

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**HCA 2082 of 2005**

**BETWEEN**

**NICOLE CUMMINGS**

**PLAINTIFF**

**AND**

**CPL. FRANCOIS**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**DEFENDANTS**

**Before The Honourable Mr. Justice Stollmeyer**

**Appearances:**

**Mr. A. Ramlogan for the Plaintiff**

**Mr. H. Ramkaransingh for the Defendants**

**JUDGMENT**

In these proceedings the Plaintiff claims damages for injuries suffered as a consequence of a bullet wound received on 15<sup>th</sup> July 2005.

The proceedings came to me after the Plaintiff had filed a summons on 12<sup>th</sup> January 2006 for leave to enter judgment against the Second Defendant, no defence having been filed and served. The Defendant responded with a summons of 13<sup>th</sup> March 2006 seeking to have the action dismissed or, alternatively, to have certain paragraphs of the statement of claim struck out. Ultimately, it was not necessary for me to determine these summons because the parties agreed that judgment should be entered for the Plaintiff and that I should assess damages on

the basis of written submissions. Consequently neither the Plaintiff's summons of 12<sup>th</sup> January 2006 nor the Defendant's summons of 13<sup>th</sup> March 2006 were argued and they are both dismissed with no order as to their costs. No oral evidence was led as to the claim for damages, but attorneys agreed that the medical certificate and the three medical reports filed on behalf of the Plaintiff (together with the authorities in support of the submissions on her behalf) would be admitted for that purpose. That certificate and those reports are:

1. Dr. Iganlan Oladapo (General Hospital Port of Spain) of 15<sup>th</sup> July 2005;
2. Dr. Iganlan Oladapo (General Hospital Port of Spain) of 19<sup>th</sup> August 2005;
3. Mrs. Andrea Bertrand (Eric Williams Medical Sciences Complex) of 14<sup>th</sup> March 2006;
4. Dr. David Toby of 6<sup>th</sup> April 2006.

They are admitted as a bundle marked "A".

The Plaintiff is a police constable described in Dr. Oladapo's report as being 30 years old in 2005 but in the written submissions on her behalf said to be 39. On 15<sup>th</sup> July 2005 she was shot in the lower right leg when the firearm of a fellow police officer, the First Defendant, was discharged while it was being cleaned. She suffered a 2cm laceration to her lower right leg and the bullet lodged in the soft tissue. There was no bone injury.

The bullet was extracted at the Accident and Emergency Department at the Port of Spain General Hospital that day and the wound was cleaned. There is no evidence of any suturing. Antibiotics and analgesics were administered intravenously and she was discharged on the same day, with a referral to her Local Health Centre for a change of dressings. Ten days sick leave was recommended.

In September 2005 she consulted Dr. David Toby, an Orthopaedic surgeon, complaining of severe pain and the tingling in the lower front portion of her leg. Dr. Toby found and removed a tumor from the scar of the wound and revised (repositioned) the scar. In April 2006 he reports that the Plaintiff was still having therapy and experiencing residual pain in the scar.

The Plaintiff has had therapy at the Eric Williams Medical Sciences Complex and a report of 14<sup>th</sup> March 2006 says that she has tingling over the scar and loss of sensation of the side of the ankle.

It is submitted on behalf of the Plaintiff that an award of \$50,000.00 is appropriate in the circumstances and reliance is placed upon the decisions in HCA 2241 of 1971 *Diamond v. Timothy* and HCA 2166 of 1971 *Gill v. Charles*.

In the former, damages of \$2,500.00 were awarded in May 1973 for a gunshot wound to the left side causing the Plaintiff to spend two days in hospital, permanent damage, fibrositis and walking with a limp. Adjusted as at November 2002, according to "The Lawyer", this award would be \$37,063.00.

In the second judgment referred to, damages of \$5,000.00 were awarded in October 1972 for a gunshot wound to the left leg fracturing/shattering the upper fibula with the bullet lodging in the tibia. The leg was put into a cast; there was considerable pain for six weeks; and subsequent complications. The wound took three months to heal and was hypertrophic. Adjusted to November 2002, the award would be \$81,746.00 (not \$88,022.00 as set out in the submissions).

It is submitted on behalf of the Defendants that the award of damages should be much lower. I am referred to several decisions, none of which involved gunshot wounds.

The first of these is HCA 1364 of 1972 *Bradshaw v. Garrick* where the Plaintiff suffered a 15 inch cut on the right shoulder and side of the chest requiring 92 stitches. This scar subsequently widened and sheltered, keloid developed and it was hypersensitive to touch. The award of \$1,500.00 in July 1975, when adjusted to November 2002, would be \$14,991.00.

The second decision is that in HCA 1449 of 1981 *Mannie & Sookchan v. Ramlogan & Simon* where damages of \$2,000.00 were awarded in July 1987 for a 1½" cut on the right forearm and pain in both knees, with the Plaintiff being away from work for 83 days after a motorcar accident. Adjusted to November 2002 this award would be \$18,667.00.

The third decision is that in HCA 3809 of 1983 *Wilson v. Supermix Feeds* where the Plaintiff suffered a 5 inch cut to the left forehead; requiring seven stitches; multiple minor cuts to the leg, bruising of both knees; pain in the spine; tenderness in the chest; bruises of the right buttock, hip and thigh. The award of \$7,000.00 in February 1988, when adjusted to November 2002, would be \$17,071.00.

The last decision referred to on behalf of the Defendants is HCA S5 of 1982 *Chamroo Hosein v. Ramkissoon* where the Plaintiff's left arm was broken; there were fractured ribs and a hip injury; severe pain and hospitalisation for 25 days with her being unable to walk when discharged. The award of damages in April 1993 of \$18,000.00, when adjusted to November 2002, would be \$29,000.96.

I have also looked at several other judgments as reported in "The Lawyer", some of which are of assistance without being directly on the point. I might, however, refer just to HCA 1443 of 1980 *Barran v. Rago & Rago* where an award of \$10,000.00 was made in 1989 for a fractured ankle which was immobilised in a plaster cast removed 3 months later. The Plaintiff was hospitalised for 7 days. After removal of the cast he still complained of pain and had lost 50% of the

mobility in the joint which would swell at the end of the day. Updated as at November 2002, this award would be \$21,894.00.

I do not think that the injury to Ms. Cummings can be regarded as serious as any of those in the judgments referred to. Additionally, I maintain the view that the adjustment methodology used by "the Lawyer" can produce inaccurate results. As an example, the \$2,000.00 award of March 1973 made in HCA 2260 of 1972 *Bostic v. BWIA* would be \$30,557.00 at November 2002. Contrast this with the adjusted award in *Diamond v. Timothy*.

It is important to note that of the five factors which I am to consider and as are set out in *Cornelliac v. St. Louis (1965) 7WIR 491* there is no evidence as to two of these: loss of amenities suffered; and loss of pecuniary prospects, although these are matters dealt with in the written submissions on behalf of the Plaintiff. I therefore do not include these in my award.

There is also a claim for exemplary damages. Although this is not dealt with in the written submissions on behalf of the Plaintiff, Mr. Ramlogan asked that I have regard to the matters set out in paragraph 5 in the statement of claim but, I do not see that paragraph 5 of the statement of claim suffices for this purpose. First, there is the Defendants' application to strike out the Particulars relating to the failure to bring disciplinary proceedings against Cpl. Francois following the incident. Further I am unable to see how this failure, or any other failure complained of in these Particulars can be properly regarded on their face as arbitrary, or oppressive or unconstitutional on the part of the first Defendant.

Additionally, the Second Defendant, as employer of the First Defendant, is only vicariously liable for his acts (or omissions) performed while carrying out his duties, or any other closely associated activities. Absent pleading or evidence otherwise, it is the acts or omissions of the First Defendant which are to be arbitrary, oppressive or unconstitutional. If this is not so, then there will need to

be a separate claim against the employer. Here, there is no such claim. The Second Defendant is sued purely as employer.

With all this in mind I have come to the conclusion that neither the nature and extent of the injury suffered by the Plaintiff, nor the pain and suffering she may have endured, are equivalent to, or perhaps even analogous to, those in either *Diamond v. Timothy* or *Gill v. Charles*. Particulars of special damages were never pleaded, and there is no evidence whatever of medical expenses and the like before me upon which I can base any award. I do not doubt, however, that some expenses must have been incurred particularly given the visit to Dr. Toby in September 2006.

The injury suffered was a "soft tissue" injury and minor in nature. No reason is advanced as to what caused the growth of the tumor within the scar but since there is nothing to indicate that it was a consequence of any act or neglect on behalf of the Plaintiff I accept it as a consequence of the injury suffered.

As agreed, there will be judgment for the Plaintiff against the Defendants and I award general damages in the amount of \$20,000.00, together with interest at the rate of 12% from 17<sup>th</sup> August 2005 to judgment. This award includes an element of aggravation, given what is pleaded in the Particulars to paragraph 4 of the statement of claim.

The claim for exemplary damages is dismissed. There is no award of special damages.

The Defendants will pay the Plaintiff's costs of the action (save as I have already ordered above), to be taxed in default of agreement.

.....September 2006

C.V.H. Stollmeyer  
Judge