

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. NO. S-47 OF 2001**

**IN THE MATTER OF THE CONSTITUTION OF  
TRINIDAD AND TOBAGO**

**AND**

**IN THE MATTER OF THE GUARANTEES OF FUNDAMENTAL  
HUMAN RIGHTS AND FREEDOMS PART 1 OF THE SAID  
CONSTITUTION**

**AND**

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL  
HUMAN RIGHTS AND FREEDOMS PURSUANT TO SECTION  
14 OF THE CONSTITUTION AND ORDER 55 OF THE  
RULES OF THE SUPREME COURT**

**BETWEEN**

**SIEWCHAND RAMANOOP**

**Applicant**

**AND**

**THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO**

**Respondent**

**Before the Honourable Madam Justice Rajnauth-Lee**

**Appearances:**

Mr. Anand Ramlogan instructed by Mr. Haresh Ramnath for the Applicant.  
Miss Josephina Baptiste instructed by Miss Sharon Sharma for the Respondent

## **JUDGMENT**

### **THE HISTORY**

1. This action was commenced by the Applicant in 2001 when the Applicant sought redress under section 14 of the Constitution of Trinidad and Tobago (“the Constitution”) arising out of his arrest and detention on the 10<sup>th</sup> and 11<sup>th</sup> November, 2000. The Applicant was awarded the sum of \$18,000.00 for the deprivation of his liberty and \$35,000.00 for breach of his right to security of the person by Bereaux J. at first instance.
2. No award of exemplary damages was made. The trial judge declared himself to be bound by **Attorney General of St. Christopher, Nevis and Anguilla v Reynolds** (1980) A.C. 637, a decision of the Judicial Committee of the Privy Council, which appeared to him to have decided that exemplary damages could not be awarded for constitutional breaches. Bereaux J. held that even if that were not the case, exemplary damages were inappropriate to actions brought under section 14 of the Constitution. The Applicant appealed.
3. The Court of Appeal by a majority reversed the decision of the trial judge: Sharma C.J. and Kangaloo J.A. (Warner J.A. dissenting) [**Civ. App. No. 52/2001 Siewchand Ramanoop and The Attorney General of Trinidad and Tobago**]. The majority decision of the Court of Appeal was delivered by Sharma C.J. who held that the Constitutional Court does indeed have a jurisdiction to award exemplary damages and that exemplary or vindictory damages should be awarded in the present case.
4. The Respondent appealed to the Privy Council. In the judgment of the Judicial Committee delivered on the 23<sup>rd</sup> March, 2005 (**The Attorney General of Trinidad and Tobago v. Siewchand Ramanoop** [2005] UK PC 15) it was held that a monetary award under section 14 was not confined to an award of

compensatory damages in the traditional sense. Paragraphs 17 to 19 of that judgment are set out in full:

“17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right, which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award."

5. The Privy Council found that Bereaux J. had stated his jurisdiction too narrowly and advised that the matter be remitted to him, or another judge, to consider whether an additional award of damages of the character described above, is appropriate in this case. This is the task that is now before this Court.

### **THE FACTS**

6. The facts as summarised by the Privy Council are as follows. On the evening of 10 November 2000 Siewchand Ramanoop, (the Applicant) a man aged 35, was in his local bar. As he was about to leave he had an altercation with a "thin, tall, dark man of East Indian descent". He left and went home. Later on the same evening when he was at home, at about 10.45 pm, he heard a car and

someone calling his name. He opened the door and was confronted by two men; one a uniformed policeman, PC Rahim, and the other the "Indian man". Before the Applicant could say anything the policeman, PC Rahim, slapped him across the face and neck, turned him around, handcuffed him, and started beating him. PC Rahim cuffed and slapped the Applicant for 5-10 minutes while cursing and shouting at him for "interfering with police."

7. At this time the Applicant was clothed only in his underwear. He was pushed back into his house where PC Rahim continued to beat him. PC Rahim told him to take a shirt and pants because he was going to lock him up. The Applicant took a change of clothing but PC Rahim refused to let him get dressed properly. He took the Applicant outside and shoved him into the back seat of a car and sat beside him. The car was driven by the "Indian man". While the Applicant was being driven to the Gasparillo police station, PC Rahim constantly cuffed and slapped him. He asked PC Rahim which police he had interfered with, but PC Rahim kept saying he would teach him a "lesson for interfering with police".
8. At the police station PC Rahim rammed the Applicant's head against the wall, causing a wound from which blood gushed. The Applicant was then handcuffed to an iron bar. PC Rahim taunted him, and poured rum over his head, causing the wound to burn and blood and rum to run into his eyes. He was taken to a bathroom and soaked in the shower while PC Rahim spun him around by the shoulders until he was dizzy.
9. Later the Applicant was allowed to get dressed. He was interviewed by PC Rahim who asked him to initial a written document. He refused. PC Rahim started slapping his head, and told him that he would not be allowed to leave the station if he did not sign the document. The Applicant was losing blood and feeling weak and dizzy. He subsequently signed the document as instructed because he was frightened at what PC Rahim might do to him if he did not. PC Rahim then apologised for assaulting the Applicant but explained that he was

"under some pressure" since his wife was pregnant. The Applicant was then taken home by the "Indian man". He arrived home at about 2 am.

## **THE LAW**

10. According to the Irish report on *Aggravated, Exemplary and Restitutionary Damages*, (LRC 60-2000) [2000] IELRC 1 (1st August, 2000),

“**1.01** The aim of exemplary damages is two-fold: to punish the defendant and to deter both the defendant and others from engaging in conduct that is extremely malicious or socially harmful, in Lord Devlin's own words "to teach a wrongdoer that tort does not pay” **Rookes v Barnard** [1964] AC 1129. An exemplary damages award may also be intended to vindicate the rights of the plaintiff, or, as Lord Devlin stated in **Rookes v Barnard**, to vindicate the strength of the law. It has the additional, incidental effect of providing compensation and satisfaction to the plaintiff. In the context of the Constitution, the particular purpose of exemplary damages is to vindicate and defend individual constitutional rights, to punish the defendant's disregard of them and to deter their breach...

**1.06** It is also important to consider the role of exemplary damages in deterring highly reprehensible conduct, including violations of constitutional rights. In a case where there has been a serious breach of constitutional rights, which the court considers warrants exemplary damages, there is a public interest in calculating an award that will effectively deter such a breach in the future.”

11. The above views are reflected in the statements of Sharma C.J. delivering the majority judgment of the Court of Appeal in the instant case. According to the learned Chief Justice:

“The undisputed facts in this case show that the police officer’s behaviour was reprehensible and despicable. He showed a callous and shameful disregard for the fundamental rights of the appellant and stripped him of his human dignity. His duty was to protect and serve. Yet he did the exact opposite. Had the appellant brought an action in tort, there is little doubt that he would have succeeded in a claim for exemplary damages.” [pages 13 and 14].

.....

“The State itself will be deterred in two ways. First in my view, it will be more astute and alive to a more meticulous and rigorous selection procedure for police officers. Secondly, the payment out of such exemplary damages from the public purse, if persistent, will inevitably attract the attention of opposing politician, the press, pressure groups and the taxpayer himself. This should lead in the long run to a system which is more efficient and accountable for ultimately what could be at stake is the loss of office. The argument that such exemplary damages come out of the public purse and therefore is a means of allocating scarce public funds by the judiciary without the sanction of the legislature with respect, misses the mark as it does not foresee the longer term benefit set out herein which will accrue to the society as a whole.

But, the question of deterrence and punishment can be more direct and effective and I can see nothing morally reprehensible nor jurisprudentially objectionable, if the State were to pursue a claim for recovery against the offending Police Officer for the sum it has to pay by way of exemplary damages.” [pages 15 and 16].

12. This Court is in complete agreement with the sentiments expressed by Sharma C.J: the police officer's behaviour in this case was reprehensible and despicable. The Court is of the view that the award of compensation made in this case does not suffice to vindicate the Applicant's infringed constitutional rights. In the judgment of the Court, an additional award is necessary to reflect the sense of public outrage, emphasise the importance of the constitutional rights and the gravity of the breach, and deter further breaches.
13. The only question that remains to be determined is the quantum of damages to which the Applicant is entitled.

#### **THE APPLICANT'S SUBMISSIONS**

14. Counsel for the Applicant has referred the Court to the case of **Tamara Merson v. Drexel Cartwright and The Attorney General of the Bahamas** Privy Council Appeal No. 61 of 2003 ([2005] UK PC 38 delivered on the 13<sup>th</sup> October, 2005. In that case Ms. Merson was awarded the sum of \$100,000.00 for the contravention of her constitutional rights. She was also awarded separate sums for assault, battery and false imprisonment and also for malicious prosecution. Ms. Merson had been arrested, humiliated at the police station and subjected to malicious charges that were subsequently dropped. The trial judge who made the award of exemplary damages explained it in the following way,

“Since the police officers involved in this incident were all servants of the State, acting, or purporting to act in their official capacities in dealing with the plaintiff, and since, in my view the conduct of the 1st defendant, Sgt. McCoy and Officer Pratt at CPS in particular, was high-handed, and the way in which the defence was conducted, e.g., by the attempt to the very end, to justify the arrest and detention of the plaintiff and the attempt to justify the seizure of the plaintiff's passport on the ground that she had refused to give her name to the 1st defendant, the fact that liability has never been conceded in respect of the torts of false imprisonment, assault

and battery or malicious prosecution, nor has any genuine apology been offered, I can only view the conduct of the 1st defendant in particular as high-handed and outrageous. Furthermore, that conduct showed an extreme disregard for rule of law and the rights of the plaintiff to the protection of the law. I therefore hold that the damages awarded in this case should include a reasonable sum by way of exemplary damages." [para. 13 of the judgment of the Judicial Committee].

15. In the judgment of the Judicial Committee set out at paragraph 18:

“These principles apply, in their Lordships’ opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that “constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course” (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in

other cases an award of damages, including substantial damages, may seem to be necessary.”

16. The Judicial Committee found that an award of damages, and a substantial award at that, was justified to vindicate Ms. Merson’s rights that had been so grievously infringed. The Judicial Committee therefore held that on the extreme facts of the case the award of \$100,000. by way of vindicatory damages was high but within the bracket of discretion available to the judge.
17. Counsel for the Applicant has submitted inter alia that the Applicant was physically assaulted, falsely imprisoned and subjected to physical torture; the facts set out by the Applicant were unchallenged and no police officer has yet been disciplined in relation to this incident. Counsel for the Applicant accordingly submitted that an award of \$100,000. in keeping with the decision in Merson ought to be made.

#### **THE RESPONDENT’S SUBMISSIONS**

18. Counsel for the Respondent has accepted that the behaviour of the police officer involved was oppressive. In the Skeleton Arguments filed on behalf of the Respondent the following paragraph sums up the Respondent’s analysis of the incident:

“The Applicant in this case was brutally treated by a Police Officer who was ‘helping out a partner’, a gross misuse of Police Powers. Further, the Applicant was detained at the Gasparillo Police Station for no other purpose than to torment him, he was assaulted at the Gasparillo Police Station, his head battered against a beam and alcohol poured into the wounds. He was not taken for medical treatment nor was any supplied to him at the said Police Station. He was treated to the lame excuses of the Police Officer as the reason for the torment because the said Police Officer was under some pressure and stress as a result of his wife’s pregnancy. This

gross misuse of the powers of the police was commented on in the hearing of the instant matter before the Law Lords of the Judicial Committee of the Privy Council.”

19. Counsel for the Respondent also referred the Court to several cases with facts similar to the instant case. The Court has considered them all, but will make reference only to a few.

20. In the case of **Stephen Singh v. The AG of Trinidad and Tobago et al** H.C.A. No. 3031 of 1994 the plaintiff a respectable businessman, was wrongfully arrested by two police in the presence of his wife, daughter and neighbours. The officers then took the plaintiff to the Police Station where he was assaulted, humiliated [his trousers were pulled down exposing his private parts] and incarcerated before being allowed to return home. Sinanan J. awarded the sum of \$15,000.00 by way of exemplary damages. He made the following robust statements at pages 28 and 29 of his judgment:

“What was perpetrated by these servants of the State was a wanton and vicious attack on a citizen in total disregard of his fundamental rights. It was an object lesson in the abuse of power.....

Police Officers must be made to understand that the powers which are entrusted to them are held in trust for citizens of this country and they must exercise these powers for the benefit of their fellow citizens not against them. What occurred here was a brutal breach of that trust.”

21. In **Harold Barcoo v. The Attorney General of Trinidad and Tobago and Inspector Phillip Browne** H.C.A. No. 1388 of 1989 the Plaintiff was awarded the sum of \$10,000.00 by way of exemplary damages for false imprisonment and malicious prosecution. The plaintiff had been wrongfully

detained, called racial names and threatened with violence. He was not, however, assaulted.

22. In **Eileen Williams v. The Attorney General of Trinidad and Tobago and Corporal Moore** H.C.A. No. Cv T 70 of 1996 the plaintiff was awarded the sum of \$15,000.00 for exemplary damages. She had been handcuffed to a gate outside her house while holding her baby in her arms, manhandled so that her dress was torn and exposed part of her breast, and then taken to the police station.

23. The plaintiff in the case of **Mitra Harracksingh v. The Attorney General of Trinidad and Tobago and Neville Adams** H.C.A. No. 2241 of 1992 was awarded exemplary damages in the sum of \$25,000.00 in his claim for damages for false imprisonment, malicious prosecution, assault and battery. The plaintiff suffered serious physical injury including the loss of a tooth, whiplash and lingering migraine headaches. Mendes J. made the following statement as to the oppressive, arbitrary and unconstitutional conduct of the police officers [pages 16 and 17]:

“I have no doubt that this is a case in which an award of exemplary damages is also justified. In my judgment, the conduct of the police officers responsible for the injuries which the Plaintiff suffered was oppressive, arbitrary and unconstitutional. While the exact motive was not entirely clear, it appears that the officers responded in the way they did because of the assertion by the Plaintiff of his constitutional rights, to teach him a lesson as it were. P.C. Adams spoke of the Plaintiff needing to learn to respect police. In any event, no reason was given for the arrest and prosecution, other than the false one that the Plaintiff used obscene language. And even if the Plaintiff did use obscene language, there was no explanation offered for what turned out to be a gratuitous and outrageous physical attack on the Plaintiff, as if the officers had become intoxicated with the power which they

wielded over him, albeit for a temporary period of time. They behaved more like the bandits who prey upon the community which they, as public servants, are charged with the duty to protect and serve.”

24. Counsel for the Respondent accordingly submitted that an award ranging from \$23,000. to \$35,000. should be considered an appropriate award.

**CONCLUSIONS:**

25. The cases cited by Counsel for both the Applicant and the Respondent rightly display the court’s abhorrence for the oppressive, arbitrary and unconstitutional use of police power.

26. In the majority judgment of the Court of Appeal in this matter, Sharma C.J. set out certain factors that may be considered when a court makes an award of this nature. These included:

- (a) The nature of the Constitutional Right breached.
- (b) The circumstances surrounding the breach including the gravity and duration.
- (c) The frequency with which the particular breach occurs in the society.
- (d) A realistic approach between the frequency of the breach and the need to deter others from committing similar breaches.
- (e) Any real prospect that the offender will be disciplined or face criminal charges and the consequences [page 20].

27. Sharma C.J. noted that these factors were not to be regarded as exhaustive and acknowledged that there may be other matters the judge in a particular case may wish to consider in the assessment of damages whether exemplary or vindicatory for constitutional breaches. [page 21]
28. The Court recognises that the duties of police officers are often stressful and dangerous. Officers are often called upon to make quick and difficult decisions. They are not infallible and can make mistakes. The conduct of PC Rahim, however, was deliberate. His conduct demonstrated a callous disregard for the rule of law and the rights of the Applicant to the protection of the law. His actions were oppressive, malicious and contemptible.
29. The Court echoes the sentiments expressed by Christopher Hamel-Smith J. in the case of **Kenton Sylvester v The Attorney General of Trinidad and Tobago et al** H.C.A. No 4025 of 1992.

“ Members of the police force seeking to combat crime in modern Trinidad and Tobago face constant danger. They are often under-resourced and carry out their duties in stressful conditions. Theirs is a difficult task. It involves direct contact with citizens, both those suspected of criminal activity as well as victims of crime. If the police are to be effective in their efforts to maintain law and order, they must act firmly and decisively. They must, however, at all times maintain discipline and obey the law. In this case, they failed to do so. Instead, they acted in gross breach of discipline and behaved in an oppressive and arbitrary manner. In a case such as this, an award of exemplary damages can vindicate the strength of the law, punish the wrongdoers and help to deter repetition of the unlawful conduct. I therefore propose to award the sum of \$50,000 as exemplary damages...”

30. In that case the plaintiff's car was hijacked by two bandits who forced him to remain in the vehicle. The plaintiff's car was then involved in a high-speed chase around the Queen's Park Savannah where his vehicle was shot at by the police and subsequently crashed in the vicinity of the hospital. After the collision, the plaintiff was pulled through a window of his vehicle and beaten by three police officers who apparently did not believe him when he attempted to explain that he was the owner of the vehicle. The plaintiff suffered severe injuries including multiple rib and arm fractures, a punctured lung and other internal injuries. He had to be hospitalised for 12 days. The judge found no difficulty in awarding the Plaintiff exemplary damages.
31. Archie J.A. in the case of **Alphie Subiah v The Attorney General of Trinidad and Tobago** [Civ. App.No. 10 of 2005], seemed to have accepted that **Ramanoop** and **Kenton Sylvester** were extreme or unusual cases which justified an award in which there was an element of deterrence.
32. Although the injuries suffered by the Applicant are not as serious as those suffered by the plaintiff in **Kenton Sylvester** the behaviour of PC Rahim is far more contemptible. This is no case of carelessness or mistaken identity; this is a clear-cut case of malicious and unconstitutional abuse of police power. The behaviour of PC Rahim was not merely reckless or rash; it was vindictive and criminal in nature. Such behaviour must be condemned in the strongest possible terms.
33. In the judgment of the Court, an award of \$60,000.00 is sufficient to reflect the sense of public outrage, emphasise the importance of the constitutional rights and the gravity of the breaches, and deter further breaches.

34. The Court therefore orders that the sum of \$60,000.00 be paid by the Respondent to the Applicant by way of an additional award. Interest should run at the rate of 12% per annum from the date of service of the notice of motion. The Respondent shall pay to the Applicant costs of the assessment certified it for Counsel and to be taxed in default of agreement.

Dated the 14th day of February, 2008

**Maureen Rajnauth-Lee**

**Judge**