

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2010-04804

BETWEEN

SHABAN MUHAMMAD

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Ms. Temilola Ade-John for the Claimant

Ms. Coreen Findley instructed by Mr. Bryan Basdeo for the Defendant

JUDGMENT

I. Background:

- [1] By Judgment dated the 14th April, 2016, this Court determined that the Claimant had proved his case of assault and battery against the Defendant on a balance of probabilities. As a result, the Court found that the Claimant was entitled to damages. However, due to what was considered to be the unreasonable, unlawful, oppressive and

arbitrary nature of the assault and battery, it was determined that the Claimant was also entitled to aggravated and exemplary damages. Special damages were also claimed and it was determined that these would be dealt with upon review of the written submissions on quantum¹ due on or before the 7th July, 2016, and Reply submissions if any, on or before the 21st July, 2016.

[2] The Claimant filed submissions on quantum on the 19th May, 2016 and the Defendant filed submissions in response on the 8th July, 2016. The Claimant then filed submissions in reply on the 21st July, 2016.

[3] The Court must now give its decision on the assessment of damages to be awarded to the Claimant.

II. Law:

[4] The factors which are to be taken into account in assessing damages for personal injury cases have long been settled by Wooding C.J. in **Cornilliac v St. Louis (1965) 7 WIR 491** as follows:

- a. *“The nature and extent of the injuries sustained;*
- b. *The nature and gravity of the resulting physical disability;*
- c. *The pain and suffering which had to be endured;*
- d. *The loss of amenities suffered; and*
- e. *The extent to which the plaintiff’s pecuniary prospects have been materially affected.”*

The nature and extent of the injuries were not severe nor was there any physical disability

[5] Counsel for the Claimant submitted that the assault and battery occasioned on the Claimant contributed significantly to the onset of certain recurring physical and psychological conditions that persist to this day², as follows:

¹ Para 57 of Justice Mohammed’s Judgment on Liability dated the 14th April, 2016.

² Para 11 of Claimant’s submissions in relation to damages.

- a. That since the incident, the Claimant has developed mental health problems including symptoms of Post-Traumatic Stress Disorder (PTSD), which led him to being taken for a psychiatric evaluation to determine whether he was fit to stand trial.
 - b. That the Claimant now suffers from dreams and flashbacks and severe nervousness.
 - c. That the medical report of Dr. Sookhoo confirms that the Claimant suffers from recurrent epistaxis and headaches.
 - d. That attached at schedule 1 of the submissions on quantum, the Claimant has appointment cards which show the physiotherapy, mental health issues, back pain, epistaxis and recurring headaches resulting from the assault.
- [6] In his pleadings and witness statement, the Claimant particularized the injuries as follows:
- a. Swelling on the head, back, left arm and left hand;
 - b. Pain in the neck and lower back;
 - c. Soft tissue injury to the left shoulder;
 - d. Musculoskeletal back pain;
 - e. Post-Traumatic Stress Disorder (PTSD);
 - f. Flexion deformity of the third digit on left hand;
 - g. Chronic/recurrent epistaxis; and
 - h. Mild hearing loss.
- [7] In support of these injuries, the Claimant has adduced into evidence three medical reports:
- a. The Medical Report of Dr Ramjitsingh-Samuel;
 - b. The Medical Report of Dr Okechukwu Obi Okoye; and
 - c. The Medical Report of Dr Leandra Blake.

The Claimant has not proved the recurrent epistaxis and headaches/hearing loss:

- [8] The Claimant relied heavily on the medical report of Dr. S. Dookhoo of the ENT Clinic dated the 25th March, 2013 and marked as “A” to the Amended Statement of Case, which diagnosed the recurrent epistaxis and mild hearing loss. The Court, however, finds merit in Defence Counsel’s argument that this medical report does not form part of the evidence as it was not attached to the Claimant’s witness statement. Accordingly, as this is the evidence of the recurring epistaxis and hearing loss, the Court will not consider these injuries in its analysis of quantum.

The Claimant has not proved all of the physical injuries claimed:

- [9] The Court agrees with Counsel for the Defendant in her submissions that the three medical reports in evidence are all hearsay documents as the doctors were not called to give testimony at trial nor were any hearsay notices filed with the Court³. However, as the Defendant filed no application to strike out the medical reports, the medical reports are in evidence, and accordingly, the Court must now determine the weight to be ascribed to them. In this respect, the Court is guided by **Section 41 of the Evidence Act, Chap 7:02:**

(1) *“Without prejudice to the generality of section 22, where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 37, 39 or 40 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.”*

Subsection 3 states that in estimating the weight, if any, to be attached to the medical report, the Court should have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the report. With respect to an out of court document, such as the medical reports in this matter, the Court is required to ask itself whether the reports were made contemporaneously with the

³ Para 21 of the Defendant’s submissions on damages.

assault incident and whether, in this case, the doctor had any incentive to conceal or misrepresent the facts.

In this light, the Court notes that there is no evidence to suggest that any of the doctors had any incentive to conceal or misrepresent the facts and the three medical reports were sufficiently contemporaneous with the assault to allow the Court to place such weight on them as is appropriate.

Dr Blake's report dated the 31st December, 2007 was given the closest in time, i.e. less than 2 months from the date of the assault which occurred on the 15th November, 2007. Dr Ramjitsingh-Samuel's report on the 13th February, 2008, was approximately 3 months after the assault and finally, Dr Okoye's report of the 7th March, 2008, was conducted almost 4 months after the incident.

[10] Dr Okoye's report stated "*He was treated for multiple soft tissue injuries and cerebral concussion and discharged to the outpatient's clinic after X-Rays and CT Brain Scan proved normal. On follow up at the clinic he developed dreams, dizziness and headaches. Patient was referred for psychiatric evaluation for Post-Traumatic Stress Syndrome. He continues follow up in the outpatient's clinic and is doing well.*"

Dr Okoye's diagnosis of soft tissue injury was consistent with the Claimant's case and the other reports, however, he was the only doctor who mentioned cerebral concussion, the development of dreams, dizziness and headaches and the referral for Post-Traumatic Stress Syndrome. These dreams, dizziness and headaches were diagnosed on a follow up visit at the clinic that was not dated in the report. The report is silent on who examined the Claimant on the follow up visit and why these symptoms were not revealed in the initial visit. The fact that these symptoms only developed after the follow-up visit raises doubt as to whether they resulted from the assault or from some intervening event that occurred between the initial visit and the follow up visit. Further, the Court notes that while the diagnosis of cerebral concussion was not challenged by the Defendant, this injury did not form part of the Claimant's pleaded case.

The Court also agrees with Counsel for the Defendant that this report does not give a diagnosis for PTSD but merely refers the Claimant for psychiatric evaluation. Lastly,

the Court notes Dr Okoye did not say that there were any residual effects from his examination and, instead states *“He continues to follow up in the outpatient’s clinic and is doing well.”*

[11] Dr Ramjitsingh-Samuel’s report stated that the Claimant, on his admission to the hospital the day after the incident, complained of lower back pain and left shoulder pain and that on a physical and radiological examination, he revealed *“soft tissue injury to the left shoulder; musculoskeletal back pain and no bony injury. Mr Muhammed was discharged from the accident and emergency Department on analgesia and advised to return if the problem persisted.”*

[12] Dr. Blake’s report was the most contemporaneous with the assault and she stated that: *“on examination Mr Muhammed appeared comfortable...He reported tenderness of the right mastoid region; there were no signs of oedema. Examination of his right ear was normal. Lumbar spine was non-tender...left leg was normal. There was flexion deformity of the third digit left hand at the proximal interphalangeal joint with minimal tenderness...Mr Muhammed was administered ibuprofen 400mg and subsequently discharged with a diagnosis of multiple soft tissue injury to the right mastoid/lumbar spine/left hand...”. (sic)*

[13] Based on the evidence in the medical reports, the Court is convinced that the Claimant suffered the following physical injuries consistent with his pleadings:

- a. Flexion deformity of the third digit on left hand;
- b. Pain and tenderness to the back (mastoid) and left shoulder; and
- c. Soft tissue injury to the back and the left hand.

The Court will also take into account the fact that the Claimant was diagnosed with cerebral concussion.

The Court will not take into account the PTSD:

[14] The only evidence in support of the PTSD was the psychiatric evaluation by Dr Hazel Othello dated the 25th July, 2011. However, the Court attaches little weight to this

evaluation as it was prepared almost 4 years after the assault and therefore, not at all a contemporaneous document.

In the evaluation report, Dr. Othello concluded that “...*the incident was traumatic enough to the claimant to result in him developing the psychiatric illness known as Post Traumatic Stress Disorder.*” However, the Court is reluctant to make a connection between the assault and a diagnosis of PTSD that was given almost 4 years after the incident. Indeed, Dr Othello made no comment about the effect that such a time gap would have on the certainty of her conclusion. For these reasons, the Court will not take into account the PTSD when quantifying the damages.

The pain and suffering was significant:

[15] This Court has already found that the Claimant’s version of events is the truer version as stated in the Judgment on liability: “*the Court is firmly of the view that the events as alleged by the Claimant are indeed more likely to be true on a balance of probabilities...*”⁴ Accordingly, I outline the Claimant’s evidence on the pain he suffered as follows:

The Claimant pleaded and gave evidence that he was hit on his head with a gun butt and further beaten on his head and back by three officers. He was then dragged to the ground and beaten further and hit on his jaw. In his witness statement, he added that he was in so much pain that he “*bawled out loud and begged the officers to stop*” and that each lash/blow was harder than the one before. He stated that he was beaten repeatedly for approximately 5- 10 minutes and he was in severe pain especially in his head and back and was only able to limp and hardly able to walk.⁵ The Claimant confirmed this evidence at trial where he stated that he was hit on his head, jaw and back, but however, contradicted his pleadings by stating that the beating lasted for about 15 to 20 minutes⁶. Counsel for the Defendant did not however challenge the Claimant about the length of time of the beating under cross examination despite this inconsistency. Nevertheless, I believe the version given in his witness statement i.e. that the beating lasted some 5-

⁴ Para 56 of the Judgment.

⁵ Paras. 20- 24 of the Claimant’s witness statement.

⁶ NOE Page 12, Lines 13- 38.

10 minutes. Indeed, such a timeframe is more comparable with the extent of the injuries suffered.

The Court therefore accepts that the pain and suffering experienced by the Claimant would have been significant.

Loss of pecuniary prospects and amenities were not proven:

[16] Counsel for the Claimant has sought to introduce facts under this head that did not form part of his pleaded case or evidence. Nowhere in his pleadings or evidence was mention made of the Claimant's nightly earnings as a cashier at B & S Sports bar or of the fact that he received \$1,800.00 per month in disability benefit from the Ministry of People and Social Development. The Claimant attempted to attach the disability receipts to his submissions but, as these receipts were not properly adduced into evidence, the Court will not be privy to them. Further, the Claimant has not pleaded or given evidence that he was unable to sustain full or part time employment since the incident nor was any evidence given of the amount of days off from work he was required to take. Further, based on the medical reports adduced into evidence, there is no evidence of any residual disability that shows that the Claimant can no longer work or continue his vocational programme at YTEPP.

Based on the lack of evidence, the Claimant has not proved the loss of amenities or pecuniary prospects that he claims.

III. Authorities:

[17] Counsel for the Claimant relied on several cases to submit that an appropriate award of damages including aggravated damages for the assault and battery lies in the range of **\$80,000.00- \$100,000.00**. I have considered the most relevant authorities below.

[18] **Chet Sutton v The A.G. CV2011-00119**, delivered on the 30th September, 2015:

Chet was a prisoner on Carrera Island Prison who claimed that he was the victim of an assault and battery by police officers. He gave evidence that he was beaten with a riot baton by one prison officer while other officers stamped and kicked him with their heavy duty boots. He stated that after the first lash (which was to his jaw) with the riot

staff, he fell to the floor and remained in a foetal position while the assaulting prison officers were kicking and stamping on him. The beating lasted for at least 15 minutes and was constant, with blows raining down on his jaw, ribs, and groin area and about his body. He was hit on the jaw with the riot staff on 2 occasions.

He identified as injuries a burst lip, scrapes, cuts and bruises and other soft tissue injuries about his body as well as injury to his jaw and groin.

He was given a referral by the Prison Medical Officer to attend the Port of Spain General Hospital for an x-ray of the jaw and was kept overnight.

Master Alexander found that the injuries sustained, save the groin injury, were proven on a balance of probabilities and the circumstances of the attack unwarranted. She also found that the nature and manner in which Chet was assaulted must have surely resulted in mental anguish and suffering necessitating an additional award of aggravated damages.

The claimant was entitled to an award of **\$70,000.00 inclusive of aggravated damages** and **\$30,000.00 in exemplary damages**.

I find the nature of the assault was analogous to the instant case save for the fact that the assault occurred for a longer period of time than in the instant case. The injuries were somewhat similar to those of the instant case. While the Claimant in the instant case did not suffer injury to his lip or jaw, he was diagnosed with cerebral concussion and deformity of the third digit on his hand.

[19] **Bartholomew & Ors v The A.G. CV2010-00513**, delivered on the 13th January, 2011:

Madam Justice Judith Jones awarded **\$60,000.00 inclusive of aggravated damages** to the first claimant. She accepted the injuries identified in the medical report for Bartholomew as follows:

“Frankie Bartholomew suffered a 1 cm laceration to his left eye that was swollen and tender; swollen right elbow; red? to lateral aspect of right elbow; tender, swollen, right forearm; tender swollen left forearm; puncture wound visualized to posterior aspect of left forearm: tender mildly swollen anterior aspect of left foot;

0.5 cm superficial abrasion to anterior aspect of left foot; tender mildly, swollen left ankle; tender, swollen anterior aspect of right foot; 0.5 cm laceration to anterior aspect of right foot.”

It is noted that in **Bartholomew**, the claimants were treated at the Port of Spain General hospital and discharged whereas in the case of **Chet**, the claimant was kept overnight at the hospital. This suggests that the injuries inflicted in **Chet** required more medical attention and perhaps were more extensive thereby warranting a higher award in damages.

[20] The Defendant submitted that the case of **Tesfer Jones v the A.G. CV2008-00036** was most analogous to the instant case:

Here, an award of **\$35,000.00** in damages inclusive of aggravated damages was given. However, this case can be significantly distinguished from the instant case based on the fact that Seepersad J concluded *“the court did not accept the evidence of the claimant that he was the subject of an unprovoked attack.”* Further, *“the Court formed the view that the behaviour of Tesfer Jones at the time was unacceptable. The Court is convinced on a balance of probabilities that the Claimant was confrontational, he was using obscene language, but he was not physically aggressive.”*

Seepersad J believed the prison officer’s version of how the assault occurred and found that the injuries on the medical certificate, i.e. soft tissue injuries to the claimant’s lower back and lower limb were consistent with the prison officer’s version and that the assault lasted no more than 5 – 8 minutes. In arriving at the award, Seepersad J considered the following:

- a. The nature and extent of the injuries sustained were not extensive or substantial and there was no evidence of resulting physical disability;
- b. With respect to pain and suffering, the assault lasted for a short period of time but there was some level of pain and suffering;

c. The claimant was not an innocent victim and his behaviour was done to incite some level of disrespect and/or discord among the other prisoners when he disobeyed the directions of officer Prieto;

d. It could hardly be said that the claimant suffered humiliation and loss of reputation⁷.

[21] In distinguishing this case, I find that while there was similarly no evidence of any resulting disability, it cannot be said that the Claimant in the instant case disrespected and/or provoked the assault, which makes the offence even more reprehensible. Further, it is likely that the Claimant in the instant case suffered more humiliation and mental anguish considering that he was not a criminal or prisoner but a law abiding citizen who was unlawfully assaulted in front of his fellow co-workers outside his family's bar. Finally, the injuries in the instant case were more extensive. Accordingly, the award given in **Tesfer Jones** is too low in relation to the case at bar.

[22] Based on a comparative analysis of the authorities submitted by both parties, the Court finds a suitable award for damages, inclusive of aggravated damages, to be **\$65,000.00**.

Special Damages:

[23] The Court accepted in its Judgment on liability that the Claimant's shirt pocket was ripped by one of the officers and the sum of \$2,000.00 was stolen, which represented money which the Claimant collected from his father on his way to work in order to facilitate the payment of a bill for his father.⁸

[24] Counsel for the Claimant sought to claim, in addition to this lost \$2,000.00 a further \$600.00 which represented the Claimant's earnings for his night shift as a cashier that night⁹ coupled with \$2,000.00 in travel expenses for attending the medical appointments thereby bringing a total of \$4,600.00 in special damages.

⁷ Paras 13 & 14 of Justice Seepersad's Judgment

⁸ Para 48 of the Judgment

⁹ Para 30 of the Claimant's submissions in relation to damages corrigenda

[25] It is trite law that special damages must be specifically pleaded and proved¹⁰. The Claimant pleaded loss of cash in the sum of \$2,600.00 coupled with travel expenses in the sum of “\$200.00 and counting”. The Court must therefore determine whether the Claimant has sufficiently proved the stolen \$600.00 from his night shift as a cashier and the \$2,000.00 in travelling expenses.

[26] The Claimant relied on the case of **Great Northern Insurance Company v Johnson** **Ansola Civ. App. No. 169 of 2008** where Mendonca JA noted that-

“...the absence of evidence to support a plaintiff’s viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff’s claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the judge was prepared to accept. Indeed in such cases the judge should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason¹¹.” (Emphasis mine)

In **Great Northern**, the plaintiff produced no documentary evidence and called no other witnesses such as, customers for whom he would have done work to prove that he worked as an upholsterer. However, Mendonca J.A. found that the trial Judge was entitled to find that the plaintiff did carry on a business as an upholsterer based on his impressions of the viva voce evidence of the plaintiff, which was unchallenged. Further, despite the lack of documentary evidence, Mendonca J.A. felt the trial Judge was entitled to give merit to the plaintiff’s viva voce evidence of his weekly earnings to calculate the plaintiff’s average yearly earnings figure.

[27] In the case at bar, there is also a lack of documentary evidence to show that (i) the Claimant earned \$600.00 per night as a cashier and that he was paid the said \$600.00

¹⁰ Halsbury’s Laws of England. Damages Vol. 29 (2014)

¹¹ Para 97 of Great Northern Insurance Company supra.

that night; and (ii) that the Claimant incurred \$2,000.00 in travelling expenses from the date of the incident in 2007 until the date of trial on the 14th April, 2015.

The Claimant did not, in his witness statement, mention or provide evidence of his nightly earnings of \$600.00 as a cashier. Indeed, the Court is of the opinion that this was a fact that easily could have been proven as some record of his pay must have been kept at the club.

Under cross-examination, the Claimant stated that his father gave him money to pay bills that night in Diego Martin before he went to work¹² and that \$2,600.00 was stolen from him that night¹³. Defence Counsel then challenged this evidence by putting to the Claimant that no one stole his \$2,600.00 from him that night to which the Claimant denied¹⁴. Accordingly, considering the lack of supporting evidence coupled with the fact that the Claimant's viva voce evidence was challenged, this Court is not convinced that the Claimant had the extra \$600.00 from his earnings as a cashier on him that night.

[28] The Claimant submitted the case of **Anjanie Samaroo v Esau & Jan Transport Limited & Ors CV2014-00001**¹⁵ to argue that despite the lack of receipts, the Court can still grant a nominal figure in travelling expenses under the head of special damages.

In **Anjanie**, Boodoosingh J noted that it is not unusual that a claimant may not have receipts for travelling expenses as taxis usually do not give receipts and ordinary litigants may not think about the significance of obtaining receipts. Therefore, the Court is entitled to accept that some expenses will be incurred. However, Boodoosingh J continued at paragraphs 18 & 19 as follows:

“But more would have been expected from her in advancing her specific claim for \$1,500.00 in travelling. She has not said specifically how many trips were made, over what period and the dates of these trips. She may have been more precise in

¹² NOE Page 19, Lines 8- 21.

¹³ NOE Page 22, Line 5.

¹⁴ NOE Page 22, Lines 3- 12.

¹⁵ Para 6 of the Claimant's submissions in Reply

doing this. She has not, for example, put in a card from the hospital detailing her clinic visits.”

“Still I accept she would have had some travelling expenses and a court has to do the best it can where it finds that some expenses were incurred and reasonably so. Considering her injuries, the period of visits and the likelihood that multiple visits were necessary, a reasonable sum in this regard is \$1,000.00.”

[29] Defence Counsel found it implausible that the Claimant could plead special damages for travelling expenses in the amount of \$200.00 in 2013 and then seek to increase that figure to \$2,000.00 as at May 2016.

[30] The Court is of the view that the Claimant has jeopardized his case by failing to detail in his witness statement, the travelling expenses he incurred and by failing to attach documentary evidence thereto. As a result, Defence Counsel had no reason or basis to cross-examine the Claimant on his travelling expenses at trial. The only evidence before the Court concerning the trips made to the hospital are that the Claimant made four (4) trips to the Mt. Hope and Port of Spain General Hospital¹⁶.

The Claimant attempted to provide evidence by way of appointment cards annexed to his submissions, but this evidence was rightly objected to by Defence Counsel as it does not form part of his pleaded case or evidence and therefore, will not be taken into account by this Court.

Considering that as of the 12th July, 2013, when his Amended Statement of Case was drafted, the Claimant had only incurred \$200.00 in travelling expenses and that between the date of the assault and then, the Claimant would have likely already incurred most of his travelling expenses for medical care, the Court is not persuaded by the Claimant’s submission that he incurred a further \$1,800.00 in travelling expenses from 2013 to present.

Accordingly, in light of the lack of supporting evidence both documentary and otherwise, the Court awards special damages in the sum of **\$2,400.00** as follows:

¹⁶ Paras. 31- 34 of the Claimant’s witness statement.

- a. Loss of cash: \$2,000.00
- b. Travelling expenses to and from the various hospitals from the date of the assault until present: \$400.00

Exemplary Damages:

[31] Counsel for the Claimant submitted that an award of \$40,000.00 should be made for exemplary damages based on the following:

- a. The assault and battery went beyond excessive force and was in breach of the Claimant's constitutional and human rights;
- b. The Claimant did not provoke the attack in anyway by being hostile or otherwise;
- c. The assault was unwarranted and done in a callous attempt to inflict injury and personal humiliation and was a total abuse of power;
- d. No assistance was provided to the claimant after the beating and no apology was ever offered.

[32] Counsel for the Defendant submitted that an award of \$15,000.00-\$20,000.00 should be given in exemplary damages and relied on cases such as **Darell Wade v The A.G. CV2011-01151** and **Tommie Chansun v The A.G. CV2009-3667**.

[33] Considering that this Court has already concluded that an award of exemplary damages is applicable, there is no need to particularize the law on granting exemplary damages. Nevertheless, it suffices to restate the finding of this Court in its Judgment on liability that the police officer's conduct was arbitrary, oppressive and plainly reprehensible and therefore, deserving of exemplary damages¹⁷.

[34] The Claimant has relied primarily on the case of **Hakim Braithwaite v The A.G. CV2009- 03845**, delivered on the 25th June, 2012 in its submissions:

In **Braithwaite**, the unchallenged evidence in this case was that the claimant was a prisoner when he was the victim of an assault and battery. He felt a "stinging lash across

¹⁷ See Rooks v Barnard (1964) AC 1129.

his back” and then the officer started beating him all over his body including his arms, head, chest and belly. He received a lash to his temple and then became unconscious. He was then revived with a splash of water to his face and when he opened his eyes, he was kicked on his foot, legs, belly and back. The claimant urinated on himself when he received a kick to his belly and on seeing this, the officer attempted to kick the claimant between his legs but the claimant was able to block the kick with his hands. The claimant tried to grab on to one of the cell bars to stand up but the officer beat him on his fingers until he let go. The alarm was sounded and other officers came with riot staves and proceeded to beat the claimant all over his body. The claimant began bleeding from his mouth and spitted blood every time he was hit with the baton. The beating lasted for about 15 minutes. He was then left in a cell over night with no medical attention during which time the claimant vomited and spitted blood and experienced severe stomach pains.

Justice Boodoosingh viewed that due to the degree of viciousness and malice towards the claimant and the failure of the prison officers to ensure that the claimant received proper medical attention after the assault, an appropriate award for exemplary damages would be \$40,000.00.

I find that the viciousness and malice in the attack in **Braithwaite** was worse than in the instant case. Further, Mr Muhammad was not knocked unconscious nor did he suffer the same level of pain and suffering as **Braithwaite**. However, it is noted that Muhammad, was not a prisoner but rather a law abiding citizen who was the victim of an unwarranted police beating which makes the assault in the instant case more reprehensible. Further, the officers in this case also did not ensure that the Claimant received any medical attention after the assault even though he was clearly limping and in a lot of pain.

- [35] In **Darell Wade v The A.G. CV2011-01151**, delivered on the 20th May, 2013, the claimant was a prisoner placed in a holding cell in the Magistrates’ Court where he was initially beaten by one prison guard for failing to fix a plastic bag that was in his cell. The evidence was that he was repeatedly slapped and cuffed by the prison officer and two bricks were thrown at him that knocked him to the ground. The officer then

returned with 6 - 7 other officers, three of whom began beating the claimant all over his body. The claimant fell to the ground and was hit again every time he tried to get up. He was kicked about his hands, legs and ribs while on the floor. The claimant was then taken back to prison and then returned to a holding cell in the Magistrates' Court where he received a third round of beating in the bathroom area. The officers beating him were armed with riot staves. The claimant was then eventually taken to the hospital where, following an x-ray of his hands and feet, he was given pain killers and a prescription then taken back to prison.

Master Alexander viewed that the manner of the attack and the nature of the injuries evidenced a degree of viciousness and malice towards the claimant. The attack was unprovoked and unwarranted considering it was because the claimant failed to fix a plastic bag in his cell. However, she viewed that taking into consideration the principles of proportionality and the award already given for damages including aggravated damages (\$60,000.00), \$15,000.00 in exemplary damages was sufficient.

It is noted in this case, that the injuries suffered were similarly extensive compared to the instant case. **Darrell** suffered severe swelling of the left hand, arm and foot; black and blue bruises over his body; large welts over the arms, neck, back and chest; haematomas about the body and swollen ribs. However, the claimant was only given painkillers and prescription and then discharged. Further, while the attacks were high handed and malicious, it seemed to be borne out of the prison guard's view that the prisoner was disregarding his orders by not fixing the plastic bag. In the instant case, there was absolutely no reasoning or justification for the assault on Mr Muhammad. Mr Muhammad was not a prisoner nor a convicted criminal but rather a law abiding citizen who was working in his parents business and this makes the attack even more reprehensible and deserving of punitive measures. Even taking into consideration the principle of proportionality and the idea that the claimant would already be compensated by the aggravated damages given, I still find the award of \$15,000.00 to be too low for the instant case.

[36] I find that the facts and award given in **Chet Sutton** supra are most analogous to this case. As stated earlier, in **Chet**, an award of **\$30,000.00** in exemplary damages was

given. Considering that the attack in the instant case is even more reprehensible given the fact that the Claimant was a law abiding citizen and not a prisoner and without a criminal record, a slight increase in the award seems appropriate.

[37] Based on the above authorities and analyses, I find a suitable award in **exemplary damages** to be **\$35,000.00**.

IV. Disposition:

[38] Accordingly, having reviewed the authorities, I give the following awards in damages to the Claimant:

ORDER:

- i. General & Aggravated Damages for Assault & Battery : **\$65,000.00**
- ii. Special Damages: **\$2,400.00**
- iii. Exemplary Damages: **\$35,000.00**

Total Damages: \$65,000 + \$2,400 + \$35,000 = **\$102,400**

[39] Costs of the Claim including the assessment of damages are to be paid by the Defendant to the Claimant quantified on the Prescribed Scale of Costs in the sum of **\$24,360**.

Dated this 16th day of February, 2017

Robin N. Mohammed
Judge