

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**HCA No. CV2015-00249**

**Between**

**LARRY BAILA**

**Claimant**

**And**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Mr. Shawn Roopnarine instructed by Ms. Helen Lochan for the Claimant

Ms. Sasha Sukhram and Ms. Daniella Boxhill instructed by Ms. Jenna Gajadhar for the Defendant

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**JUDGMENT**

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**A. Introduction**

[1] This decision concerns a claim for damages for wrongful arrest and false imprisonment made by the Claimant against the Defendant.

[2] On 22 January 2015 the Claimant initiated the instant claim by filing his Claim Form and Statement of Case. The Defendant entered an appearance on 27 February 2015 therein disclosing its intention to defend the entirety of the claim. Accordingly, on 2 March 2015 the Defendant filed its Defence.

[3] The first case management conference was held on 28 April 2015, at which hearing, permission was given to the Claimant to make a slight amendment to the Claim Form so as to correct an obvious error at paragraph 1 of the Claim Form where the time of the alleged wrongful arrest and false imprisonment was erroneously stated to be from approximately “1:30pm until 11:30am” as opposed to “1:30am to 11:30am”. The correction in the time from “pm” to “am” was allowed by the Court; the correction being endorsed by the Court on the Claimant’s Claim Form filed on 22 January 2015.

[4] On the 18 June 2015 the Claimant filed an Amended Claim Form and Statement of Case. These were, however, struck out by the Court as the amendment was done without permission of the Court and therefore no reliance was placed on that Amended Claim Form or Statement of Case, during the course of this matter.

[5] It thereafter followed that on 15 May 2015, the Defendant made an application supported by written submissions, to strike out paragraphs 3, 4 and 5 of the reliefs claimed in the Claimant’s Claim Form filed on 22 January 2015.

[6] At the second case management conference held on 6 November 2015, the Court upheld the Defendant’s application. Consequently paragraphs 3, 4 and 5 of the reliefs claimed by the Claimant in his Claim Form were struck out. At that same hearing the Court proceeded to give directions for trial of the instant claim.

[7] On 7 December 2015 and 11 December 2015, the Claimant and the Defendant, respectively, each made standard disclosure.

[8] On 26 February 2016, the Claimant filed his Witness Statement in support of his Claim and on same date the Defendant filed the Witness Statement of Police Constable John Hinds in opposition to the claim.

[9] On 11 April 2016 the Claimant filed a Statement of Issues and same was also filed by the Defendant on 22 April 2016.

[10] At the third case management conference on 29 April 2016, the Court directed that the Claimant's Attorney file a trial bundle in accordance with CPR Part 40. Accordingly, on 9 May 2016 the Claimant filed the said trial bundle. The trial thereafter proceeded on 23 May 2016 and 6 June 2016.

[11] Thereafter on 18 July 2016, both the Claimant and the Defendant filed their respective written submissions and bundle of authorities in respect of the issues arising for determination by the Court. Further, on 29 July 2016 the Claimant filed his Reply to the Defendant's submissions. Additionally, on 9 October 2016, the Court heard further oral submissions of Counsel for the Claimant and Counsel for the Defendant.

[12] Having considered the evidence before this Court as well as the written and oral submissions made by both sides, this court is of the view that the Claimants arrest on 9<sup>th</sup> August 2014 was lawful and reasonable and that his subsequent detention for at least the first six and a half hours was justified. However, this Court is of the view that the final three and a half hours prior to the Claimant's release from the San Fernando Police Station at 11:30am on Saturday 9 August 2014 was unjustified by the Defendant and excessive, and therefore the Court hereby orders that the Defendant do pay to the Claimant the sum of **Twelve Thousand Dollars (\$12,000.00)** for the additional three and a half hours that the Claimant was detained. I am of the view that this award is sufficient in the circumstances and meets the justice of the case. In light of the fact that the Claimant has succeeded in only part of his claim and that the Defendant has succeeded in defending part of the claim, I am of the view that this is an appropriate case for the Claimant to recover at least a small percentage of his costs incurred in pursuing this matter.

[13] I have hereinafter detailed the reasons for the Court's decision in the instant matter.

**B. Factual Background**

[14] On Saturday 9 August 2014 at around 1:30am, the Claimant was driving in the area of Ciperio Street, Cross Crossing, in the City of San Fernando. He stated that he had gone to that area to purchase food from the roadside vendors.

[15] At the same time Police Constable John Hinds Regimental No. 7266 and a number of other police officers from the Traffic Section of the San Fernando Police Station were conducting a breath analysis test exercise on drivers of randomly-selected vehicles at Cross Crossing, San Fernando.

[16] At approximately 1:30am the Claimant's vehicle was randomly selected and he was signaled to pull aside. According to Police Constable Hinds he observed that the Claimant had glassy eyes and slurred speech.

[17] The Claimant was asked if he had alcohol to drink that night and he responded in the affirmative. The Claimant indicated to the officer that he did in fact have a ***“glass of Baileys”*** shortly before. Under cross-examination he also admitted that he also had a ***“sip of stout”*** and that he had showed PC Hinds the bottle of stout that was at the time in his car.

[18] Consequently, Police Constable Hinds informed the Claimant that he was required by law as a driver or the person in charge of a vehicle who was suspected to have alcohol in his breath exceeding the prescribed limit to submit to a breath analysis test and asked whether the Claimant had any objections or medical conditions that would prevent him from submitting to the test. To this the Claimant had no objections and willingly submitted to the breath analysis test.

[19] Police Constable Hinds stated that he then informed the Claimant that he was authorized by the Minister of National Security to perform the breathalyzer test and demonstrated to the Claimant how it should be performed. Thereafter, the Claimant blew into the mouthpiece of the field sobriety test instrument and the reading was obtained.

[20] The lawful level for breath alcohol is set at 35 micrograms per 100 ml of breath. The Claimant's level was found to be 37 mg/dl (two micrograms over the prescribed limit).

[21] The Claimant was informed of the reading and shown the instrument screen. He was then cautioned in accordance with the Judges' Rules and informed of his legal rights and privileges. The Claimant was further informed that he was required to be subjected to two further evidential tests, namely, the roadside breath testers which provide results slips. Page 69 of the Station Diary Extract dated 9 August 2014 shows that those two further evidential tests read 37mg/dl and 40mg/dl, respectively.

[22] The Claimant failed all the road side breath tests by being over the prescribed limit by at least 2 microgrammes per 100 ml of breath.

[23] The Claimant stated that at the material time he was not misbehaving or rowdy in anyway whatsoever and that he willingly gave his name and address and also provided his driving permit and certificate of insurance to PC Hinds. PC Hinds admitted this to be true.

[24] According to page 69 of the Station Diary Extract dated 9 August 2014, it thereafter followed that sometime around or shortly after 1:40am, the Claimant was then informed by PC Hinds that he (the Claimant) was over the prescribed limit by 2 microgrammes per 100 ml of breath and PC Hinds cautioned the Claimant in accordance with the Judges' Rules. The Claimant replied "*ah take one shot ah Bailey's and ah drink ah half ah stout*". The Claimant stated that he asked the officer for permission to call a family member to come and pick up his van and having obtained permission he called a relative. However, PC Hinds stated in cross-examination that he could not recall whether

he allowed the Claimant the facility of making a telephone call to his relatives to come and attend to his vehicle.

[25] PC Hinds recalled that he informed the Claimant of his constitutional rights and privileges and also informed the Claimant of the reason for his arrest. PC Hinds further stated that in exercise of the police officers' powers of arrest, the Claimant was then placed in a police bus which was on site to transport offenders to the San Fernando Police Station.

[26] In his oral testimony, PC Hinds stated that it was "**standard procedure**" to arrest in such circumstances. He stated that as far as he was concerned, once a person fails the breathalyzer test, that person was arrested, and he admitted that that was what happened to the Claimant in this case.

[27] PC Hinds noted that even though the last arrest during the road exercise was around 2:40am, that the exercise had possibly continued a while after that arrest before finally being completed. When the entire police road exercise was complete all offenders/arrested persons, including the Claimant, were transported to the Traffic Section of the San Fernando Police Station. The Station Diary Extract shows that at least seven (7) other persons were arrested and transported together with the Claimant to the Traffic Section of the San Fernando Police Station. PC Hinds maintained that the police bus arrived at the Police Station around 4:00am having completed the road exercise.

[28] The Claimant was taken to the Traffic Section of the San Fernando Police Station (which is a separate building from the San Fernando Police Station but on the same compound). The Traffic Section is the building located to the back of the property and the Police Station is to the front. In oral evidence the Claimant admitted that he was not kept in any cell in the Traffic Section. The Claimant stated that he was only kept in a cell when transferred to the Police Station to the front.

[29] At the Traffic Section of the Police Station, the Claimant was processed by PC Hinds. PC Hinds maintained that at the Traffic Section all offenders who arrived on the

police bus with the Claimant had to be processed and additional forms which were not on site at the road exercise were required to be completed. These include the *crime forms*, *triplicate information to go to Court*, the *Notice to Prisoner* and *Certificate of Analysis*. Pages 69 to 70 of the Station Diary Extract dated 9 August 2014, evidenced that around 4:30am the Claimant was fingerprinted; around 4:45am the Claimant was formally charged by PC Hinds under **section 70A(1) of the Motor Vehicles and Road Traffic Act Chap. 48:50**; and at 4:55am PC Hinds served the Claimant with a notice for the offence charged, copies of the test result slips and the Certificate of Analysis. A copy of the Notice to Prisoner; Certificate of Analysis; and Station Diary Extracts of the Traffic Section of the San Fernando Police Station, each dated 9 August 2014 were exhibited.

[30] Thereafter, at sometime after 4:55am the Station Diary Extract provides that PC Ramkissoon, PC Ramcharan and PC Mahabir escorted eight (8) prisoners including the Claimant to the San Fernando Police Station (which is the building in front of the Traffic Section).

[31] At the San Fernando Police Station, the Claimant was handed over to PC Alleyne. The Defendant maintained that further processing of the Claimant thereafter took place at the San Fernando Police Station. Such processing included the filling out of the relevant books such as the detainee register and the charge book, the taking of the photographs of all the arrested persons and the conduct of a tracing for each person as well as the process relevant to the approval of station bail for the Claimant. The Defendant emphasised that the Claimant, having been charged with an offence for which he could be arrested, would not have been released until approval for station bail had been obtained and the bail bond was completed.

[32] Although no documentary evidence was provided by either side in respect of the time at which the Claimant was eventually released on station bail, the Claimant claimed that he was eventually released from the San Fernando Police Station around 11:30am on 9 August 2014.

[33] The Defendant maintained that the Claimant's detention during the ten (10) hour period from 1:30am to 11:30am was justified because as outlined above he was lawfully arrested, charged, processed and bail approval documents prepared during the ten hour period that he was detained prior to his bail being approved and granted and him being released.

[34] The Claimant, however, averred that his detention was unlawful and even if it was lawful it was unduly long. The Claimant claimed he ought to have been released as soon as possible and certainly a reasonable period would have been within 2 hours of arrest having regard to the offence and all enquiries having been completed at the time of arrest. The Claimant stated that he was a gardener/landscaper and the father of two children and that he suffered deep embarrassment, humiliation and mental anguish.

[35] To this end, the Claimant sent the Defendant a pre-action protocol letter dated 17 September 2014. By letter dated 19 November 2014 the Defendant addressed a letter in response to the Claimant requesting further and better particulars in respect of the alleged incident. On 18 December 2014, the Claimant by letter addressed to the Defendant's Attorneys provided the additional information requested. The Defendant then responded by letter dated 15 January 2015 informing the Claimant that the Defendant was still in the process of receiving instructions in relation to the matter. By further letter dated 12 February 2015, and addressed to the Claimant's Attorney, the Defendant, having received instructions from its agents denied that there was any liability of the State in respect of this matter. The instant claim was thus thereafter initiated by the Claimant.

### **C. Issues to be Determined by this Court**

[36] Based on the Statement of Issues provided by the Claimant and the Defendant, and having regard to the pleadings, the evidence and submissions of the respective parties, the Court has deduced three main issues for determination. These issues are:

- (i) Whether the arrest of the Claimant on 9 August 2014 was an unreasonable and unlawful exercise of the power of arrest in the circumstances. In considering this issue this Court shall also consider**



whether there was an alternative method available such as the issuance of a ticket or a summons to the Claimant and if yes, would the circumstances have required that the Police Officer utilise his discretion to issue a summons or ticket, as opposed to arresting the Claimant;

- (ii) If the Claimant's arrest was lawful, whether the period of the Claimant's detention at the San Fernando Police Station was unreasonable, that is to say, was the Claimant's detention from 1:30am to 11:30am justified; and
- (iii) If the Claimant's arrest was unlawful, or if his arrest was lawful but part of his period of detention unreasonable and unjustified, whether the Claimant is entitled to general damages (inclusive of aggravated and exemplary damages) and if so, the quantum thereof.

#### **D. The Submissions of the Claimant and the Defendant**

##### **(i) The Claimant's Submissions**

[37] The Claimant submitted that he was unjustifiably arrested and detained unreasonably. The Claimant submitted that should the Court find that his arrest and initial detention was lawful then, in any event, the Claimant's continued detention was excessive and unlawful. The Claimant does not dispute that the State, through its police officers, has several powers of arrest. Rather, he challenged the exercise of the Police Officer's discretion of arrest. The Claimant accepted that PC Hinds may have had the power to arrest the Claimant but submitted that having use of that power is separate and apart from the actual use of the power. The Claimant gave the example that a Court may have the power to incarcerate an offender but it does not follow that all offenders must or should be incarcerated. Every case, the Claimant submitted, should be decided on its own merits and it would be wrong to say that all offenders are to be incarcerated as **"standard procedure"**.

[38] The Claimant further submitted that to proceed to Magistrates' Court by way of complaint without oath requires only the name and address of the proposed Defendant, and that even before the arrest PC Hinds had received the driver's permit and insurance

of the Claimant and both documents would have provided the Claimant's name and address. Thus, the Claimant submitted that even prior to the Claimant's arrest PC Hinds had all the necessary information to proceed to prosecute the Claimant by complaint without oath for his infraction of the law. Bearing that in mind, the Claimant submitted that the State provided no reason as to why it was necessary to take away the liberty of the Claimant rather than issue a summons to the Claimant to attend Court and proceed by complaint without oath. The Claimant emphasised that an arrest is not necessary to commence a prosecution and relied on the case of **Doodnath Mootoo v PC Flaviney and ors HCA No. S-48 of 1998.**

[39] That notwithstanding, the Claimant submitted that assuming the Claimant's arrest was lawful, he should have been released as soon as possible and within a maximum of two hours. The Claimant stated that the Defendant had not shown that the whole period of detention was justified. The Claimant maintained that the law, namely **section 70C(8) of the Motor Vehicles and Road Traffic Act Chap 48:50**, clearly provides for an expeditious procedure but that PC Hinds failed to adhere to his statutory duty. Additionally, the Claimant, relying on **Adesh Maharaj v AG HCA No. S-788 of 1998**, submitted that the Defendant's attempt to justify the detention of the Claimant at the police station by indicating that various forms and registers had to be completed, ought not to be accepted by the Court. The Claimant also submitted that with respect to the Claimant's further detention from 4:55am to 11:30am, the Defendant omitted evidence in justification of the Claimant's continued detention and has deprived the Court of the opportunity to arrive at an objective and rationalized decision on what amounts to "further processing".

[40] The Claimant submitted that should the Court determine his arrest, detention and/or part of his detention were unlawful then he would be entitled to damages. The Claimant submitted that the appropriate sum to be awarded in general damages is approximately **\$50,000.00** with interest at a rate of 9% per annum from the date of service of the claim.

**(ii) The Defendant's Submissions**

[41] The counsel for the Defendant contended that in the instant matter there is no dispute that the Claimant was arrested; the issue is whether there was an absence of lawful authority to justify his arrest. To that end, counsel contended that Police Constable Hinds had reasonable cause to suspect that the Claimant had been driving with alcohol in his breath exceeding the prescribed limit contrary to **section 70A of the Motor Vehicles and Road Traffic Act Chap. 48:50**. This, the Defendant stated, substantiated the administering of the breath test. The Defendant maintained that the factors which aroused the suspicion of PC Hinds were the fact that the Claimant had (i) glassy eyes; (ii) slurred speech; and (iii) his admission that he had alcohol to drink in addition to showing PC Hinds a bottle of stout that he had in the his car at the material time. Counsel contended that all these factors were sufficient for PC Hinds to suspect that the Claimant had alcohol in his breath exceeding the limit.

[42] The Defendant further contended that it is not in dispute that the Claimant failed all of the breath tests administered to him. In fact, under cross-examination, the Claimant accepted that he broke the law. Therefore, the Defendant contends that as a person who was found driving a motor vehicle while over the prescribed alcohol limit, the Claimant was lawfully arrested under **section 70A of the Motor Vehicles and Road Traffic Act**.

[43] Counsel for the Defendant maintained that **section 70A (5)** is clear in providing the police with the power to arrest. As a result, the Defendant contended that having confirmed that the Claimant was over the prescribed limit, PC Hinds had an honest belief as well as reasonable and probable cause to suspect that the Claimant committed the offence under **section 70A** and thus the Claimant's arrest was justified. To this end, counsel further argued that although the Claimant pleads that he should have been issued a ticket or summons to attend Court instead of being arrested, the Claimant has not brought before the Court any authority to issue a ticket or summons to attend court to persons found driving over the prescribed alcohol limit.

[44] Additionally, it was the Defendant's contention that the period of the Claimant's detention was justified and reasonable. The Defendant contended that when the Claimant was arrested he was told the reason for his arrest, cautioned, informed of his legal rights and privileges, and was then placed in a police bus that was on site. The bus left the site after the completion of the exercise and the Claimant together with others arrived at the San Fernando Police Station at 4:00am. In summary, the Defendant contended that during the period of the Claimant's detention, the Defendant would have done the following in relation to processing the Claimant:

- (i) PC Hinds would have reported on the breath tests administered;
- (ii) The triplicate information to go to the Magistrate's Court was filled out;
- (iii) The Claimant was fingerprinted and the fingerprint forms filled out;
- (iv) The Certificate of Breath test had to be prepared as well as the result slips;
- (v) The Claimant would have been charged and the Notice to Prisoner, copies of the result slips and the Certificate of Analysis would have been delivered to the Claimant;
- (vi) The Claimant's photograph was taken; and
- (vii) Bail bonds had to be completed and approval for release obtained in order to facilitate the grant of bail for the Claimant.

The Defendant submitted that once processing of the Claimant was completed and bail granted the Claimant was released.

[45] That notwithstanding, the Defendant contended that if, however, this Court should find that any part of the Claimant's detention was unreasonable, that the primary award of any damages should be to compensate the Claimant for any harm done to him. The Defendant contended that in the instant matter, there is nothing to suggest that there are factors which require the reward of aggravating and/or exemplary damages. The Defendant emphasised that, in any event, the Claimant's detention up until 4:55am when he was served with the Notice to Prisoner should in no way be held to be unjustified. As a result the Defendant contended that in the event that this Court finds that the Defendant was unreasonably detained for six hours the award of damages should be somewhere in

the vicinity of \$8,000.00 to \$12,000.00 based on authorities such as Kamaldaye Maharaj v Police Constable Hobbs No. 10560 and anor HCA No. 2587 of 1998; Chandardat Soogrim v The Attorney General CV2007-3755; and Iven Neptune v The Attorney General CV2008-03386. The Defendant further submitted that if the Court finds this to be an appropriate case for the award of interest, such interest should be at a rate of 2.5%: The Attorney General v Fitzroy Brown et al CA251 of 2012.

#### **E. The Law and its Application to the Issues**

**Issue 1: Whether the arrest of the Claimant on 9 August 2014 was an unreasonable and unlawful exercise of the power of arrest in the circumstances. In considering this issue this Court shall also consider whether there was an alternative method available such as the issuance of a ticket or a summons to the Claimant and if yes, would the circumstances have required that the Police Officer exercise his discretion to issue a summons or ticket, as opposed to arresting the Claimant?**

[46] Having considered the evidence and the relevant law in relation to this first issue, I am of the view that the Claimant's arrest on 9 August 2014 was reasonable and lawful.

[47] The tort of false imprisonment is established on proof of (i) the fact of imprisonment and (ii) the absence of lawful authority to justify that imprisonment. In the instant matter there is no dispute that the Claimant was arrested. The issue is whether there was an absence of lawful authority to justify his arrest.

[48] The Claimant was arrested pursuant to section 70A(5) of the Motor Vehicles and Road Traffic Act Chap. 48:50 for the offence of driving or being in charge of a vehicle while the alcohol in his breath exceeded the prescribed limit contrary to section 70A (1).

[49] Section 70A of the Motor Vehicles and Road Traffic Act provides that:

*"70A. (1) No person shall drive or attempt to drive, or be in charge of a motor vehicle on a road or other public place if he has consumed*

*alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limit.*

(2) *Any person who contravenes subsection (1) is guilty of an offence and is liable—*

- (a) in the case of a first conviction, to a fine of twelve thousand dollars or to imprisonment for three years; and*
- (b) in the case of a second or subsequent conviction, to a fine of twenty-two thousand, five hundred dollars or to imprisonment for five years.*

(3) .....

(4) .....

(5) *Any constable may arrest without a warrant, any person committing an offence under this section.*” [Emphasis added]

[50] There is no doubt that PC Hinds would have arrested the Claimant pursuant to the police powers of arrest under **section 70A (5) of the Motor Vehicles and Road Traffic Act**. Certainly, the consequence of **section 70A (5)** is that the offence committed contrary to **section 70A (1)** is one for which an officer can arrest an offender. Thus, it is open to a Police Officer to arrest such offender without warrant if the person is found to have committed the aforementioned offence. In the instant case, there is also no doubt that the Claimant indeed committed an offence contrary to **section 70A (1) of the Motor Vehicles and Road Traffic Act**; the unchallenged evidence is that the lawful level for breath alcohol is set at 35 micrograms per 100 ml of breath (see **section 70G (1) of the Motor Vehicles and Road Traffic Act**) and the Claimant’s level was found to be 37 mg/dl (two micrograms over the prescribed limit). The Claimant had failed each of the breath tests issued to him.

[51] Thus, the real issue is whether, in the instant case, PC Hinds would have properly exercised his discretion to arrest the Claimant for the offence, given that section **70A (5)** provides that any constable may, as opposed to shall, arrest without warrant a person committing an offence contrary to **section 70A (1)**. The consequence of the language of **section 70A (5)** is that even if PC Hinds found that the Claimant did commit the offence, it does not follow that PC Hinds was bound to arrest the Claimant.

[52] In the instant matter, Counsel for the Claimant submitted that it was open to PC Hinds to issue the Claimant a ticket or alternatively to issue a summons to the Claimant to attend Magistrates' Court to answer to any charge made against him in respect of the offence. Counsel however did not provide any authority upon which this submission (as to alternative options of issuing a ticket or a summons) was premised.

[53] Nonetheless, I have noted that **section 3(1) of the Motor Vehicles and Road Traffic (Enforcement and Administration) Act Chap. 48:52** which provides for the issue by officers of fixed penalty tickets states that "*where a constable has reason to believe that an offence has been or is being committed, it shall be lawful for him to give to the driver a notice charging him with the commission of such offence, and requiring him either to pay the fixed penalty within the time specified in the notice or to appear at the Court specified in the notice on the day and at the hour stated therein to answer the said offence charged*". **Section 2 of the said Act**, however, limits the definition of "*offence*" as referred to in **section 3(1)** to offences listed in the **First Schedule of that same Act**. The offence stated in **section 70A(1) of the Motor Vehicles and Road Traffic Act** is however *not* listed in the **First Schedule to the Motor Vehicles and Road Traffic (Enforcement and Administration) Act** and therefore **section 3(1) of the latter Act** is not applicable to the instant matter. Thus, it cannot be said that PC Hinds had the option to lawfully issue a fixed penalty ticket to the Claimant for the offence presently in question.

[54] Regarding the Claimant's submission that it was open to PC Hinds to issue a summons to the Claimant to attend Court and answer the charge as opposed to arresting him, the Claimant relied on the authority of **Doodnath Mootoo v PC Flaviney, Kenny Mohammed (Commissioner of Police) and The Attorney General of Trinidad and Tobago HCA No.S-48 of 1998**. This Court notes from the outset, that the Court in that case was concerned with the traffic offence of non-compliance with traffic directions (in that case breaking a red light) contrary to **section 66B of the Motor Vehicles and Road Traffic Act**. However, no power of arrest was granted by **section 66B** unlike the instant **section 70A (5)** which is presently in question. That fact no doubt influenced the final

determination of the Court in **Doodnath Mootoo** and from the outset distinguishes the case at bar from that one.

[55] That notwithstanding, the case of **Doodnath Mootoo** (*supra*) still offers useful discussion in respect of the exercise of a police officer's discretion to arrest an alleged offender. The Court in **Doodnath Mootoo** (*supra*) stated at page 16 to 17 of its judgment that having obtained the alleged offender's name and address, the police officer was put in a position to carry out his common law duty to bring the alleged offender to justice by sending him a summons to attend court. Such power to issue a summons appears to be premised on **sections 42 and 43 of the Summary Courts Act Chap. 4:20**. To obtain a summons, PC Hinds would have had to find a Justice of the Peace on the weekend to issue the summons or wait until the following Monday when he could have obtained one at the Magistrate's Court. This is so as only a Justice of the Peace and Magistrate are empowered under the **Summary Courts Act** to order such summons.

[56] Thus, it would appear that PC Hinds may have had the option of considering whether to obtain a summons for the Claimant as opposed to arresting him in the instant matter.

[57] Bearing that in mind, this Court emphasises the caution given by the Privy Council in **Chandrawatee Ramsingh v The Attorney General of Trinidad and Tobago (2012) UKPC 16 at paragraph 13**, that when a police officer is given a discretion to arrest an offender or not "*it would be wrong in principle for the police to adopt a blanket policy [or standard police procedure]....all must depend on the circumstances*".

[58] The fact remains that as a result of the use of the phrase "*may arrest*" in section **70A (5) of the Motor Vehicles and Road Traffic Act**, as opposed to "*shall arrest*", as stated in the case of **Doodnath Mootoo** (*supra*) at page 19:

*"...He [the Police Officer] is given an executive discretion which he can choose not to exercise after considering matters such as "the possibility of escape, the prevention of further crime and the obstruction of police*



*enquiries” – Shaaban Bin Hussein v Chong Fook Kam (1969) 3 All ER 1626. [The Police Officer] could have decided not to take [the alleged offender] into custody having regard to the relatively minor nature of the offence and to the fact that he had all the necessary information to summon the [alleged offender] to court. But the way in which the constable exercises his discretion....will only be reviewed by a court of law on the bases; for example, that the officer acted in bad faith, or took into account irrelevant considerations or acted unreasonably in the Wednesbury sense – Holgate Mohammed v Duke (1984) 1 All E.R. 1054.” [Emphasis added]*

[59] Applying these legal principles to the case at bar, I agree with Counsel for the Claimant that it would have been wrong for PC Hinds or by extension for the police service to adopt a standard procedure to arrest any person who commits an offence under **section 70A (1) of the Motor Vehicles and Road Traffic Act**. To adopt such a standard procedure would be to essentially ignore the executive discretion which **section 70A (5)** gives to an officer and which requires the officer to take into consideration all the relevant circumstances of each case before proceeding to arrest an offender.

[60] That said, however, following the principle in **Holgate Mohammed v Duke (1984) 1 All ER 1054**, as referred to in **Doodnath Mootoo** (supra), I cannot find anything in the substantive evidence that would suggest that PC Hinds acted in bad faith in arresting the Claimant nor can it be said that he took into account irrelevant considerations. Counsel for the Claimant, however, suggested that it was unreasonable for PC Hinds to arrest the Claimant based on the fact that the Claimant was compliant and was not misbehaving or rowdy in any way and further that the Claimant had willingly given PC Hinds his name and address and also provided his (the Claimant’s) driving permit and insurance to PC Hinds. I do not agree that this alone could render the decision of PC Hinds unreasonable.

[61] Mere compliance and the provision by the Claimant of his name and address, cannot of itself negate or nullify a police officer’s power of arrest. Indeed, such can be taken into consideration, however, it must be viewed amidst other relevant considerations and indeed amidst the entirety of the circumstances in a particular matter.

[62] To this end, I repeat the principle in the case of **Shaaban Bin Hussein v Chong Fook Kam (1969) 3 All ER 1626** which was also referred to in **Doodnath Mootoo (supra)**, that some of the other relevant matters to be considered are the possibility of escape, the prevention of further crime and the obstruction of police enquiries. Particularly relevant in the instant case was the prevention of further crime. By this I mean that the very nature of the offence under **section 70A (1) of the Motor Vehicles and Road Traffic Act** is such that once the Claimant was found to have alcohol in his breath in excess of the prescribed limit, it would have taken some time for his alcohol level to be reduced to or under the prescribed limit.

[63] It followed therefore, that once the Claimant failed the breath test, it would not have been open to PC Hinds to issue him a summons at once, for such action could risk that the Claimant would get back into the car and drive while the alcohol level in his breath was still very likely to be over the limit. That the Claimant, if he were allowed to be free, might continue to drive his motor vehicle, was not a remote risk because after all, when he was stopped he was already committing the offence of driving while over the prescribed limit. This would in essence result in further or a continued offence contrary to **section 70A (1)**. In addition to those conditions, the officer would have had to bear in mind that the issuance of summons was not readily available in that it would require PC Hinds to find a Justice of the Peace to issue the summons or wait until Monday where he could obtain one at the Magistrate's Court. This would have made the issuance of the summons impractical.

[64] Further, I have considered that although the Claimant stated in his witness statement that he asked PC Hinds to call a family member to come pick up his van and that he (the Claimant) called a relative, in a practical sense, it can hardly be expected that PC Hinds would have been obligated to wait until someone came to pick up the Claimant's vehicle to ensure that no further offence was committed by the Claimant getting back into the vehicle and driving while the alcohol level in his breath was still in excess. If that were the case, such option would have also had to have been extended to each and all of the other persons who were also found to have committed an offence under **section 70A (1)**, and in that light, it certainly cannot be held to be a reasonable and

effective use of an officer's time that an officer waits until each offender's car is at the time removed from the equation by another, so as to ensure no further offence.

[65] Additionally, the Court notes that section **70A (2) of the Motor Vehicles and Road Traffic Act** prescribes penalties based on the number of previous convictions under that section. PC Hinds gave evidence that he eventually had the Claimant's fingerprints taken and that a tracing was done. This no doubt would have been done to ascertain whether the Claimant had any previous convictions under **section 70A (2)**, so as to enable PC Hinds to provide that information to the Court, in order to determine the appropriate penalty. How, other than by arrest, could PC Hinds compel the Claimant to provide his fingerprints as necessary for the tracing? Thus it can be said that the Claimant's arrest was also necessary for the conduct of further police enquiries.

[66] There may no doubt be circumstances in another case that can justify the issuance of a summons as opposed to the arrest of an offender who commits an offence contrary to **section 70A (1) of the Motor Vehicles and Road Traffic Act**. However, this case is not an appropriate case in which I can, without speculation, say that it was unreasonable for PC Hinds to exercise his discretion to arrest the Claimant for the offence. I am of the view that the arrest was indeed reasonable and lawful in the circumstances of this case.

**Issue 2: If the Claimant's arrest was lawful, whether the period of the Claimant's detention at the San Fernando Police Station was unreasonable, that is to say, was the Claimant's detention from 1:30am to 11:30am justified?**

[67] This Court has found that the arrest of the Claimant was lawful and reasonable. It has been shown that there was reasonable and probable cause to arrest the Claimant. However, that is not the end of the matter. Counsel for the Claimant has submitted that even if the initial arrest was lawful, that the period of the Claimant's detention before being granted bail was unreasonable and excessive.

[68] In **Chandrawatee Ramsingh** (supra) the Privy Council explained that whether or not the continued detention of a person is justified depended on all the circumstances of the case. At paragraph 16 of their judgment the Privy Council explained that:

*“...the respondent must show that the whole period of detention was justified. However, while it would be wrong in principle to hold that, because the initial arrest was justified it follows that the subsequent detention was also justified, it is important to consider the subsequent detention in light of the arrest.”*[Emphasis added]

[69] In the case of **Adesh Maharaj v The Attorney General of Trinidad and Tobago** S-788 of 1998, it was stated at paragraph 6, that in determining whether a person’s detention was excessive:

*“...It is clear that it is not enough for the Respondent to say that because a person has been charged, then any period of detention before he is told of his right to bail is reasonable and lawful. If there is to be a detention beyond a reasonable period, there must be good reason for so doing. If there is good reason then the period would not be excessive and no claim for damages for false imprisonment can stand.”*[Emphasis added]

[70] With respect to the process and/or time frame in which a person charged is able to obtain bail, in **Adesh Maharaj** (supra), Pemberton J (as she then was) stated at paragraph 33 of her judgment that:

*“A person is innocent until proven guilty. Even though our Constitution is silent on time limits when dealing with actions to secure liberty of the subject, I am certain that any action to be taken by public authorities to respect the right of the individual to his freedom must be with alacrity to ensure that the public authority does not run afoul of the Constitution. The courts have recognized that pressure of work and short staff situations may impact on the desired norm. However, that reason cannot always hold sway.”*

[71] In **Adesh Maharaj** (supra), AM was charged for disorderly conduct and placed in a cell at a Police Station from 7:45pm to 10:45pm. AM stated that no statements were taken from him or further interviews carried out. He was just kept in the cell. He stated that he was never informed of his right to bail and he was only given bail when his uncle, a sergeant of police, called and asked that he be given bail. He complained that to keep

him in the cell from 7:45pm to 10:35pm was an excessive period for which he was entitled to damages for false imprisonment. The reasons proffered by the defendant to justify AM's detention was that AM was deliberately left in the cell to "cool down" and to process necessary papers, in addition to the fact that the officers had other things to do at the station. In light of the evidence, or more so the lack of evidence of the books and registers, inter alia, which had to be filled out and the amount of time that may be required to fill same out, the Court in **Adesh Maharaj** (supra) held that AM's detention was excessive.

[72] Applying the general principles of law established in cases such as **Chandrawatee Ramsingh** (supra) and **Adesh Maharaj** (supra), I am of the view, that while the Defence in the instant matter provided evidence that could justify at least six and a half (6.5) hours of the ten hour period for which the Claimant was detained, that the Defendant has not shown good reason for the final three and a half (3.5) hours during which the Claimant remained detained prior to being released on bail.

[73] Following the principle established by the Privy Council in **Chandrawatee Ramsingh** (supra), even though it would be wrong to hold that because the initial arrest of the Claimant was justified it follows that the subsequent detention was also justified, I have considered that the Claimant's subsequent detention ought to be viewed in light of his lawful arrest. This Court accepts that the Claimant was reasonably detained during the period from around 1:40 am to 4:55am, during which period the Claimant's detention reasonably facilitated:

- (i) the conduct of the additional two roadside breath testers from which evidential result slips were obtained;
- (ii) the completion of the police road-exercise on the said morning;
- (iii) the completion of the crime forms, triplicate information to go to court, the Notice to Prisoner and the Certificate of Analysis;
- (iv) the fingerprinting of the Claimant; and
- (v) the formal charging of the Claimant and delivery of a copy of the offence charged, test result slips and Certificate of Analysis to the Claimant.

[74] The Court further accepts that bearing in mind that the Claimant was being processed along with about seven other persons who were also arrested during the police road exercise, that upon being transferred from the Traffic Section of the San Fernando Police Station to the front building of the San Fernando Police Station around 4:55am, that the further detention of the Claimant was required for *at least such time* as would facilitate the officers in:

- (vi) filling out the detainee register and the charge book;
- (vii) obtaining the Claimant's photograph;
- (viii) conducting a tracing on the Claimant; and
- (ix) completing the bail bond and obtaining approval for release of the Claimant in order to facilitate the grant of bail to the Claimant.

[75] This Court is however of the view, that the Defendant has justified *only part* of the continued detention of the Claimant for the six and a half hours from 4:55am to 11:30am; such part that was justified being such time as was at least required to facilitate the last four aforementioned functions by the officers. This Court has noted that the Defendant provided no evidence of any opposition or obstacles to the grant of bail to the Claimant, further no evidence was provided that the filling out of the detainee register and charge book, obtaining of the Claimant's photograph, or conduct of the tracing were time-consuming activities. Moreover, no evidence was given as to any special amount of time being required in the circumstances for the completion of the bail bond and obtaining of approval for the Claimant's release. In the circumstances, drawing from the case of **Adesh Maharaj** (*supra*) where bail was also required by a person charged for a misdemeanor, it was stated by an officer in that case and accepted by the Court that the average time required to process the person for bail was about one hour and a half.

[76] Bearing that in mind, I am of the view that the functions of : (i) completing the bail bond and obtaining approval for release of the Claimant in order to facilitate the grant of bail; (ii) filling out of the detainee register and charge book; (iii) obtaining of the Claimant's photograph; and (iv) conduct of the tracing, could in the instant circumstances

wherein the officers also had a duty to process other offenders who were brought to the station together with the Claimant – that these functions ought to have altogether reasonably taken no more than a maximum additional period three hours, safely speaking. I say this mindful of the fact that there was no evidence of further obstacles or opposition to the Claimant being released. Thus, this Court is willing to accept that the Defendant has justified the continued detention of the Claimant at the front building of the San Fernando Police Station for at least an additional period of three hours from 4:55am up to 7:55am.

[77] It therefore follows, that the Defendant has *failed* to justify the Claimant's detention for the additional approximate three and a half (3.5) hours from 7:55am to 11:30am, during which the Claimant remained detained at the front building of the San Fernando Police Station before being released on bail. Those final three and a half hours are therefore found by this Court to be unjustified by the Defendant and excessive.

**Issue 3: If the Claimant's arrest was unlawful, or if his arrest was lawful but part of his period of detention unreasonable and unjustified, whether the Claimant is entitled to general damages (inclusive of aggravated and exemplary damages) and if so the quantum thereof**

[78] It follows that the Claimant shall be entitled to claim damages for the final *three and a half hours* of detention from 7:55am to 11:30am, at the cell at the San Fernando Police Station, which period was unjustified by the Defendant and excessive.

[79] In this case, in light of the fact that the Claimant was initially lawfully arrested and the first six and a half hours of his detention justified, the principal objective of the award of damages for that part of his detention which was excessive (the three and a half hours) would therefore be, primarily, to compensate the Claimant for injury to his liberty, that is, the loss of time considered from a non-pecuniary standpoint as well as the discomfort caused to the Claimant in additional period of detention that was unjustified.

[80] I have considered that even though the Claimant gave evidence that he felt he was being unjustly punished by the officers, that there is no evidence before this Court that could substantiate or justify such feelings of the Claimant. There is no evidence of mala fides or maliciousness in respect of the Defendant's agents and I am of the view that this *is not* an appropriate case for the award of either aggravated or exemplary damages.

[81] Of all the aforementioned cases submitted by Counsel for the Claimant and Counsel for the Defendant, the case of **Kamaldaye Maharaj v. Police Constable Hobbs No. 10560 and ors. HC 2587 of 1998 (decided 12 April 2002)** is the closest in terms of the period of unjust detention in the instant matter. In **Kamaldaye Maharaj** (*supra*), the Court awarded **\$10,000** as general damages where the Claimant was falsely imprisoned for approximately six and a half hours. This is, of course, almost double the period of time deemed as unjust/excessive detention in the instant matter. I however, take into account that **Kamaldaye Maharaj** was a 1998 case which was decided in the year 2002; over 15 years ago, so that regard must be had to the passage of time and the value of such an award today in light of the economic realities.

[82] Having considered all the circumstances of this case at bar, as well as the submissions of counsel for both parties, I am of the view that had this case been decided in the year 2002 like **Kamaldaye Maharaj**, it would have attracted an award of about **\$5,000.00**. An appropriate award today for general damages would be the sum of **Twelve Thousand Dollars (\$12,000.00)** for the additional three and a half hours which the Claimant was caused to spend in the cell at the San Fernando Police Station. I believe such compensation to be a sufficient award to the Claimant in the instant case.

### **The claim for interest**

[83] The Claimant has claimed interest at the statutory rate in his claim form and statement of case pursuant to **section 25 of the Supreme Court of Judicature Act Chap. 4:01 (SCJA)** but in his written submissions filed on the 18 July 2016 he argued that interest ought to be awarded at the rate of 9% per annum from the date of service of the Claim to the date of this judgment. I have found no justifiable reason for denying the Claimant his claim for interest but I am of the opinion that both the statutory rate and the



9% claimed by the Claimant are too high in all the circumstances of this case. Defence counsel has submitted in reply submissions that if the Court is of the view that interest is to be awarded then the rate should be 2.5% per annum in keeping with the decision of the Court of Appeal in **The Attorney General of Trinidad and Tobago v Fitzroy Brown et al No. CA 251 of 2012**<sup>1</sup>. This Court is in agreement with the submission by Defence counsel and so awards interest on general damages at the rate of 2.5% per annum from the date of the filing of the Claim to the date of this judgment. Interest will therefore be calculated by the following formula:  $\$12,000.00 \times 2.5\% \times 980 \text{ days} \div 365 = \$805.48$ .

[84] Interest on the general damages for the allowable period as calculated above will therefore be awarded in the sum of \$805.48.

### **Costs**

[85] Although the Claimant has succeeded in part only of a major issue in his claim, the Defendant was able to successfully defend on two of the major issues. In this light, and because the Claimant will still have to collect a cheque, he is to be considered a successful litigant in part (see **Day v Day [2006] EWCA Civ. 415** and **Widlake v BAA Ltd [2009] EWCA Civ. 1256**). Accordingly, I am of the opinion that he is entitled to a portion of his recoverable costs incurred in pursuing a matter which, from all perspectives, seemed against him. An appropriate order for costs therefore would be that the Defendant pay to the Claimant 30% of his costs to be quantified on the prescribed scale. Bearing in mind the award given for general damages, the “value” of the claim on which the prescribed costs are to be calculated is, by **CPR Part 67.5(2)(a)**, the **amount ordered** by the Court.

[86] Further, it appears, from the authority of the Privy Council Appeal in **Benoit Leriche v Francis Maurice [2008] UKPC 8**<sup>2</sup> that the “amount ordered” by the Court for the purposes of determining the “value” of the claim, must **include** the amount awarded as **interest** up to the date of the judgment. In this regard, the value of the claim

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<sup>1</sup> Delivered by **Archie C.J.** on 12<sup>th</sup> October, 2015 (see page 18 lines 25 – 32 of the official transcript)

<sup>2</sup> Per **Lord Carswell** at paragraph 18 of his judgment

would be \$12,000.00 + \$805.48 = \$12,805.48. Therefore, the **full prescribed costs** as determined from the **Scale of Prescribed Costs at Appendix B of Part 67** is **30% of \$12,805.48 = \$3,841.64**. However, since the Claimant is awarded **30%** of the full prescribed costs, then his recoverable costs would be **30% of \$3,841.64 = \$1,152.50**.

**F. Disposition**

[87] In the premises, the order of the Court is as follows:

**ORDER:**

- I. The Defendant do pay to the Claimant general damages in the sum of **Twelve Thousand Dollars (\$12,000.00)** for the unjustified and excessive detention of the Claimant for the period of approximately three and a half hours prior to the Claimant's release from detention at the San Fernando Police Station at 11:30am on Saturday 9<sup>th</sup> August 2014.
- II. This award shall attract interest at the rate of **2.5%** from the date of the filing of the Claim Form to the date of this judgment, calculated in the sum of **\$805.48**.
- III. The Claimant's claim for aggravated/exemplary damages is hereby refused.
- IV. The Defendant shall pay to the Claimant **30%** of his costs to be quantified on the Prescribed Scale of Costs under CPR Part 67, which said costs have been calculated in the sum of **\$1,152.50**.

Dated this 29<sup>th</sup> day of September, 2017

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**Robin N. Mohammed**  
Judge