

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-01921

BETWEEN

MUSTAPHA GHANNY

CLAIMANT

AND

POLICE CONSTABLE DEV RAMADHIN NO. 16969

1ST DEFENDANT

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

2ND DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. F. Scoon for the Claimant

Ms. C. Findley for the Defendants

JUDGMENT

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BACKGROUND

1. By claim form filed on June 9th 2015 the Claimant claims inter alia:-
 - i. Damages for **unlawful arrest and false imprisonment.**
 - ii. Damages for **malicious prosecution.**
 - iii. Damages for trespass to the person (**assault and battery**).
 - iv. **Special damages** in the sum of \$88,100.00 in the following circumstances:-

2. On December 14th 2011 the claimant was sitting in his vehicle with his wife and son eating “doubles” when he felt an impact to the rear of their vehicle. He emerged. He spoke to officer Ramadhin who was nearby directing traffic. As a result of their encounter he was seized and carried to the nearby Police Station. He claims that there was no cause for this.

3. Ramadhin contends that the claimant began using quite insulting language to him. The claimant denies this completely. It is common ground that he was subsequently released without charge. Some time later he returned to the station. He says it was to ascertain the name of the officer who had detained him and his badge (regimental) number. He alleges that this was for the purpose of a complaint that he intended to make to the Police Complaints Authority. Ramadhin claims that the claimant on this occasion again began to insult him and use obscene language and that he attempted to resist arrest.

4. The claimant however contends that Ramadhin physically assaulted and battered him, inter alia by blows to the chest and belly, despite Ramadhin having been aware from their first encounter that he had had heart surgery. The Claimant was charged with the offences of using obscene language and resisting arrest.

5. The matters were all subsequently dismissed on September 9th 2013 in the Magistrate’s Court.

6. The Claimant further contends that the police:-
 - a. had no **reasonable and probable** cause to **arrest and detain** him;

- b. **maliciously prosecuted** him on charges of using obscene language and resisting arrest
- c.. wrongfully and illegally **assaulted** him;

ISSUES

7.

- a) Whether Ramadhin had reasonable and probable cause to **arrest** and **detain** the claimant.
- b) Whether Ramadhin **maliciously prosecuted** him on charges of using obscene language and resisting arrest.
- c) Whether Ramadhin wrongfully and illegally **assaulted and battered** him.
- d) Whether the claimant has proved his claim for **special damages in the sum of \$88,100.00 or any part thereof.**
- e) The measure of **general damages** if any, including **whether aggravated** or **exemplary** damages are applicable.

FINDINGS AND CONCLUSION

Alleged unlawful arrest

8. I find that Ramadhin did not have reasonable or probable cause to **arrest** or **detain** the claimant.

Alleged false imprisonment - detention

9. I find that the claimant was wrongfully detained on false charges and was therefore in custody for approximately 17-18 hours from 6.10pm to 11.30 pm in addition to an earlier detention at the station for a period of approximately half an hour.

Alleged malicious prosecution

10. I find that the prosecution by Ramadhin of the Claimant on the charges of using obscene language and resisting arrest was malicious and without reasonable and probable cause.

Assault and battery

11. The doctor that the Claimant visited recorded his impression of multiple soft tissue injuries and observed bruising, contusions and ecchymoses in his right shoulder; bruising, contusions and ecchymoses right and left anterior aspects of the chest; Bruising, contusions and ecchymoses to right mandibular region. See the medical report from Dr. Rainier Rahman dated 19th December, 2011.

12. I find, on the basis of the independent medical report of Dr. Rahaman, that Ramadhin assaulted the claimant, and in the manner he described without any lawful justification whatsoever. His conduct in doing so was illegal. It justifies an award of damages, including an award of exemplary damages, sufficient to deter such conduct.

13. The officers who attended to provide testimony in support did not do so truthfully and their evidence must be rejected.

14. Ramadhin was not entitled to seek to punish the claimant extra judicially. He and the other officer who assisted him to do so were not entitled to place the claimant, who had undergone heart surgery, at risk of serious personal injury in the complete absence of any threat to themselves. I expressly find that there was no such threat. The claimant was separated from his family, in custody, alone, and outmanned.

15. The sweeping powers granted to police officers are to be used within the confines and parameters of the law. In a democracy governed by the rule of law and the Constitution, they are not to be used, as I expressly find was done in this case, to infringe the safety or security of citizens, especially where a person has been illegally arrested, and then falsely charged with manufactured offences, based solely on his alleged interactions with police officers, based on nothing more than malice and abuse of authority.

16. I have found as a fact, on a balance of probabilities:-

a. That the claimant was assaulted and battered for no reason;

b. That police officers, agents of the defendant, deliberately lied on oath about Ramadhin not assaulting and battering the claimant, and in the case of Cagan, about the claimant using obscene language on the first occasion.

c. That police officers conspired with one another and were complicit in concealing the truth from their superior officers, from attorneys at law for the defendant, and from the court.

17. This is conduct which cannot be condoned. It places all citizens, even the most law abiding ones, at risk - that they, themselves or their families could be branded as criminals, treated as such, and, before even facing a court, become a target of violence and brutality while alone and defenseless.

18. The defendant's agent assaulted the claimant while he was in their custody, for no apparent reason. No apology was forthcoming. Instead the defendant's agents sought to portray him as a criminal miscreant and tarnish his reputation, even after the case against him was dismissed.

19. In this case I have found as a fact that the claimant posed no threat whatsoever to the safety of the officers involved. The claimant was battered for no reason, inflicting on him painful injuries. The claimant was treated like a criminal for no logical reason, despite being an elderly person. Ramadhin had prior knowledge that he had undergone heart surgery. Without any justification he was arrested twice by the defendant Ramadhin, and battered while with him in his custody. The arrest and preferring of demonstrably false charges in an attempt to cover up the conduct of Ramadhin, and the collusion by fellow officers **PC Cagan** and **Shaeed Ali**, to the point of delivering false evidence before this court is inexcusable.

20. No cause existed for the attack and infliction of injuries upon him, or for his detention in custody.

Aggravated Damages

21. The law permits compensation to be awarded to him for that detention, and for his injuries, loss or damage, sustained as a result of that assault and battery. The law allows such compensation to include an uplift for the aggravating circumstances under which these occurred.

Exemplary Damages

22. Exemplary damages are not lightly awarded. However the law allows exemplary damages to be awarded in cases of serious abuse of authority, such as this, taking into account any need to discourage such conduct in future.

23. The behaviour described by the claimant, and which it has been found as a fact actually occurred, can randomly target innocent citizens. No one can consider himself immune. The only safeguard is the courts' willingness to expose such behaviour and enforce and uphold the rights of citizens.

24. To reserve comment in a situation like the instant one is to participate in the culture of complicity which saw each officer involved in this incident testifying, despite clear medical evidence to the contrary, that no assault, battery or visible injury occurred to the claimant while he was in their custody. Holding such conduct up to public scrutiny may serve to prevent the erosion of the rights of law abiding citizens. That is a remedy after the fact.

25. The duty of courts in a democracy which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens, requires condemnation of high handed and oppressive actions, behaviour and conduct of the servants or agents of the State, lest they be condoned, encouraged, systematized and perpetuated.

26. Without consequences there is no reason to expect that unlawful behaviour violative of the rights of law abiding citizens will not be repeated. This matter requires

investigation of the officer Ramadhin as well as the other officers named in this action who attended and provided false testimony in support. (PC Cagan 6898 and Shaeed Ali 16272). They were all entrusted with the responsibility to **protect** and serve, which they abused.

Special damages

27. These must be specially pleaded, as they have been, and strictly proved. While the claimant's own testimony is prima facie evidence of loss, stricter proof would have been required of his loss of income of \$60,000.00. The absence of proof to show how this was even calculated means that this claim must be disallowed. (See **Raghunath Singh v MTS HCA 2193/2007** delivered on the 6th August 2012 where the various decisions of the Court of Appeal to this effect are set out).

DISPOSITION AND ORDERS

ORDERS

28. **It is ordered that**

- i. The claimant be paid general damages for **false imprisonment** for a period of 17-18 hours of his detention in the sum of **\$45,000.00**.
- ii. The claimant be paid general damages for **assault and battery** inclusive of aggravated damages in the sum of **\$55,000.00**.
- iii. The claimant be paid general damages in the sum of **\$35,000.00** in respect of **malicious prosecution, (apart from the element of detention** compensated as above).
- iv. Interest at the rate of 6 % per annum on each of the above sums from June 9th 2015.
- v. **Exemplary damages** in the sum of **\$60,000.00**.
- vi. Special Damages in the sum of \$25,000.00.
- vii. Interest at the rate of 3 % per annum on the sum of \$25,000.00 from September 30th 2013 to February 19th 2016.
- viii. Special Damages in the sum of \$3,100.00.
- ix. Interest at the rate of 3 % per annum on the sum of \$3,100.00 from December 19th

2011 to February 19th 2016.

- x. Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total of (i) - (ix) above.
- xi. Liberty to Apply.

ANALYSIS AND REASONING

29. The reason for the arrest and detention of the claimant is found inter alia in the Witness statement of Ramadhin.

Whilst conducting my duties I had cause to stop a dark coloured motor vehicle that was travelling in a northerly direction due to its dark tint. I was speaking to the driver of that vehicle when a man who was later identified as Mustapha Ghanny, the Claimant, suddenly approached me on the left. He asked me "What you harassing the man for?" I told the Claimant that this was a police matter and warned him that his interference could amount to obstructing a police officer in the execution of his duty and cautioned him and he replied, "Why allyuh police so dotish? Allyuh feel allyuh bad?"

I then asked the Claimant who he was speaking to and he pointed in my face and said, "You is a dotish Indian, Why you fighting down the man for? You have to be a real dotish duncy indian."

*I informed the Claimant of the offence of **assault** and **insulting** language and cautioned him. He replied, "You dotish Indian I don't fraid you. I could tell you what I want **once me ain't cuss yuh**, yuh stupid Indian." I then held on to the Claimant on his right upper arm and told him that he was under arrest for the offence of **insulting** language. The Claimant using his left hand **attempted to pull my hand off of him** and said "What you locking me up for?"*

*I told the Claimant of the offence of **resisting arrest** and cautioned him. He replied, "I is a surgery case. I can't get lock up. Leave me alone." I again informed the*

Claimant that he was under arrest and **subdued** him with PC Cagan's assistance. PC Cagan attempted to calm the Claimant and appealed to him to stop resisting arrest.

The Claimant began **pleading** to be released and stated that he lost his temper. The Claimant stated that he was sorry for his behaviour and that he is an **old man** and very **sickly**. He bared his chest and **showed us his surgery scars**. I conducted a search of the Claimant's person and a quantity of cash was found on him. The Claimant handed over this money to someone he stated he knew and indicated that he wanted to do so. PC Cagan and I then proceeded to convey the Claimant to the Barrackpore Police Station, which was approximately 20-30 feet away.

On reaching the station I placed the Claimant to sit on a chair in the charge room and I asked him if he was okay and he said yes. PC Cagan left the station and went back outside. I then had a conversation with the Police Corporal Narine Regimental No. 14519 in the presence of the Claimant. I informed Corporal Narine of the incident that had occurred. The Claimant continued **begging and pleading for forgiveness** stating (expressly deleted- irrelevant)" I decided not to prefer the charges of using insulting language and resisting arrest against the Claimant, due to his **health condition** and his **contrite behavior**. The Claimant was released from custody **without charge** shortly thereafter.

After the Claimant was released I made a note of the incident in the station diary. A true copy of the station diary extract of the Barrackpore Police Station is hereto annexed and marked "**D.R.1**" Thereafter I returned to the duty of regulating traffic.

At or around 6:10 p.m. **whilst PC Cagan and I were regulating the traffic** I saw the Claimant **approaching me** again, he was pointing his index finger and said in a loud tone of voice "yuh **f---g** dotish indian you is an embarrassment to the police, you don't know who is me. I know seniors and I have brothers in and out of the police service who will deal with you". I was under the impression that Mr. Ghanny was

either intoxicated or mentally unstable as I could not believe that he would again approach me and insult me.

*I immediately called out to PC Cagan who was nearby and came to my aid. I approached the Claimant and held up my Trinidad and Tobago Police Identification card. The Claimant said, “Keep that I know who you is you is f---ng Ramadhin”. I identified myself to the Claimant as a police officer and informed him of the offence of **obscene** language and cautioned him. He replied, “Yuh can ’t’ prove that, I have seniors advising me how to deal with you, f--k you. Lock me up na let me make you lose yuh wuk”. I informed the Claimant that he was under arrest and held on to his right wrist.*

*The Claimant began **beating his chest repeatedly** and shouted “no beat meh, beat meh”. On seeing this, I was concerned, as the **Claimant had earlier stated that he had surgery and was sickly** I reminded the Claimant of his surgical scars but he continued his threats of making me lose my job. Other officers who were a short distance away approached us on seeing this. **PC Cagan and myself restrained the Claimant.** I informed the Claimant of the offence of resisting arrest and cautioned him. He replied loudly, “(expressly deleted- irrelevant)” We again conveyed the Claimant to the Barrackpore Police Station.*

THE EVIDENCE

30. It was submitted that “the evidence of the First Defendant is more plausible in that the First Defendant states he was speaking to a person about the tint on their vehicle when he was suddenly approached by the Claimant who used insulting language towards him and said “*What you harassing the man for?*” The First Defendant warned the Claimant about interfering with an officer in his duties and he responded by calling him a *dotish Indian* repeatedly. He then arrested the Claimant and held onto him and the Claimant tried to pull away. He then escorted the Claimant to the Barrackpore Police Station.

- i. This makes no sense whatsoever. In fact the defendant and his witness recognised this and sought to suggest that the claimant was either intoxicated or insane. There is no evidence of either. The claimant was a 56 year old businessman who was travelling with his family. He had previously had heart surgery. The confrontational and erratic behaviour suggested by the defendant is not credible.

- ii. Further the lack of credibility extends to other evidence of the defendant Ramadhin. He admitted under cross examination that the claimant did not use obscene language at their first encounter which preceded his being carried to the police station. He was forced to concede this as the claimant was allegedly being taken to the station for **insulting** language allegedly used and not obscene language. He contended that if someone used obscene language that is what he would be charged with even if the language was also insulting as the latter subsumed the former. However in the magistrate's court Ramadhin told the magistrate in sworn testimony that the claimant used **obscene** language at their first encounter. Yet he was not arrested for this alleged obscene language He admitted before this court that that sworn testimony before the magistrate was not true. His own testimony made this clear as he stated that the claimant allegedly told him that once he, the claimant didn't curse he could tell Ramadhin anything. Yet this was shortly after allegedly doing exactly that. Ramadhin then says that within the hour the claimant accosted him and proceeded to use obscene language. Clearly even without the admission by Ramadhin that he lied before the magistrate's court his evidence was internally contradictory and not credible. His admission that he lied put the matter even further beyond dispute.

- iii. What is disturbing is that his colleagues came before the High Court and similarly lied. PC **Cagan** testified on oath that the claimant used obscene language at the first encounter between Ramadhin and the claimant. He alleged that he was present and close enough to hear this. Ramadhin himself had by then admitted in court that the claimant used no such language on the first occasion. It goes

without saying that giving false testimony on oath on the very issue in dispute is a very serious matter.

- iv. Ramadhin alleged that at the station the Claimant appeared remorseful, even tearful, and told the First Defendant about his recent heart surgery and even opened his shirt to show the First Defendant a surgical scar. The First Defendant released the Claimant without charge as he had pleaded with him and appeared contrite.

Second Arrest

- v. The Claimant's evidence is that he returned to the station to get PC Ramadhin's name and regimental number so he could make a complaint against him. It was submitted that this is despite that fact that the Claimant was already arrested earlier by the First Defendant and thus would have been told his name. Moreover the First Defendant was uniformed at all material times thus his regimental number would have been visible on his uniform.
- vi. However the claimant may have failed to register either the name of Ramadhin or his regimental number in the traumatic circumstances of having been arrested for no reason on the first occasion. Certainly the mere possibility that the information was available to the claimant does not affect his credibility when he alleges that he had to return to the station to obtain this information.
- vii. It was on this occasion that the Claimant claims he was assaulted by the First Defendant. The First Defendant denies that he assaulted the Claimant. The First Defendant states that the Claimant on his arrest started to beat his chest saying loudly "*beat me nah*". This is quite unbelievable. The absurdity of this evidence stems from the admitted fact that the claimant had had heart surgery, and had even shown the surgical scar to Ramadhin. In fact it was one of the reasons that Ramadhin decided to release claimant after the first arrest. Yet Ramadhin

contends that the claimant not only began beating his chest, but insinuates that he inflicted on himself multiple soft tissue injuries that the doctor later observed.

31. He charged him for resisting arrest. His testimony on this was as follows:-

A: *When I informed him he was under arrest the second time he began to beat himself and I don't know if he was pulling away.*

Q: *Your evidence is that he was challenging you to arrest him. Not resisting arrest?*

A: *I formed an opinion that by his actions in beating himself and acting in a violent manner that he was resisting arrest.*

The attempts by the court to clarify this testimony produced the following:

Q: *So you were holding what hand?*

A: *right hand.*

Ct: *He was hitting his chest with what hand?*

A: *Left wrist and pulling away.*

Ct: *He was hitting himself with his left wrist and you did not know if he was attempting to resist but you charged him with resisting arrest?*

A: *I form an opinion that he was in fact resisting arrest **by beating himself and operating in a violent erratic manner.***

Ct: *He was resisting arresting by hitting himself?*

A: *I don't know what was going on in his mind at a point in time sir.*

32. He was not sure if the claimant intended to resist arrest. On his own evidence he was not sure if the claimant was in fact resisting arrest. He might have been pulling away while hitting himself with his left wrist, although Ramadhin claims to have been holding his right hand. He claims that he formed the impression that the claimant was resisting arrest although on his own evidence the claimant was hitting himself with one hand, while Ramadhin was holding the other. It is even possible based on the evidence of Cagan that Cagan was holding the other hand of the claimant.

33. The tension between the attempt to describe how the claimant himself inflicted his own **injuries** with his left wrist, and the need to justify a charge of **resisting arrest**,

despite having only his left wrist free, (with that occupied in hitting himself), appears to have resulted in the absurdity of the situation that they described. It has all the hallmarks of fabrication after the fact. It remained unclear after the testimony of Ramadhin what precisely the claimant did to justify his being arrested and charged for resisting arrest, when the primary activity of the claimant with his free hand appeared to be hitting himself.

LAW

Reasonable and probable cause - to justify the arrest

34. Section 3 (4) of the Criminal Law Act Ch 10.04 provides that
*“where a Police Officer, with **reasonable cause**, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with **reasonable cause**, suspects to be guilty of the offence.”*

35. The onus is on the police to justify the arrest of the Plaintiff in an action for unlawful arrest and to establish **reasonable and probable cause** for the arrest: (*Dallison v Caffery [1965] 1 Q.B. 348 at 370*).

36. The test required was stated in **O’ Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead as partly objective and partly subjective**. The test is subjective because the arresting Police Officer must have formulated a **genuine suspicion** within his own mind that the **accused person has committed the offence**.

37. Further, the test is partly objective as **reasonable grounds** for the suspicion are required by the arresting officer and this must be judged at the time when the power is exercised. (See also the judgement of the Honourable Mendonça J as he then was in **Harold Barcoo v A.G of T. & T. and Browne – HCA 1388 of 1989** delivered December 19, 2001 page 5 –6 where he adopted the following analysis from the text **Clayton & Tomlinson Civil Actions against the Police (1987)**.

i. The test whether there was **reasonable and probable cause** has **both subjective and objective** elements.

ii. Did the officer **honestly** have the requisite suspicion or belief?

iii. Did the officer when exercising the power **honestly believe** in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief?

iv. Was his **belief** in the existence of these circumstances **based on reasonable grounds**?

v. Did these circumstances constitute **reasonable grounds for the requisite suspicion or belief**?

38. The first two are subjective and the second are objective and as the Honourable Justice Mendonca, as he then was, pointed out, if the answer to any one of these questions is “no” then the officer would not have had reasonable grounds.

39. In determining whether the arresting officer had reasonable and probable cause, the first enquiry is to ascertain what was **in the mind of the arresting officer** and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were **reasonable**.

40. Wooding L.J. in **Irish v. Barry [1965] 8 W.L.R 177** at page 182 stated the two questions to be separately posed and answered as follows: (1) do those facts warrant a suspicion that a felony has been committed, and (2) do they also warrant a suspicion that the person whose arrest is contemplated committed it or was a party to its commission?

41. It is clear that Ramadhin did not have reasonable and probable cause to arrest and to detain the claimant on the first occasion because Ramadhin could not be telling the truth about the claimant having used obscene language the first time that he arrested him.

a. he did not arrest him for obscene language but for **insulting** language (paragraph 6 and 9 of witness statement).

b. he testified that if the claimant had used obscene language on that occasion he would have arrested him for obscene language not insulting language. The reason that he did not arrest him for obscene language was that the claimant did not use obscene language on that occasion,

c. in fact the claimant himself, according to Ramadhin, was careful to inform Ramadhin that he could say what he wanted once he was careful not to use obscene language. His assertion in the magistrate's court that the claimant had done exactly that shortly before making that statement defies belief.

d. Ramadhin conceded before this court that his sworn testimony to the magistrate that the claimant used **obscene** language on the first occasion was **not true**.

42. It was submitted that the prosecution **need not believe in the probability of conviction and need not test the full strength of the case:** (See *Glinski v Mc Iver* [1962] A.C. 726, 776 as quoted in *Harold Barcoo v the Attorney General*.

43. Moreover, there is no duty on the part of the officer to determine whether there is a defence to the charge but **only to determine whether there is reasonable and probable cause** for the prosecution (See *Herniman v Smith* [1938] A.C. 305) Per Lord Atkin.

44. Additionally **it is not the duty of the said officer to resolve conflicts of evidence and knowledge of these conflicts does not demonstrate a lack of reasonable and probable cause nor is it inconsistent with the prosecutor's honest belief that there is a case against the accused fit to go to trial.** (See *Dallison v Caffery* [1965] 1 QB 348 page 376).

45. However this is not a case where the prosecutor can contend that it is not for him to judge guilt or innocence and that his role is simply to put contested issues of fact before the tribunal of fact to determine the effect of countervailing evidence if any. This is a case where the evidence of a. insulting language, b. obscene language, and c. resisting arrest are all matters where the main witness is Ramadhin himself. If it is found

that he lied about any of these matters then he simply cannot contend that it was for the magistrate to decide the facts. In fact it is clear that his testimony is perjured a. based upon his own admission that he lied before the magistrate when he claimed that prior to the first arrest the claimant used obscene language, and b. based upon the inherent lack of credibility of his testimony concerning the behaviour of the claimant.

46. Even he recognised that that behaviour was so irrational that he had to state in his witness statement *that, 'Mr. Ghanny was either intoxicated or mentally unstable as I could not believe that he would again approach me and insult me.'* It is clear however from Mr. Ghanny's straightforward and unshaken testimony that he was neither intoxicated nor mentally unstable. This court, like Ramadhin himself, cannot believe that Mr. Ghanny *would again approach him and insult him*. In fact it does not believe that Mr. Ghanny even ever did so initially. This testimony has all the hallmarks of a clumsy, internally contradictory fabrication, which was revealed as such under cross examination. The purported corroboration of this perjured testimony by officer Cagan simply confirms that his testimony also was untrue.

Malicious Prosecution

47. The ingredients of the tort of malicious prosecution are set out in Clerk & Lindsell on Tort (20th Ed. Pg 1070, para 16:09) as follows: "*In an action for malicious prosecution the claimant must show first that he was prosecuted by the defendant, that is to say that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was **without reasonable and probable cause**; fourthly, that it was **malicious**. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort.*"

48. Reasonable and probable cause has been explained in various cases. In Hicks v Faulkner (2 [1881] AER 1987 at 191 paragraph b, c) Hawkins J stated:

*“I should define reasonable and probable cause to be an **honest belief** in the guilt of the accused, based upon a **full conviction**, founded upon **reasonable grounds**, of the existence of a state of circumstances which, assuming them to be true, would **reasonably lead any ordinary prudent and cautious man**, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed...”*

Hawkins J stated : *“The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon **the reasonable bona fide belief in the existence** of such a state of things as would amount to a justification of the course pursued in making the accusation complained of...No matter whether the belief arises out of the recollection and memory of the accuser, out of information furnished to him by another...The distinction between facts necessary to establish actual guilt and those required to establish a reasonable bona fide belief in guilt should never be lost sight of considering such case as I am now discussing. Many facts admissible to prove the latter would be wholly inadmissible to prove the former.”*

Reasonable and probable cause

49. The factors and considerations that go to establishing **reasonable and probable cause** or conversely the want of it in an action of **wrongful arrest and false imprisonment** are substantially the same as those which go to prove or disprove **reasonable and probable cause** in an action for **malicious prosecution: *Irish v Barry* (1965) 8 W.I.R. 177** per Justice of Appeal Mc Shine at page 186, paragraph E.

Reasonable and probable cause to justify the prosecution

50. In this case Ramadhin was the one who was alleging that the claimant was using insulting language and resisting arrest. He was the main witness and prosecutor. He clearly knew that the claimant had not used insulting language and had not done anything which even he could confidently say amounted to resisting arrest. His actions were based on his own fabrications which he knew to be completely false. In fact those fabrications

were designed to cover up and conceal, and in default to justify, the fact that an aged businessman, who had undergone heart surgery, taken into custody by him, emerged therefrom with inexplicable injuries. There was no countervailing evidence arising from any investigation that Ramadhin had to put before a court for it to decide guilt or innocence. There was only the fabricated and admittedly perjured testimony of Ramadhin. Accordingly there could be **no reasonable and probable cause to justify this prosecution.**

Malicious Prosecution - Damages

51. In **Thadeus Clement v the Attorney General of Trinidad and Tobago** Civ. App. 95 of 2010 Delivered July 31st 2013 the Honourable Jamadar JA at paragraph 12 outlined the relevant heads of damages for the tort of malicious prosecution as: *“Apart from pecuniary loss, the relevant heads of damages for the tort of malicious prosecution are as follows:-*

- (i) Injury to **reputation**, to character, standing and fame.*
- (ii) **Injury to feelings** for indignity disgrace and humiliation caused and suffered*
- (iii) **Deprivation of liberty** by reason of arrest, **detention** and/or imprisonment.”*

52. In **Thadeus Clement** the Appellant was charged with robbery. In considering the injury to his reputation the Honourable Jamadar JA stated at 22:- *“The Appellant starts with a good character which has not been impugned. The Appellant suffered real and substantial damage to his reputation and character. Injury to which must have affected his livelihood. **The seriousness of the charge/offence** especially in the context of his occupation is material factor in terms of the **damage to his reputation.***

53. He considered whether an award of exemplary damages could or should be made when the award that was being made already included aggravated damages at paragraph 30: *“Should an **additional** award be made for **exemplary** damages given the uplift to the compensatory award for aggravating factors? In Rookes v Barnard Lord Devlin*

*explained that exemplary damages could be awarded, inter alia, where there is oppressive, arbitrary or unconstitutional action by the servants of the government. Police Officers acting in the course of their employment are for the purposes of an award of exemplary damages the servants of the government. Exemplary damages **unlike aggravated damages** which are compensatory in nature are intended to be punitive, to punish or deter a tortfeasor. **Such an award is appropriate** where the police behave in an oppressive, arbitrary or unconstitutional manner and **where the court having regard to the award for compensation (inclusive of aggravated damages)** is of the view **that it is not sufficient to mark the court's disapproval** of the actions of the agents of the State (the Police)”*

54. In **Anthony Sorzano and Anor. v The Attorney General of Trinidad and Tobago and Anor. Civil Appeal 101 of 2002 Delivered June 8th 2004** at paragraph 9 the Honourable Mendonça JA described the relationship between **damages for deprivation of liberty under malicious prosecution** and damages for **false imprisonment**:

*“I think that the position is correctly stated in Mc Gregor on Damages (14th Edition) at paragraph 1367- If there had been arrest and imprisonment up to the hearing of the case, damages in respect thereof should be included, and will be the **same** as would be recoverable in an **action for false imprisonment.**”*

55. In **Terrance Calix v Attorney General of Trinidad and Tobago [2013] UKPC 15** in dealing with the issue of loss of **reputation** stated at paragraph 16 of their judgment as follows:

“As the authors of Clayton and Tomlinson on Civil Actions against the Police 3rd ed (2004), observe at para 14-064:

*“The seriousness of the offence for which the claimant was prosecuted should be considered. **The more serious the offence, the greater the damage to the claimant’s reputation.** Thus, for example, accusations such as dishonesty or sexual misconduct will cause more damage than accusation of **minor public order offence** or assaults. A money figure should be placed on this ‘reputation*

damage'. The award should be increased if the prosecution received wide publicity"; and

"The claimant's reputation should then be considered. If he is of good character then the 'loss of reputation' sum should not be reduced. If, on the other hand, he has previous convictions then there will be reductions in his 'loss of reputation' damages."

56. The offences with which the claimant was charged were ***minor public order offences***. However he was a businessman. He was arrested while he was with his wife and son. He had been engaging in the perfectly innocent activity of eating "doubles" with his family when he merely attempted to speak with Ramadhin about the possibility that his vehicle had been struck. There is no suggestion that he had anything other than a previous record as a law abiding citizen despite Ramadhin's suggestion that he would check whether he was a bandit. The injury to his feelings, as well as to his reputation deserve an award of no less than \$35,000.00.

FINDINGS - Reasonable and probable cause to arrest, detain, or prosecute

57. I therefore find that the Ramadhin did not in fact have sufficient cause to believe that the claimant was guilty of the offences either that he was first accused of and taken to the station for or those for which he was later charged when he returned to the station.

Whether the officer when exercising the power, honestly believed in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief.

58. Most definitely he did not.

Was the officer's belief in the existence of these circumstances based on reasonable grounds?

59. Ramadhin could have had no belief in the existence of any circumstances to justify the claimant's apprehension, or detention, or prosecution, as he in fact fabricated them.

Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

60. These circumstances could not possibly constitute reasonable grounds. Ramadhin took it upon himself to simply arrest, detain, and prosecute the claimant for no valid or lawful reason.

Law – False imprisonment

61. An arrest involves a trespass to the person which is prima facie tortious. This trespass by the arrestor continues so long as he retains custody of the arrested person. The arrestor must justify **the continuance of his custody** by showing that it was reasonable.

Reasonable and probable cause to justify arrest and continued detention.

62. The relevant principles were recently summarised in **Ramsingh v. The Attorney General of Trinidad and Tobago [2012] UKPC 16** delivered **May 23rd 2012** as follows (emphasis added).

63. Section 3 (4) of the Criminal Law Act Ch 10.04 provides “*where a Police Officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.*”

- i) *The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.*
- ii) *It is for the arrestor to justify the arrest.*
- iii) *A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.*
- iv) *Thus the officer must **subjectively** suspect **that that person** has committed such an offence.*
- v) *The officer’s belief must have been **on reasonable grounds** or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.*
- vi) ***Any continued detention after arrest must also be justified by the detainer.***

9] These principles are established by a series of cases, both in England and in the Caribbean. See in particular *Dallison v Caffery* [1965] 1 QB 348, [1964] 2 All ER 610, 128 JP 379, per Lord Denning MR at 617 and per Diplock LJ, in a well-known passage at 619; and *Holgate-Mohammed v Duke* [1984] AC 437, [1984] 1 All ER 1054, [1984] 2 WLR 660 per Lord Diplock at 1059. See also two decisions in Trinidad and Tobago which make it clear that the lawfulness of continued detention raises different questions from those relevant to the arrest: *Mauge v The Attorney General of Trinidad and Tobago* HCA No 2524 of 1997 and *Mungaroo v The Attorney General of Trinidad and Tobago* HCA Nos S-1130 and 1131 of 1998.

[10] The position after arrest in England is now to be found in Pt IV of the Police and Criminal Evidence Act 1984 (“PACE”): see s 34. Section 37(2) provides that, where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail:

“unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.”

As Clayton and Tomlinson put it in their *Law of Human Rights, 2nd edition* (2009), at para 10.56, **the police must justify detention on a minute by minute basis.**

64. For the reasons set out previously I find that his detention was wholly unjustified and unacceptable.

Was the length of the Applicant’s detention unreasonable?

65. Any detention of the claimant in these circumstances was wholly unreasonable.

66. When one considers that during that time, as the medical evidence clearly reveals, the claimant was subjected to physical assaults by the police, then the case for aggravated and even exemplary damages needs to be considered.

THE ALLEGED ASSAULT

67. The evidence for this comes from the Claimant's *Witness Statement*.

1. *I am sixty-one years old.*
2. *On Wednesday 14th December 2011 at or around 5:05 pm to around 5:40 pm I was sitting in my family's Toyota .. which was in a yard or public space at the Barrackpore Junction in Barrackpore, in the island of Trinidad. The Barrackpore Police Station is situated opposite to the place where I was parked.*
3. *I was sitting in the passenger front seat to the said vehicle. I was awaiting the return of my son, Irfan Ghanny, and my wife, Khadijah Ghanny, both of whom had gone to purchase doubles and some drinks, in the same yard or public space. When they returned to the vehicle, Irfan entered and sat in the front driver's seat while Khadijah sat in the back.*
4. *We were sat talking and eating when I felt the car shake as if it had been bumped. I came out of the vehicle. I observed a police officer in uniform with a fluorescent yellow reflective vest. He was also standing at the back of the vehicle.*
5. *Not too long after I also noticed that the First Defendant, whom I later learnt was attached to the Princess Town Police Station was standing behind the vehicle talking to an individual*
6. *I walked at the rear of my vehicle and observed the back bumper was slightly damaged. I noticed that there was a vehicle a black Suzuki Grand Vitara parked behind my vehicle, and it appeared to me that the Grand Vitara may have hit my vehicle and caused it to bump and shake. By the time I came back to the front door, I then noticed that the person in the plain clothes moved away from the*

First Defendant and went to the Suzuki and stood by the driver's side front door of the same.

7. *I went over to the the First Defendant and said to him "The gentlemen who you were speaking with just a moment ago, could you direct me where he went to? I want to believe that if he is the owner of that vehicle parked in the back of mine, he bounced the vehicle and I would like to see him". He said to me something like "you is the man lawyer or something" I didn't hear him clearly so I asked the second time "Officer the gentlemen who you was speaking with, is he the driver of the vehicle parked at the back of that blue vehicle there?"*

8. ***Suddenly and without warning the First Defendant grabbed my right hand and said "You're under arrest". He squeezed my right hand at the wrist area causing it to pain considerably and as well held my left shoulder. He pulled me to my vehicle. He called another police officer who was across the road. When the other police officer arrived, the First Defendant said "You are under arrest. Whatever you have in your pockets, hand it over to somebody who you are here with I" I asked the question, "Officer, what am I under arrest for?" The First Defendant did not respond to this question. Instead he continued to drag me in the direction of the police station. While he was dragging me I said to him, "Chief, excuse me. I opened my shirt with my free hand and said "I now came out of open heart surgery my friend, please do not drag me like this". The First Defendant continued to drag me across the road humiliating me in the public, and causing me extreme physical pain and putting me to much anxiety about my life hard (sic) and I protested to him that I was a heart patient.***

9. *When we reached the center of the road, he let go of my hand and we walked to the police station. When we arrived in the yard in front of the police station, he frisked me and asked me whether I had a firearm. He called one of his colleagues who appeared to be on foot patrol or directing traffic. He too frisked me up against a car. They took my money, keys, wallet and other stuff out of my pocket.*

He handed these items to Irfan and continued forcible (sic) removing me to the police station.

*10. I was taken inside the police station by the First Defendant and his colleague. When we were walking into the police station, he called out "I want to get the keys to the cell. This man is **under arrest**". There were three officers in the charge room of the police station each one occupying one of the desks present. The First Defendant then took me down to the back of the station where there were three cells. He **then started to explain to me that I should have waited for him to conduct his enquiries and then approach him**. He then took me to the charge room again and we started a conversation again. I explained to him that whenever I am roughed up in my present condition, I get sick. He said he was going to do an investigation to ascertain whether or not I was a bandit. He called Irfan and asked him for my ID and my driver permit. He then took down some information from these two instruments and told me. "Mr. Ghanny, you may leave now. I am sorry, but in future **I hope you will learn a lesson**". "I then left the station. It was about **5:50 pm** when I left.*

11. I left the station with my son and wife and went back to do (sic) complete the business that I was about. We drove back into the village of Barrackpore. On the way there, my hand started to swell and I couldn't breathe properly. When we reached the area where we were going to complete our business, I started to get short breath while speaking. I felt that I was unable to complete the business on account of feeling unwell and requested to my son that we leave.

*12. **On the way back I felt compelled to get the name of the First Defendant and his rank because I had resolved in my mind to make a complaint to the Police Complaints Department**. I instructed my son to go to the police station. Irfan stopped the vehicle on the road outside of the Police Station. When I got (sic) the police station I met three officers at the station and **I enquired of them of the First Defendant's name and badge number**. They told me that he was from*

Princess Town Police Station but **refused to give me the First Defendant's name.**
After futile attempts to get information **I left the police station.**

13. **When I came out of the station's gate at or around 6:10 pm and was headed towards the vehicle, I heard someone calling my name. When I turned around I saw that it was the First Defendant. He ran towards me and grabbed my hands, pulling me or literally almost dragging me into the station. As we approached or entered the station one of the policemen on duty said "If you bring this gentleman in here, make sure and charge him this time. Don't only bring him here to fool us."**
14. **I was again taken to the back of the station near the cell area. The First Defendant came and he asked me "so you want my name and badge number, here is my name and number". He put me to lean against a wall. He then called a colleague, a person of African descent. He began beating me. His colleague who had rearrested me looked on. I received blows to my belly, my chest, shoulder, my left hand and my face. My legs buckled and I almost fell down. The African guy held me up and spun me around so that my face was facing the wall. The First Defendant told me to get up and told me to spread out after which he hit me with his knee and slammed me up against the wall. The First Defendant then kicked me in my back. I again buckled and almost fell. The other officer lifted me up again and turned me around and the First Defendant proceed to rain slaps on my face.**
15. **I protested. I said "Boss, I am an open heart patient". He said "You under lockup" He then opened the cell. He put me inside of the cell. Before he locked the cell, I felt an urge to urinate. The First Defendant said "We not allowing you to use the washroom. Go back" He then locked me in the cell and walked away.**

16. ... I asked him again to use the bathroom. He refused again. .. The cell was extremely dirty and filthy. ...
17. After about an hour he took me out of the cell and took my finger print and told me that I was being charged for **resisting arrest, abusive language** to the police and **obstruction of a police officer** doing his duty.
18. Later that night at around 11:30pm I was transferred from Barrackpore Station to Princess Town Police Station. I asked for my medication but this request was **denied**. I asked the officers to **stop the car** they were transporting me in as I was **feeling ill** and needed to vomit. This **request was denied**. They told me to vomit on myself. I pushed my head through the window and vomited.
19. At Princess Town, I was put in a cell there and the next morning about 8:00 'clock I was taken to the Magistrate's Court.
20. The Magistrate read out two charges resisting arrest and **obscene language** and the case was adjourned to January 23, 2012. I was placed on bail for \$20,000.00 and taken downstairs to the JP where I signed the bond and was released.

EVIDENCE

Evidence of Shaeed Ali

68. He claims he saw nothing in the nature of the assault that the claimant complained of and he did not participate in any such assault. This evidence is not credible especially as he was even prepared to go so far as to say in his witness statement that the claimant never made any inquiries of him as to the identity of Ramadhin which would have been *absurd* as he knew *who arrested him and why*.

69. He was not in a position to say this as he only came on shift around 6 pm, after Ramadhin had initially arrested the claimant. This is indicative of the fact that he was prepared to testify even as to matters that he knew nothing of in an effort to cover up the

wrongdoing of a fellow officer and be complicit therein. As officer in charge of the station he cannot claim to not have been aware of the assault on the claimant. He claims that he was in a position to observe the claimant when he came into the station and was being taken into the cells. He must therefore have observed the injuries being inflicted on the claimant. His attempt to give positive evidence to the opposite effect confirms that he too was complicit in the conduct of Ramadhin. In fact he was one of the officers who transported the claimant to the Princes Town Police Station. The claimant complains of this journey as follows:-

Later that night at around 11:30pm I was transferred from Barrackpore Station to Princess Town Police Station. I asked for my medication but this request was denied. I asked the officers to stop the car they were transporting me in as I was feeling ill and needed to vomit. This request was denied. They told me to vomit on myself. I pushed my head through the window and vomited.

Medical Report

70. The doctor's observations in the agreed medical report are consistent with the Claimant's evidence as to where he received the various blows about the body during the assault.

71. I find as a fact that the claimant had observable injuries when he presented to the doctor. I find that it was extremely unlikely that, as contended by Ramadhin, those injuries could have been self inflicted.

72. The claimant's medical evidence, coming from an independent medical professional, is credible. While it cannot establish exactly how the claimant's injuries were sustained, it definitely establishes that shortly after his release from police custody he was suffering from the injuries of which he complains, that they were visible and painful injuries, and that they could not have been self inflicted.

73. The only other possible inference, that they were somehow inflicted coincidentally on the claimant by unknown third parties and blamed on the defendant's

officers, is too ludicrous to contemplate, and the defendant has never sought to suggest this.

74. On a balance of probabilities the injuries complained of are consistent with the manner in which the claimant has described they were inflicted.

75. It is clear on the evidence that the claimant was telling the truth about having sustained injury. That necessarily leads to the conclusion that, injury having been sustained, that the defendant's witnesses Ramadhin and Ali, were not being at all truthful when they testified that they had not themselves inflicted any injuries on the claimant, and neither did they observe any incident which could account for those injuries having been sustained, including the infliction of injuries by others.

76. In light of the claimant's proven injuries the evidence of the defendant's officers who testified to the effect that at no time, while the Claimant was in police custody, did they observe any visible injuries on the Claimant, or that the Claimant was ever assaulted by any police officer, either by them or in their presence, is simply not credible.

77. This means:-

- a. that Officer Ali was complicit in the infliction of injury on a person who was entitled to be presumed innocent until proven otherwise.
- b. that he, together with Ramadhin was prepared to testify untruthfully before the High Court and disregard his oath to tell the truth.

78. Officer Cagan also clearly gave false testimony when he insisted that the claimant used obscene language on the first occasion prior to his initial arrest.

79. I expressly find that all the officers who testified were prepared to testify untruthfully before the High Court and disregard their oath to tell the truth.

80. There can be no justification for such conduct. The claimant suffered an ordeal that was completely without any justification. Injuries were inflicted on him for absolutely no reason other than that he was alone and that officers, primarily including Ramadhin, were in a position to do so without check or consequence. That is conduct that must fall within the category that would attract exemplary damages.

The evidence re the accident

81. For the sake of completeness, it was contended that the claimant did not report the alleged motor vehicle accident. First of all the evidence is that the claimant felt an impact while his vehicle was at a standstill. He believed that there might have been an impact caused by another vehicle, and he was trying to ascertain if that had been the case when his interactions with Ramadhin began.

82. In any event the claimant was never able to identify who was the driver of the vehicle which might have caused it, or even which vehicle, if any, was actually involved. It is abundantly clear however that the need to report any such accident, even if there had actually been one, rather than a suspected one, where neither the driver nor the vehicle involved had been identified, must have ceased to be a priority in circumstances which had degenerated as rapidly as described.

83. Further the suggestion that the claimant should have reported any such accident most likely to the very station where he had been abused, is unrealistic in the extreme. The claimant could be readily assumed to not want to have any further interaction with that station for any purpose whatsoever.

84. Any failure on his part to report the suspected accident most certainly cannot go towards the credibility of his testimony, corroborated as it was by:-

- a. the medical report attesting to his injuries, and
- b. the admission of Ramadhin that he delivered perjured testimony on oath before the Magistrate.

85. No inference in favour of the defendants can be drawn in the circumstances from any failure to report the suspected accident.

DAMAGES FOR ASSAULT - QUANTUM COMPENSATORY/GENERAL DAMAGES

86. The factors which are to be taken into account by a Court in the assessment of general damages for personal injuries have been long settled by the Honourable Wooding C.J. 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.

The nature and extent of the injuries suffered

87. The injuries actually sustained do not appear to have had a long term physical impact. There were no fractures. They were mainly soft tissue injuries, with no permanent residual effects or resulting disability, and no effect on pecuniary prospects.

88. In this regard they are quite similar to those sustained by the claimant in **Ijaz Bernadine v The AG HC 2956/2010** -delivered 2nd October, 2013. Accordingly the same authorities that are referred to in that case as set out hereunder, which justified the award of **Fifty five Thousand dollars (\$55,000.00)** would be applicable here. That award also included matters of aggravation, again similar to those in the instant case.

Pain and suffering

89. I accept that the pain and suffering that the instant Claimant would have experienced would have been significant, as is evidenced from his witness statement.

Judicial Trends

90. **Martin Reid v The Attorney General, C.V. 2006-02496** delivered **June 6 2007** per the Honourable Justice Jones. Reid sustained injury after an assault at the hands of several prison officers. The injuries received by the instant Claimant were less severe than the injuries of the Claimant Reid. They included a **broken finger, cuts to the back of his head, and bruises**. In the case of Reid he was left unattended for more than 2 days before being taken to hospital, though he had been taken to the infirmary officer right after the attack. His wounds continued to bleed. When he was taken to the hospital he was **hospitalized for 5 days**. He suffered **post concussion syndrome** from the blunt head trauma and he still suffered blackouts, pain and headaches at the time of assessment. The Court awarded the Claimant Reid the sum of **\$65,000.00** as general damages for the injuries suffered and \$45,000.00 as exemplary damages. Those injuries appear to have been of greater severity than those of the instant claimant.

91. **Thaddeus Bernard v Nixon Quashie, Civil Appeal No. 159 of 1992** - delivered **October 21 1998** per the Honourable Chief Justice De La Bastide. In **Bernard** the Respondent was beaten by the Appellant who was an estate constable at the Tobago Airport. The Respondent was assaulted at the Tobago Airport by the Appellant initially holding on to the collar of the Respondent. Another officer then held down the Respondent's hands behind his back at which time the Appellant struck the Respondent a few times in his face. As a result the Respondent **suffered lacerations to the face**. The lacerations bled quite profusely. He was taken to the hospital for treatment.

92. The trial judge awarded the Respondent the sum of \$78,000.00 in compensatory damages and \$12,000.00 in exemplary damages. On appeal to the Court of Appeal the general damages were reduced to \$40,000.00, as \$78,000.00 was held to be a wholly erroneous estimate of the damage, in view of the then existing range of awards of that type, (up to \$37,000.00). The award of exemplary damages was upheld.

93. The injuries suffered by the Respondent in **Bernard** were similar to the recorded injuries suffered by the Claimant. The injuries of the Respondent in Bernard, the nature

of the assault upon him, in terms of its viciousness and duration, and the circumstances of humiliation are less serious when compared to the situation of the Claimant herein. That award was made 17 years ago.

94. **Lester Pitman v The Attorney General C.V. 2009-00638** dated 18th December 2009 per the Honourable Justice Jones. In the case of Pitman the Claimant was beaten in the condemned division of the Port-of-Spain by prison officers, two using closed fists and one using his riot staff. The injuries suffered by Pitman as a result of the attack consisted mainly of soft tissue injuries and, like the injuries suffered by the Claimant, did not involve fractured bones. The Honourable Justice Jones awarded Pitman the sum of **\$90,000.00** general damages and \$30,000.00 exemplary damages.

95. **Morris Kenny v The Attorney General H.C.A. T-62 of 1997** – delivered March 11 2002 per the Honourable Justice Tam. The Plaintiff in this case was beaten with a cable about his body in a prison setting and suffered severe back pains. The Plaintiff also suffered many abrasions about the body and had welt marks as a result of the beating. The Court awarded **Kenny** the sum of **\$50,000.00** general damages to take into account aggravating factors. Exemplary damages were awarded in the sum of **\$60,000.00**.

96. **Lincoln Marshall v The Attorney General, CV 2009- 03274** - delivered **October 1 2010** the Honourable Madam Justice Rajnauth-Lee. On or about the 22nd April 2007 a Prison Officer used obscene language towards the Claimant. The Claimant responded to the officer similarly. The Claimant was then assaulted and beaten by three officers. The injuries that were suffered by Marshall were as follows:-

- (i) The Claimant lost two teeth and had four of his other teeth broken.
- (ii) Welt marks about his body.
- (iii) Tender swelling about his entire body.
- (iv) Tender haematomas about the Claimants body.
- (v) Intense swelling of the face and jaw area.
- (vi) Inability to eat food and difficulty in talking.

- (vii) Bleeding from the jaw area.
- (viii) Soft tissue injury about the body.

97. On October 1 2010 Madam Justice Rajnauth Lee awarded the Claimant the sum of \$100,000.00 in general damages, including aggravated damages, and \$50,000.00 in exemplary damages for these injuries of far greater severity.

98. Taking into account all of the above , including the trend discernible in awards of the courts for similar soft tissue injuries inflicted in comparable aggravating circumstances, the sum of **Fifty Five Thousand dollars (\$55,000.00)** is awarded to the Claimant inclusive of Aggravated Damages for assault and battery.

FALSE IMPRISONMENT

99. In the **Handbook on awards for Damages for False Imprisonment and Malicious Prosecution, a publication of the Judicial Education Institute, at pages 22 -24** decisions **which** include awards for similar periods of detentions are summarised. Based thereon, and on the award of this court in **Bernadine** for detention of 15 and a half hours, an award of **\$45,000.00** falls within the range of awards for similar periods of detention to that of the instant claimant.

AGGRAVATED DAMAGES

100. 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.**

101. These are matters which may be affected by the **manner** in which the **assault** was carried out by the officers. The manner and the circumstances in which the attack was carried out must obviously have been humiliating to the Claimant. It was carried out with

reckless and callous disregard as to whether force was even required to subdue the claimant in the circumstances then existing.

102. In addition there are the following additional matters that this court considers must be relevant:-

- i. The mental torment that the Claimant would have experienced throughout the entire ordeal, and in particular the anguish, helplessness, despair, and fear attendant upon this unnatural situation.
- ii. The violence meted out to him by Ramadhin while he remained in his custody and control.
- iii. The humiliation of being assaulted and battered.
- iv. The apparent condonation of the use of excessive force upon him by other officers with whom he came into contact.
- v. The fact that he had done nothing to deserve such treatment.

EXEMPLARY DAMAGES

103. 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.**”

104. 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.*” 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**. Both Lord Devlin in *Rookes v Barnard* and Lord Hailsham of St Marylebone LC in *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 **emphasised the need for moderation in assessing exemplary damages**. That principle has been followed in *The Bahamas* (see *Tynes v Barr* (1994) 45 WIR at 26), but in *Merson v Cartwright and the Attorney General* [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.

105. A matter which supports an award under this head of damage must include the urgent need to deter such conduct before it becomes engrained as a result of apparent condonation, and before it results in serious personal injury or loss of life.

JUDICIAL TRENDS - AWARDS OF EXEMPLARY DAMAGES IN CASES OF ASSAULT AND BATTERY BY OFFICERS OF THE STATE

106.

- i. In **Martin Reid v The Attorney General** the Honourable Justice Jones awarded the sum of **\$45,000.00** as exemplary damages.
- ii. In **Abraham** the Court awarded the sum of **\$50,000.00** as exemplary damages.
- iii. In **Kenny** the Honourable Justice Tam awarded the sum of **\$60,000.00** as exemplary damages.

NEED FOR MODERATION

107. The need for moderation must be borne in mind when assessing exemplary damages. That must be balanced with the need to send a message of condemnation of the behaviour involved and to deter its recurrence.

108. While various courts have been sending the message of condemnation while exercising moderation in the awards for exemplary damages the message is clearly not

resulting in deterrence of such conduct by servants or agents of the State. In fact it appears to have been ineffective in deterring such conduct.

109. The approach of marginally and incrementally increasing the awards for exemplary damages appears to have been ineffective in sending the message, if it even needs to be sent, that such conduct is an abuse of power, is unlawful and oppressive, and will entitle the victims, if they survive, to substantial compensation.

110. It may be that the emphasis on moderation is being misconstrued as a mere slap on the wrist, resulting in recurrences.

111. The fact is that the pronouncements by the courts set out above appear to have been ineffective in preventing the repetition of behaviour similar to that here complained of, and allegations of assault at the hands of servants or agents of the State, continue to be made.

112. The signals from the courts via awards of exemplary damages at previous levels have been ignored. The Court has a discretion with regard to the quantum of an award of exemplary damages. There is no justification for behaviour such as has occurred here, where a citizen is subjected to arbitrary and excessive brutality, at the whim of those entrusted to protect and serve.

113. Failure to condemn such behaviour in the strongest possible terms amounts to countenancing and condoning it. This is incompatible with the duty of courts in a democratic country which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens.

114. In those circumstances it is the courts' duty to set an award of exemplary damages in an amount that may give pause to officers contemplating such abuse in future, and to their employers who do not take steps to hold such officers accountable.

115. That is not a matter about which a court should be hesitant. The courts cannot countenance such behaviour. The courts have a duty to the citizens of this country to uphold their rights where they have been infringed. They have a duty to accompany their findings with appropriate and effective remedies, and to do so without fear of favour.

116. The court cannot effectively signify displeasure at such conduct, yet make simply a token or worse yet, no award of exemplary damages. A token award of exemplary damages, even with a compensatory aspect of damages which includes aggravated damages, risks being an exercise in futility. A token award of exemplary damages sends the opposite signal to that required of an award of exemplary damages.

117. It sends the signal that although assaults by the police will attract an award of damages if proved, somehow such assaults will not be sufficient to attract the strongest possible condemnation, as reflected in an appropriate award of exemplary damages. An excessively low award of exemplary damages, or far worse, no award of exemplary damages, suggests that the court will condone such high handed and brutal behaviour, unlawful as it is, by tempering signals of the society's displeasure, reflected via the court.

118. The conduct of the officers in this case needs to be held up to scrutiny. That conduct includes:-

- a. assaulting a citizen in a brutal manner causing him to sustain painful injuries,
- b. failing to recognise that there was no absolutely lawful justification for such behaviour,
- c. carrying out, (and in the case of those not actually involved in the assault and battery), permitting, such conduct directed at the claimant who was in their custody and defenceless.
- d. it constituted an abuse of the power conferred on the officers involved.

It clearly and necessarily involved being consistently and repeatedly untruthful to the attorneys for the State in the preparation of their defence and their witness statements, and to the Court. It involved a cover up among all the officers who testified.

119. The conspiracy led to:

- (i) Officer Ramadhin swearing on oath that he had not inflicted injury on the claimant;
- (ii) Officer Ali who was in charge of the station at the time swearing on oath that he did not observe the infliction of injury on the claimant, nor was he aware of the injuries on the claimant at any time that he was in police custody,
- (iii) Officer Rondell Cagan testifying that he heard the claimant using obscene language on the first occasion that he was detained by Ramadhin, when even Ramadhin denied that was the case

This cannot be rewarded by a nominal award of exemplary damages.

120. The signal that needs to be sent is that this is behaviour that is absolutely unacceptable in a society which has respect for the fundamental human rights of its citizens, and that the courts will uphold those rights when they are clearly, as in this case, demonstrated to have been infringed.

121. The courts have a responsibility, while demonstrating restraint in making awards of exemplary damages, to:

- a. recognise the trends in such awards by the Judges of the Supreme Court,
- b. take into account all the circumstances and factors that go into such awards,
- c. refrain from undermining and reducing to irrelevance the concept of exemplary damages by imposing on themselves artificial constraints, not justified in law, on their discretion to do so.

122. The conduct here was reprehensible, unlawful, and falls clearly within the category of high handed action by servants or agents of the State. An award of exemplary damages in a sum less than \$60,000.00 would risk reducing to irrelevance the purpose of exemplary damages. Such an award would not do violence to the concept of restraint in such awards, yet is more likely to achieve the purpose of this aspect of an award.

123. The purpose of the exemplary component of an award has little to do with compensating a claimant – that has already been addressed by the purely compensatory aspect of an award. It is directed at condemnation of actions, behaviour and conduct of the servants or agents of the State – action that is high handed and oppressive - that must be highlighted and prevented, lest it be condoned, encouraged, systematized and perpetuated. The quantum of exemplary damages required to achieve the purpose of exemplary damages, in particular, deterrence, is accordingly set at **\$60,000.00**.

DISPOSITION

124. Damages are assessed as follows:-

It is ordered that:

- (i) The claimant be paid general damages for **false imprisonment** for a period of 17-18 hours of his detention in the sum of **\$45,000.00**.
- (ii) The claimant be paid general damages for **assault and battery** inclusive of aggravated damages in the sum of **\$55,000.00**.
- (iii) The claimant be paid general damages in the sum of **\$35,000.00** in respect of **malicious prosecution**, (**apart from** the element of **detention** compensated as above).
- (iv) Interest at the rate of 6 % per annum on each of the above sums from June 9th 2015.
- (v) **Exemplary damages** in the sum of **\$60,000.00**.
- (vi) Special Damages in the sum of \$25,000.00.
- (vii) Interest at the rate of 3 % per annum on the sum of \$25,000.00 from September 30th 2013 to February 19th 2016.
- (viii) Special Damages in the sum of \$3,100.00 from December 19th 2011 to February 19th 2016.
- (ix) Interest at the rate of 3 % per annum on the sum of \$3,100.00 from December 19th 2011 to February 19th 2016.

- (x) Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total of (i) - (ix) above.
- (xi) Liberty to Apply.

Dated the 19th day of February, 2016

Peter A. Rajkumar
Judge

The Court is indebted to counsel for all parties for the diligence of their research and the thoroughness and detail of their written submissions.