

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.3243 of 2004

CV 2009-00988

Between

DAVE LEON MOORE

Claimant

And

DEXTER LEWIS #12925

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendants

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Ravi Heffes Doon instructed by N.D. Alfonso & Co. for the Claimant.

Ms. Karen Boodan and Rennie Singh for the Defendant.

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ASSESSMENT OF DAMAGES

BACKGROUND

1. On the 30th November 2000 the claimant was injured in an incident that took place at the Oriental Recreation Club. He sustained severe injuries to his neck in circumstances detailed in this court's previous written judgment.

2. At the time of the accident he was 43 years old, being born on September 1st 1957 and worked with Carillon Caribbean Limited .Despite physiotherapy he claims that he remains unfit to return to work. This is confirmed by the medical evidence, including that of Dr. Adam.

3. He claims damages for personal injuries and consequential loss, as follows:-

1. **\$60,000.00** for future treatment,
2. **\$400,000.00** for general damages,
3. Future loss of earnings in the sum of **\$224,448.00,**
4. Exemplary damages of **\$100,000.00** and
5. Special damages in the sum of **\$426,466.27**

Total **\$1,150,914.27.**

CONCLUSION

4. Based on the authorities and taking all the circumstances into consideration, and the evidence of the extent of injury suffered, the following award of damages is made: (This is the final award and supersedes the interim award previously made if it has not yet been paid.)

A. General Damages:

- (a) For pain and suffering and loss of amenities including an element of aggravation
\$120,000.00

(b) **Interest** on this sum at the rate of 12 % per annum from December 29th 2005 – (date of appearance to writ) to April 11th 2012.

(c) **Exemplary Damages - \$10,000.00.**

(d) **Loss of Future Earnings - \$106,512.00.**

B. Special Damages:

(i) **Loss of earnings to date of judgment - \$212,224.00.**

(ii) **Reimbursement of expenses**

Used wheelchair - **\$1200.00**

Walker - **\$1,007.84**

Cane - **\$414.43**

Pain Relievers -**\$950.00**

Medical Forms and Medical Reports - **\$105.00**

MRI - **\$2800**

Chiropractor - **\$2020.00**

Neck Brace - **\$285.00**

Transportation Costs – **\$5000.00**

Total - \$13,782.27

(iii) **Simple Interest on the Special Damages of \$226,006.27 at 6% per annum from December 1st 2000 to April 11th 2012.**

C. Costs:

Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total above amount.

ANALYSIS AND REASONING

DAMAGES

COMPENSATORY/GENERAL DAMAGES

5. The factors which are to be taken into account by a Court in the assessment of general damages for personal injuries were set out by the Honourable Wooding CJ in the **Cornilliac v St. Louis (1965) 7 W.I.R. 491** as follows:-

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

1. THE NATURE AND EXTENT OF THE INJURIES

6. The medical reports evidence the injuries as follows:

MRI dated 21st June 2001

The C6 vertebral body is posteriorly displaced into the spinal canal associated with impingement of the cervical spinal cord at this level

Cord oedema

Post traumatic cord myelomalacia

Report of Dr. Bascombe dated 25th September 2002 stated that *physical examination revealed weakness in all his limbs...his x-rays showed a fracture of the body of C3 and an anteroinferior **dislocation of C6.***

During the patient's stay in hospital the power of his limbs improved although not fully with persisting difficulty to ambulate.

The patient was advised that he needed surgery which entailed open reduction and internal fixation using an Atlantic cervical plate and screws "which this institution does not have." The patient claimed he was not ready for surgery and that he was improving with physiotherapy.

Report of Dr. Rasheed Adam dated February 21, 2008

*Examination showed a prominent C7 spinous process and increased tone in the lower extremity with approximately T2 sensory level. **He had weakness in both upper and lower extremities...***

MRI scan of the spine (in 2001) showed a C6 posterior displacement with cord edema and damage -mylomalcia.

*Mr. Moore's findings indicate a cervical spine injury with significant residual deficit. **He is significantly disabled walking with a cane and unable to work in any capacity.***

2. THE NATURE AND GRAVITY OF RESULTING PHYSICAL DISABILITY

7. Ten years after the injury Mr. Moore's condition was reviewed by Dr. Adam on February 22nd 2010 and his findings remained basically unchanged, as reflected in his further medical report dated February 25th 2010. He still had neck discomfort and stiffness, slow ambulation, leg spasms, weakness in the upper and lower limbs, and still relied on a cane for mobility.

8. He explained that the symptoms were consistent with the MRI and with manifestations that he observed which the claimant could not have produced voluntarily, for example reflexes, and increased muscle tone. He was of the view that the claimant was unable to work, and even a desk job as for example, a dispatcher, would pose difficulties for him.

3. THE PAIN AND SUFFERING WHICH HAD TO BE ENDURED

9. The claimant was warded at the Sangre Grande Hospital for four days after the incident then transferred to the Port of Spain General where he spent at least 3 weeks. (The medical records from the hospital do not indicate his date of discharge). He initially suffered limb weakness, particularly in his legs, and incontinence. To this day he still requires a cane to walk. He was warned at the hospital that he was at risk of paralysis if he did not have surgery performed, though the plates required for that surgery were not then available.

4. THE LOSS OF AMENITIES SUFFERED

10. At the time of the injury the claimant was 43 years. He is now 54. The Claimant claims to have had an active outgoing lifestyle playing cricket and football. He now experiences diminished sensation in his hands and arms, has difficulty in walking, and has reduced power in his limbs.

GENERAL DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES

Judicial trends

11. I consider the following cases relevant:

Samantha Hosein v Central Equipment Rentals; Davis, Carlyle (defendants); Trinre Reinsurance Company Limited of Trinidad and Tobago Limited (co-defendant)

H.C.301/2009. CV.2009-00301 Jones, Judith J delivered 2011.06.17

The claimant sought damages for personal injuries suffered as a result of an accident on 2004.07.27. She was 30 years old at the time. She suffered a spinal injury and surgery was recommended, but not performed.

12. The claimant sustained a loss of normal cervical lordosis and a moderately severe right posterolateral disc herniation with foraminal stenosis on the **right C5-6 level**. This resulted in a right paramedian **disc herniation at the C5-6 level**.

13. According to the claimant at the time of and immediately subsequent to the accident she was in extreme pain. Subsequently, she began to experience difficulty in sitting because of intense pain along the back and neck. She was prescribed and continued to use painkillers.

14. She claimed to be in constant pain and as a result was depressed. For the year and a half prior to trial she had hip pains which radiated to her toes and shooting back pains and spasms at night with the occasional twitching and loss of sensation on her left hand.

15. In his medical report of October 2005 Dr. Maharaj stated that the claimant complained of severe pain and swelling in her neck and upper back five days after the accident with the pain radiating to the right shoulder. She also complained of lower back pain. During the period 2004 to 2005 he states that her complaints of pains in the neck radiating to the right upper limb had been constant. On review on 19th August 2005 her complaints were pain in the neck radiating to the upper right limb, swelling of the neck and pain in the lower back.

16. Dr. Maharaj testified that the claimant would have had very severe pain for the four weeks following the accident that the pain was now moderately severe and was aggravated by extension, rotation and bending to the left. He was surprised that the claimant had tolerated the pain for such a long period of time and not consented to the surgery.

17. This resulting physical disability, according to her doctor, was correctable by surgery with a 95 per cent chance of success, and the claimant being able to resume a normal life.

18. In addition, had the claimant taken the surgery when initially advised to do so she would have had a 95 per cent chance of total pain relief. Ten (10) years after the accident she had an 85 per cent chance of total pain relief. She stated that on 2005.08.22 she was forced to resign from her employment as a result of the unbearable pain. A sum of **\$130,000.00** was awarded in general damages, \$10,000.00 for future medical expenses and \$43,700.00 for future surgery.

19. **Cost of future surgery** is one of the claims by the claimant in the instant matter. The reasonableness of not undergoing surgery, and the impact on this on both the claimant's condition and on an award to her were considered in that case, in particular at paragraphs 8,9,10,and 11. I consider that there is no evidence that, almost 12 years after the injury, the claimant is prepared to actually undergo the surgery that was recommended, which he declined. There is no evidence that his refusal then was

unreasonable, as the reason he apparently gave was that he was improving with physiotherapy. Further, the evidence is that the plates required for the recommended surgery were not then available.

20. In the instant case the evidence is that he would not experience an improvement in his condition if he had the surgery, save that it would stabilize the vertebra, and reduce the risk of deterioration.

21. Taking all of the above into account, no award is made in respect of the cost of future surgery, as there is every likelihood that the claimant will continue to choose to forego it.

22. In the case of **Anna Peters v Andre Ramjohn and New India Insurance Company H.C.1972/2007. CV.2007-01972** per Best, Carlton J 2010.09.29, the claimant was a back-seat passenger in a motor vehicle which collided with the first defendant's vehicle on 2005.08.19. Main injuries sustained included a narrowing of C5 and C6 of the cervical spine. This led to spondylosis. Her neck movements were restricted and she was also diagnosed as suffering from Post Concussion Syndrome. At the time of the accident she was employed as a Security Guard and was **51** years old. The sum of **\$90,000.00** was awarded for general damages.

23. In the case of **Edmund Taitt v Kenny Rampersad, Rhonda Mc Clean and Trinidad and Tobago Insurance H.C.A. 1052 of 2006** per the Honourable Justice Ventour, the claimant there suffered an inability to extend the right and left elbow, pins and needles sensation of the right and upper limbs, severe neck pains, posterior **C5/C6 disc herniation** with intra spinal extrusion, cord edema and contusion from C6 vertebral level, **temporary paralysis**, temporary loss of speech, a left frozen shoulder, diminished reflexes in the upper and lower extremities, **permanent C5/C6 disc herniation** with cervical root involvement and alleged sexual dysfunction.

24. Examination showed that power in the right hand on a scale of 0-5 was graded at 4 and in the left hand at 1. As a result the claimant was unable to grip objects. In the aftermath of the accident he was taken to the Port of Spain Hospital where he regained consciousness but was unable to talk or move his arms and legs. His speech and power in his limbs gradually returned. However weakness of the left upper extremity persisted, more particularly in the left hand but he made an excellent recovery.

25. He continued to experience pain throughout his body. Following the accident he took some 18 months to regain his ability to walk without assistance and approximately 6 months to be able to shower and use the toilet unaided.

26. He was no longer able to go to the beach as he used to because the cold water and the sea breeze cause him pain. His injury also resulted in loss of consciousness. His social activities suffered, notwithstanding his recovery. He was found to be unable to safely drive a motor vehicle. He was awarded the sum of **\$125,000.00** in general damages for pain and suffering and loss of amenities.

27. In **Ann Marie Redman v Hillary Samuel CV2007-02664** before the Honourable Mr. Justice Stollmeyer 10th July 2009, a claim in negligence/breach of employer's duty for personal injuries suffered on 19th July 2006 when the Claimant fell while attempting to sit on a chair at her place of work. On 13th February 2007 an MRI was carried out on her lumbar spine at the Eric Williams Medical Sciences Complex. This showed an element of disc desiccation at L3-4, L4-5 and L5-S1. At the L3-4 and L4-5 level there was seen mild posterior annular disc bulge indenting the epidural fat in the anterior spinal cord. The epidural fat was indented in the neural foramina bilaterally, which was worse than L4-5, being sites of possible exiting. L3 and L4 nerve root irritation. The disc at L4-L5 was bulging inwards and pressing on the nerve in that area of the spinal canal.

28. The evidence leading up to her first admission to the Port-of-Spain General Hospital showed a logical progression of a condition that worsened over time. The MRI

scans and the reports detailed an injury to the lower back. She continued to have severe pains.

29. A sum of \$100,000.00 was awarded, which was reduced as the court found an element of contribution.

30. I consider that the cases reveal a current range of \$90,000.00 to \$140,000.00 for awards in respect of cervical injuries of some severity with residual impairment. These cases are comparable in terms of pain and suffering endured and likely to be endured, together with residual disability.

31. At the date of the service of the writ the range of awards would have been slightly lower. The claimant would be compensated for being out of the money he would have been entitled to at the date of the service of the writ by an award of interest from that date. Accordingly, an award of **\$120,000.00** is made, inclusive of an element of aggravation.

5. THE EFFECT ON PECUNIARY PROSPECTS

Incapacity

32. I accept that the Plaintiff has been significantly handicapped in the labour market. I do not find that the Plaintiff has exaggerated his injuries which, in any event, are supported by the medical reports and the evidence of a medical expert - Dr. Adam. Apart from not being able to play sports, the main effect of his injuries is that he is unable to work full time.

33. The Plaintiff is 54 years old. The question of re-training is not practical. The incident took place in 2000. The Plaintiff has been unable to work full time since that time, though he has secured occasional employment with the unemployment relief program.

LOSS OF FUTURE EARNINGS

MULTIPLIER

34. At the date of his witness statement – October 2009, the claimant was 52 years old. He is now 54 years old. He could have had a further working life of at least 11 and possibly more given that he was self employed. At the date of the incident in 2000 he was 43 years old.

35. I am guided by the Privy Council case **Privy Council No. 86 of 2002, Peter Seepersad v Theophilus Persad & Capital Insurance Ltd** delivered on 1st April 2004. In that case the appellant who suffered personal injuries was 37 years old **at the date of trial**. I note that at paragraph 18 the Privy Council took into account the current discount rate on treasury bills in Trinidad and Tobago as being between 5% and 6% and assessed a multiplier of 16 years in order to provide proper compensation to the appellant taking into account interest rates in Trinidad and Tobago and making some allowance for the contingencies of life.

36. I take into account that in the **Seepersad** case the multiplier used was 16 for a plaintiff 37 years old **at the date of trial**.

37. I note also that interest rates in Trinidad and Tobago have been on the decline.

38. The multiplier of 16 in the **Peter Seepersad** case was for **future** loss of earnings, as pre-assessment loss of earnings had been quantified.

39. In **Ansola, Johnson v Singh, Ramnarine; Roopnarine, Ganesh; The Great Northern Insurance Company Limited H.C.3487/2003** delivered in 2008 this court used a multiplier of 8 in relation to a claimant who was at trial aged 47 years. I propose to use a multiplier for future loss of 6.

40. I find that the Plaintiff, being a person who made his living by his manual labour, is significantly impaired in the labour market, and that the employment that he earns as a URP foreman is occasional and not guaranteed.

41. I find that his net earnings at the time of the incident were on average \$13.50 per hour before tax.

42. At the time of the injury the claimant claims to have earned between \$1,600.00 to \$2,200.00 per fortnight as a carpenter with Carillion Caribbean Limited. His pay slips per fortnight record the following:-

26th November 2000

\$2,187.00 **Net \$1703.56**

12th November 2000

Gross \$2,011.50 **Net \$1,589.49**

29th October 2000

Gross \$2,214.00 **Net \$1,638.11**

17th September 2000

Gross \$1,889.50 **Net \$1,510.19**

11th June 2000

Gross \$2,157.50 **Net \$1,684.39**

43. He earned \$1638.11 when he worked 164 hours per fortnight and \$1510.19 when he worked for 137 hours per fortnight. Strangely, that number of hours does not include an element of overtime pay.

44. He therefore earned between \$10.00 and \$11.00 per hour after tax. It is clear that if he were working 82 hours per week, or even 69 hours per week, he would have had no time for the extra jobs that he claims he could have done in his spare time. There would have been no spare time.

45. It also seems clear that the contract hours worked by the claimant were not representative of a normal work week of 40 or even 44 hours, and seem to be associated with a period of industry required by his employment on that particular job site.

46. I propose to use the figure of \$11.00 per hour as his established earning capacity, after tax, at the time of the incident, and apply that to a work week of 40 hours. I find that it is likely that the Plaintiff would have earned \$440.00 per week for most weeks of the year. It is probable that he would have taken time off equivalent to a vacation and reduced the amount that he earned for a period. In all likelihood, I find that period would be two weeks.

47. I find that he would have earned this net sum of \$440.00 per week for 50 weeks.
50 x 440 = \$22,000.00

48. To these future annual earnings of \$22,000.00 I apply the multiplier of 6.

49. The claimant claims that he earns \$708 per fortnight in his statement of case but in his witness statement filed on October 30 2009 he claims the sum earned is \$530, and only for 11 to 13 weeks over the past 2 years, that is, from 2007. I propose to utilize the higher figure, in the absence of explanation for this discrepancy.

50. Apart from the statement of the claimant there is no evidence that the claimant actually was a skilled carpenter or that a skilled carpenter can currently earn \$350 per month. Given the importance of this figure in assessing quantum I consider that evidence of greater cogency and weight would have been required to prove those assertions.

51. There is no evidence, apart from his statement, that he worked only an average of 6 fortnights on the unemployment relief program per year. I accept however, that the nature of that work would be uncertain, and that, given the weakness of the claimant, based on the medical evidence which I accept, that he is now unable to perform physical labour in any regular paid position.

52. Accordingly a deduction is made from his estimated annual earnings for the possibility of occasional work with the unemployment relief program or otherwise. The calculation of his estimated future loss of earnings would be:-

Twenty-two thousand (\$22,000.00) (less average earnings of \$708 per fortnight for 6 fortnights- \$4248) per year as URP foreman) multiplied by 6 - **\$106,512.00**

No interest is awardable on this sum.

PRE-ASSESSMENT LOSS - FROM 2000 TO 2012

53. From September 2005 he earned \$708.00 per fortnight from the unemployment relief program, as claimed in his statement of case filed in January 2006. In his witness statement filed on October 30 2009 he claims the sum earned per fortnight is \$530, and only for 11 to 13 weeks over the past 2 years, that is from 2007.

54. I propose to utilize the higher figure in the absence of explanation for this discrepancy and apply a deduction of \$708.00 per fortnight (\$354.00 per week) from September 2005 to September 2007.

30th November 2000 to March 30th 2012 – 11 years 4 months

11 years x \$22000 – \$242000.00

16 weeks x \$440.00 – \$ 7040.00

TOTAL - \$249040.00

Less deduction – 104 weeks multiplied by \$354 - **\$36,816.00**

Total Loss - \$212,224.00

55. **Interest would run on the sum of \$212,224.00 at the rate of 6% per annum from December 29th 2005 – (date of appearance to writ) to April 5th 2012.**

AGGRAVATED DAMAGES

56. Under this head of damages the Claimant is entitled to recover damages for mental suffering inflicted on the claimant as opposed to the physical injuries he may have

received. Under this head are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and the standing in the eyes of others – **per Chief Justice de La Bastide in Thaddeus Bernard v Nixon Quashie at page 4.**

57. These are matters which may be affected by the manner in which the assault was carried out by the first named defendant. I consider that the nature of the attack requires the inclusion of an element for aggravation, because of

- a. The level of force used,
- b. Its disproportion to any conduct of the claimant,
- c. The persistence even to trial in the demonstrably false claim that
 - (i) The claimant attacked him first, and,
 - (ii) That the claimant was exaggerating the effects of the injuries, (despite overwhelming medical evidence to the contrary), that the first named defendant deliberately or recklessly, and in any event needlessly, inflicted.

EXEMPLARY DAMAGES

58. The House of Lords in **Rookes v Bernard** [1964] AC 1129 recognized two categories of cases in which an award of exemplary damages would be appropriate at common law, including where there is evidence of “oppressive, arbitrary or unconstitutional action by the servants of the Government.”

59. In **Bernard v Quashie (supra)** the Honourable de la Bastide CJ stated “*the function of exemplary damages is not to compensate but to punish and deter.*”

60. In **Takitota v AG of the Bahamas, Privy Council Appeal 71 of 2007** delivered March 18 2009 it was stated:

[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and

deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in Rookes v Barnard [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power.

61. I consider that the criteria for exemplary damages are satisfied. The actions of the first named defendant were arbitrary and an abuse of his powers as a police officer. He was not, and could not truthfully perceive himself to be under physical attack.

62. In this case the actions of the first named defendant were performed in the heat of the moment, immediately following upon a verbal attack in the club. Accordingly the award for exemplary damages would be moderate. The claimant seeks \$100,000.00 under this head. This is the sum awarded in **Owen Goring v The Attorney General H.C 3643/2010 delivered the 3rd of August 2011**. In **Goring** the assault was characterized by brutality directed at a prisoner in circumstances where he was helpless and outnumbered. Unlike **Goring**, this is not a case of conduct akin to torture.

63. Ten thousand (**\$10,000.00**) is awarded under this head.

SPECIAL DAMAGES

64. **Walking Aids** - Claims for used wheelchair **\$1200.00**, Walker **\$1,007.84**, Cane **\$414.43**
Pain Relievers **\$950.00**
Medical Forms and Medical Reports **\$105.00**

I award these sums as claimed even in the absence of receipts, as these are not unreasonable sum given the length of the claimant's disability and the severity of his injury.

65. I do not propose to award the sum claimed for Personal Monies Lost \$1000.00. To do so I would have to make a finding that the first named defendant stole that sum while the claimant was semi conscious after the incident, as the claimant asserts that it was the first named defendant who placed the wallet, less the cash, into his bag. There is insufficient evidence to make such a finding.

66. **Medical Services**

MRI **\$2800**

Chiropractor $\$260.00 + \$160.00 * 11 = \mathbf{\$2020.00}$

Medical Supplies

Neck Brace **\$285.00**

67. The claimant had to travel to Port of Spain once per week for 8 months. His mobility was severely restricted. The sum claimed of \$120 - 220 per trip is too vague and not proven but a reasonable cost would be no less than \$100 per trip.

Transportation Costs – an award is made in respect of reasonable costs in the sum of **\$5000.00**

68. **Total Special Damages - \$13,782.27**

CONCLUSION

69. Based on the authorities and taking all the circumstances into consideration, and the evidence of the extent of injury suffered, the following award of damages is made: (This is the final award and supersedes the interim award previously made if it has not yet been paid.)

A. General Damages:

- (a) For pain and suffering and loss of amenities including an element of aggravation
\$120,000.00

- (b) **Interest** on this sum at the rate of 12 % per annum from December 29th 2005 –
(date of appearance to writ) to April 11th 2012.

- (c) **Exemplary Damages - \$10,000.00.**

- (d) **Loss of Future Earnings - \$106,512.00.**

B. Special Damages:

- (i) **Loss of earnings to date of judgment - \$212,224.00.**

- (ii) **Reimbursement of expenses**
 - Used wheelchair - **\$1200.00**
 - Walker - **\$1,007.84**
 - Cane - **\$414.43**
 - Pain Relievers -**\$950.00**
 - Medical Forms and Medical Reports - **\$105.00**
 - MRI - **\$2800**
 - Chiropractor - **\$2020.00**
 - Neck Brace - **\$285.00**
 - Transportation Costs – **\$5000.00**
 - Total - \$13,782.27**

- (iii) **Simple Interest on the Special Damages of \$226,006.27 at 6% per annum
from December 1st 2000 to April 11th 2012.**

C. Costs

Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total above amount.

ADMINISTRATION OF JUSTICE

70. This award exceeds \$500,000. Although the first defendant is joined, in practice the State-and ultimately, taxpayers - will be called upon to pay for the actions of a policeman, gambling in a bar, abusing his State conferred authority, as a result of which a citizen has been partially crippled and rendered unable to work and fully support himself. The claimant's life has been ruined, and money is inadequate compensation for the paralysis, months of rehabilitation, struggling with medical bills, and disruption of a previously busy, hard working life.¹

71. An award of exemplary damages is not made lightly. It is usually made to signify extreme disapproval of conduct, and to punish and deter. Remarks made by the courts in several similar matters appear to have been ignored, and there is every indication, from the repetition of like incidents, that the perpetrators face no consequences.

72. A mechanism must be found to ensure accountability by agents of the state who do not uphold the trust placed in them to use state conferred power wisely, responsibly, lawfully, and with restraint.

73. Any argument that such a mechanism would deter officers of the State from performing their duties misses the point that it is highly unlikely that an officer who does not abuse the powers of office for personal or vindictive or sadistic motives would be exposed to such a risk, and those who do are the very ones who need to be deterred, rather than protected from the effects of findings, by a court, of serious abuse of power.

¹ See pay slips.

74. The payment by the State of the entire sums awarded insulates the culprits from that signal. Without consequences there would be no deterrence. Without deterrence there is the probability of repetition.ⁱ

Dated this 11th day of April, 2012.

.....

Judge

ⁱ The Court would like to record its appreciation to judicial research assistant Ms. E. Ali for her contribution to this judgment.