricted to “the peculiar circumstances of this case”.*

*The second and equally important observation is that the decision is not based on any admissions, as in the instant case, in the plaintiff’s evidence from which it could be seen from the manner in which he conducted himself that the plaintiff was guilty of*

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<sup>13</sup> 12<sup>th</sup> Edition paragraph 4-13

<sup>14</sup> (1978) 1 WLR 1293

<sup>15</sup> (1982) 31 WIR 250

<sup>16</sup> Ibid at page 254

*contributory negligence. In my view, there lies the crucial difference between Fookes v Slaytor and the instant case."*

70. Crane J at paragraphs h-j<sup>17</sup> analysed section 9(1) of the Law Reform (Miscellaneous Provisions) which is similar to Section 28 aforesaid. In looking at the legislation the learned judge found that the above wording of the Guyanese Act "*leaves open the question of whether the court can only make a finding of contributory negligence if there is a plea to that effect*". The Court also found that the judgement in **Fookes v Slaytor** did not conclusively decide that the Court can make a finding of contributory negligence for all time and for all cases wherever there is an absent<sup>18</sup> defendant who has failed to plead contributory negligence.

71. The Defendant also referred the Court to the St Lucia case of **Andry Paul v Sonia Melchoir**<sup>19</sup> where the Court was called upon to decide whether the Claimant was contributory negligent in circumstances where contributory negligence was not specifically pleaded. Under the heading "Contributory negligence in principle" it was stated:

*"18. Mrs. Melchoir's pleaded Defence gives very little away apart from the fact that she was the owner of some cows which used to graze on the pasture near the highway. It certainly makes no express allegation of contributory negligence against Mr. Paul. However, in the course of his cross-examination of Mr. Paul,*

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<sup>17</sup> Ibid at page 254

<sup>18</sup> In the *Fookes* case the Defendant filed no defence and was debarred from doing so. The Court described the Defendant in that case as an absent Defendant.

<sup>19</sup> [2003] ECSCJ No. 276

*Mr. Innocent obtained admissions from Mr. Paul which might indicate that the accident was partly his fault because he was driving too fast.*

19. *The first question is whether the **failure to plead contributory negligence** means that the court cannot consider the point. Mr. Innocent referred me to a case from the Court of Appeal of Guyana (*East Coast Berbice Village District Council v Shambool Hussain* (1982) 31 WIR 249) where that Court decided that damages can be reduced where the factual basis for a finding of contributory negligence had been admitted by the Claimant in evidence even if it has not been pleaded in a Defence. If and in so far as that decision is inconsistent with the decision of the English Court of Appeal in *Fookes v Slaytor* [1979] 1 AllER 137 I prefer the decision of the Guyana court for the reasons set out in the judgment in that case, I will therefore consider whether Mr. Paul's damages fall to be reduced under Art 989D."*

72. In my opinion the evidence in the instant matter can be distinguished from that in the two cases referred to by the Defendant. In **Andry Paul** the Court found the Defendant was guilty of negligence in not properly securing her cows and which caused the Claimant to collide with them on the highway. The Claimant in cross-examination indicated that the accident was partly his fault because he was driving too fast. However, the Court rejected the argument of contributory negligence in that case after examining the facts since the Claimant was driving at 30 m.p.h. and the Court found that this was not an excessive speed.

73. Similarly, in **East Coast Berbice Village District Council** the Court held that the driver of a motor vehicle was contributory negligent in colliding with a herd of cows since he admitted that he was negligent in not slowing down the motor vehicle to a

walking pace (if not actually stopping it) when confronted by the cattle and the Court found that there was enough distance and time to do so. The driver in this case killed 8 cows and continued driving for around 18 km until he ended up in a trench.

74. In the instant case, there was no plea of contributory negligence and there was no admission by the Claimant during cross-examination that he was to be partly blamed for his injuries. Therefore I find that there is no basis for the Court to consider a finding of contributory negligence since it was not pleaded and there was no admission by the Claimant in his evidence that he was partly to be blamed for his injuries.

**What measure of damages would the Claimant be entitled to if it is found that the Defendant breached its duty of care?**

75. In assessing general damages for personal injuries, the Court is guided by the principles laid down in **Cornilliac v St. Louis**<sup>20</sup> as follows:
- a. The nature and extent of the injuries sustained;
  - b. The nature and gravity of the resulting disability;
  - c. The pain and suffering which the injured party endured and is likely to continue to endure;
  - d. The loss of amenity;
  - e. The extent to which the pecuniary prospects of the injured party have been affected.
76. The Claimant pleaded that he suffered the following injuries:
- a. Wound above left eye (3 cm long)
  - b. Soft tissue injuries

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<sup>20</sup> [1965] 7 W.I.R. 491

- c. Spot of clotted blood inside of right ear
- d. Pain in the right ear
- e. Neck pain due to damaged muscles and limitation of movement
- f. Cerebral Concussion or post-concussion syndrome
- g. Amnesia
- h. Post traumatic headaches
- i. Dizziness and Loss of Balance

77. Based on the medical reports provided by the Claimant, the nature and extent of the injuries are outlined above.

78. In relation to the nature and gravity of the resulting injuries. The Claimant's evidence was that he was rescued by his colleagues in a semi-conscious state and he was placed on a chair and when he regained his composure he observed blood dripping from his face onto his clothes, his skin and the ground. The Claimant became anxious upon realizing that there was a lot of blood all over his body and he was then placed in a marked police vehicle and taken to the San Fernando General Hospital where he received treatment.<sup>21</sup>

79. The Claimant admitted that he has no disabilities from the incident in this matter. Further scans of the Claimant's brain and Cervical Spine dated 9<sup>th</sup> March 2011 showed that there are no resulting injuries experienced by the Claimant. However, the Claimant remained with a scar.

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<sup>21</sup> Para 9 of Statement of Case at page 8 of Trial Bundle 1

80. As for pain and suffering, the medical reports submitted showed that the Claimant endured pain in the right ear and in the neck area. The Claimant stated in evidence that his pain and suffering lasted for several months on his neck and right ear and he suffered from headaches.<sup>22</sup>
81. Generally, damages may be awarded for the loss of the pleasures or amenities of life, either permanently by loss of a leg or temporarily as by mere detention in hospital or in bed for a period. This is a distinct element altogether from pain and suffering, or from loss of earning power. However, there was no evidence that the Claimant had any permanent loss of the pleasure or amenities of life.
82. In relation to the last guideline being the extent to which the pecuniary prospects of the injured party have been affected, the Claimant has not from his pleadings claimed that he was unable to return to work as a Police Officer.
83. In arriving at the award for general damages I took into account the awards made in the following authorities:
- a. **Keston Kirk v. Caribbean Airlines Limited**<sup>23</sup>. The Claimant in this case suffered from temporary hearing loss of 30 decibels in his right ear after a flight when the cabin in the aircraft was suddenly depressurized. The Claimant was awarded **\$35,000.00** in damages.
  - b. **Russel Seaton v. The Attorney General of Trinidad and Tobago**<sup>24</sup>. (Judgment delivered on September 17, 2014). The Claimant in this case was assaulted by police officers and suffered soft tissue injury

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<sup>22</sup> Para 15 of the Statement of Case at page 16 of Trial Bundle 1

<sup>23</sup> CV 2009-00259

<sup>24</sup> CV 2009-03666

to left wrist, knee and to the upper back, soft tissue injury and forehead with swelling to left forehead, soft tissue injury and forehead with bruising to right forehead and multiple (x3) superficial abrasions to left elbow. The Claimant was awarded **\$45,000.00** in general damages.

c. **Dwain Kirby Henry v. A.G. & Ors**<sup>25</sup>The Claimant in this case suffered laceration to his left ear with bleeding right occipital area swelling and tenderness, right forearm abrasions and bleeding sustained during police assault and battery. The Claimant was awarded **\$35,000.00** plus \$20,000.00 aggravated damages.

d. **Corneal Thomas v. The Attorney General of Trinidad and Tobago & Anor**<sup>26</sup> (Judgment given on October 2016). The Claimant in this case was beaten by 2 police officers on his head, neck and upper back. The Claimant testified that those blows were inflicted with great force; they jarred his vision and 'caused lights to flash before his eyes'. He could not block the blows and eventually he fell unconscious. The Claimant 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 brief loss of consciousness consequent to a head injury. The Claimant was awarded **\$35,000.00** in damages for assault and battery.

84. In my opinion a reasonable award for the Claimant is \$30,000.00 as general damages.

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<sup>25</sup> CV 2008-03079

<sup>26</sup> CV2012-05160

**Should the Claimant be awarded aggravated and/or exemplary damages?**

85. Both aggravated damages and exemplary damages were claimed in the Claimant's Statement of Case. In the closing submissions the Claimant stated that the claim for exemplary damages was not being pursued. However it was submitted on behalf of the Claimant that he is entitled to damages under the head of aggravated damages due to the unique facts of the present case.
86. On the other hand the Defendant argued that based on the circumstances of the instant case no award for aggravated damages should be made.
87. Lord Woolf in **Thompson v Commissioner of Police of the Metropolis**<sup>27</sup> stated at page 516 the approach the Court should adopt in determining if an award for aggravated damages should be made as:
- "Such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution."*
88. In **Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie**<sup>28</sup> the Court of Appeal in this jurisdiction stated at page 5:

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<sup>27</sup> [1998] QB 498

<sup>28</sup> Civil Appeal No. 159 of 1992,

*“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and to include what is referred to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.*

*Under this head of what I have called ‘mental suffering’, are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.*

*I think it is better to adhere to the traditional practice of making one award of compensatory damages. The judge may in coming to his decision identify the two components of the award but I think to separate them expressly in the judgment would tend to blur the fact that what is being awarded is a single figure intended to compensate the plaintiff for the suffering and damage he has endured both physical and mental”.*

89. The Claimant pleaded the following particulars to support an award of aggravated damages:
- a. The Government of Trinidad and Tobago failed in its duty to provide adequate safety equipment of protective gear, a competent staff with proper training, a safe system of work and a safe place of work to the Claimant and other police officers that work at the San Fernando Magistrates Court Support Unit.
  - b. The Claimant had no alternative but to work in dangerous conditions daily.
  - c. Numerous other police officers and prisoners were injured at the San Fernando Magistrates Court and no significant changes were made to

ensure that the safety off police officers, members of the public and Court staff.

- d. The San Fernando Magistrates Court has been and continues to be in violation of numerous provisions of the OSH Act.

90. There was no evidence from the Claimant that he has endured mental suffering, humiliation and damage to reputation as outlined in case of **Thaddeus**. The OSHA Report relied upon by the Claimant did not establish the need to award aggravated damages as outlined by law. The Claimant did not plead nor did he present evidence to prove that he was embarrassed by the reporting of his accident in the newspapers. Further, the Claimant's evidence that he appeared dazed and unresponsive did not fall within the threshold for aggravated damages since this was a direct consequence of injuries sustained and is accounted for under heads of general damages outlined above.

91. In my opinion, for the aforesaid reasons, the Claimant did not satisfy the test for the Court to make an award for aggravated damages.

92. The Claimant also pleaded the following claim as special damages:

- a. Medical Supplies from Value Pus Pharmacy dated 14<sup>th</sup> January 2011- \$101.00
- b. Neck brace receipt dated 19<sup>th</sup> January 2011- \$50.00
- c. Cost of Medical Services on 11<sup>th</sup> April 2011- \$250.00
- d. Cost of Medical Services on 28<sup>th</sup> April 2011-\$300.00
- e. Cost of Medical Services on 26<sup>th</sup> May 2011-\$300.00

The total is \$1001.00 and not \$1351.00 as claimed by the Claimant.

93. In **Anand Rampersad v Willies Ice-Cream Ltd**<sup>29</sup>. Archie J.A. ( as he then was) in speaking about special damages stated as follows:

*“The rule is that the plaintiff must prove his loss. The correct approach is as stated by Lord Goddard C.J in **Bonham Carter v Hyde Park Hotel [1948] 64 Law Times 177:***

*“Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘This is what I have lost; I ask you to give me these damages’. They have to prove it’.”*

94. To support his claim, the Claimant exhibited the documentary evidence in support as JM 5 to his witness statement. I therefore award the Claimant the sum of \$1001.00 as special damages.

### **Interest**

95. The award of interest is discretionary under **section 25 of the Supreme Court of Judicature Act**<sup>30</sup> . The basis of this award is to compensate a claimant for the fact that he has been kept out of his money by a defendant who has had the use of it himself: **Jefford v. Gee**<sup>31</sup>

96. In the case of **Jefford**, the Court rationalized its preference for the use of short term investment rates on pre-judgment debts. Shah J in the local case of **Sandra Juman v PC Abbot and the AG**<sup>32</sup>, in exercising his discretion under the **Supreme Court of**

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<sup>29</sup> Civil Appeal No. 20 of 2002

<sup>30</sup> Chapter 4:01

<sup>31</sup> [1970] 2 WLR 702.

<sup>32</sup> HCA No. S-490 of 2001

**Judicature Act** considered a reasonable pre judgment interest rate by considering the investment rates given by financial institutions in Trinidad and Tobago. At page 14, mid page, he stated:

*“Raising the rate in 2000 to 12% when this was the usual rate given by Trust Companies and other financial institutions is acceptable. But 2000 is not 2008 or 2009. Today the world is on the brink of financial meltdown. Governments have had to rescue banks, financial institutions and trust companies from financial disaster both in Trinidad and Tobago and the wider world. No country has been immune. Where in the world does any financial institution now give 12%?”*

97. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**<sup>33</sup> reduced interest awarded for false imprisonment, where allegations of assault were made, at the rate which is payable on money in court placed on a short term investment account. As such bearing in mind that monies are placed in the Unit Trust account and since this was not a case where the commercial lending rates was applicable the Court of Appeal reduced the interest awarded from 9% to 2.5%.
98. Therefore interest on general damages in the instant matter is awarded at the rate of 2.5% per annum from the date of service of the Claim which was 16<sup>th</sup> January 2015 to the date of judgment and interest on special damages is awarded at a 1.25% per annum from the accrual of the cause of action to date of judgment.

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<sup>33</sup> CA 251 of 2012

## Costs

99. The costs in this matter is to be determined on the prescribed scale pursuant to Part 67 of the CPR. The award for general damages is \$30,000.00 and for special damages is \$1001.00. Costs on the prescribed scale therefore amounts to \$9,250.25.

## Order

100. Judgment for the Claimant.

101. The Defendant to pay the Claimant general damages assessed in the sum of \$30,000.00 with interest at the rate of 2.5% per annum from the date of service of the Claim Form ie 16<sup>th</sup> January 2015 until judgment.

102. No award is made for aggravated damages.

103. The Defendant to pay the Claimant special damages assessed in the sum of \$1001.00 with interest at the rate of 1.5% per annum from the date of accrual of the cause of action until judgment.

104. The Defendant to pay the Claimant's costs in the sum of \$ 9, 250.25.

**Margaret Y Mohammed**  
**Judge**