

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-01487

BETWEEN

ASHRAM PARIAGSINGH

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Ms. Jayanti Lutchmedial instructed by Ms. Kavita Sarran for the Claimant

Ms. Niquelle Granville and Ms. Kelisha Bello instructed by Ms. Laura Persad for the Defendant

REASONS

1. The Claimant is a police officer. On May 8th 2012 he was attached to the La Brea Police Station. During the course of that work day, he fell. As a result of that fall he claimed he suffered a serious back injury.
2. The first issue I had to determine in this case is where he fell. On the one hand he claimed it was in the area at the back of the police station on a wet concrete floor close to a black water tank. On the other hand, some of his colleagues said he told them that he had sustained the fall at a nearby parlour to which he had gone to purchase some snacks. At the trial, the Defence sought to establish this version as to the place of the accident through its sole witness PC Barclay.

3. I found as a fact that the incident, the slip and fall took place at the police station in the area close to the water tank for the following reasons. The Claimant's account was supported by a contemporaneous record in the station diary. It was entered shortly after he left the station to seek medical attention, by someone other than himself, one Ag. Cpl. Leotaud.
4. This entry in the station diary account as to how he fell was a subject of a disciplinary charge and investigation against the Claimant under the Police Service Regulations. On the very day of his fall, officers attached to the station reported he had caused a false report and entry to be made. The disciplinary process was invoked. Sgt. Ashworth Ramdeen (Ag.) was appointed to investigate the Claimant's conduct. In the course of his investigation Sgt. Ramdeen interviewed several persons and took statements. He visited the La Brea Police Station. He made observations. All of this was done within months of the report and therefore more contemporaneously with the incident.
5. At the end of his investigation Sgt. Ramdeen indicated his findings in a report dated 29th November 2012. His conclusions were set out at page 9 of his report. He stated:

“Sir, there is no evidence to support the claim, that Cpl. Pariagsingh fell by a parlour as no one can say which parlour he fell by and no one saw him fell by any parlour. There is also no evidence to support the claim that Cpl. Pariagsingh did not fall at the back of the La Brea Police Station as no one was with him at the time he said he fell. There is however evidence that there was water on the floor where Cpl. Pariagsingh claims he fell. I am therefore of the opinion that Cpl. Pariagsingh did fall at the back of the La Brea Police Station where he sustained injuries and as a result I humbly suggest that this inquiry be closed to further police action.”

“There is no evidence to substantiate the claim made by Constables Lewis and Barclay, that the Claimant reportedly fell at a parlour as neither of them made an entry in the La Brea Station relative to the conversation that they said took place between Pariagsingh when he returned to the station limping after visiting the parlour. There is also no entry in police station diary where Pariagsingh left the station prior to the fall.”

Further he said

“but all parties involved state that there was indeed a leak at the La Brea station and there was water on the floor where he claims he fell.”

6. There is no evidence that any further disciplinary action was taken against the Claimant in the wake of Sgt. Ramdeen’s recommendation. Now this Court is obviously not bound by the findings of Sgt. Ramdeen, but his conclusions which I find entirely reasonable, clearly supported the claimant’s version as to how he came to fall, as opposed to the version which Ramdeen rejected and which the State maintained some three (3) years later in the defence in these proceedings.
7. I have formed an unfavourable view of the conduct of the State in this matter. In his Statement of Case, the Claimant referred to Sgt. Ramdeen’s report. In its response the Defence claimed to be a stranger to the report and the State chose not to admit the contents of the investigative report. It went further to require the claimant once again, to prove how he fell.
8. In his preaction letter, the Claimant had specifically referred to the initiation of disciplinary proceedings against himself as well as the investigation and report of Sgt.

Ramdeen. One would have expected that the Defendant would have, upon receipt of the pre-action letter, taken steps to confirm that such an investigation had in fact been undertaken and to properly consider the outcome. It is not only unreasonable but unacceptable in my view that the State could have insisted on pursuing a defence which required the allocation of further judicial time and resources in the circumstances, on the issue, the place of the accident.

9. What concerns me is that the issue was determined by the report of Sgt. Ramdeen, in accordance with a statutory process. His report did not deal with the issue of negligence which is the second issue before the Court in these proceedings and it was entirely reasonable for the State to contest the matter of negligence here. But in determining the issue of the place of the accident, Sgt. Ramdeen was discharging an important regulatory statutory function.
10. By raising it again in these proceedings, the State was effectively ignoring it, or paying it insufficient regard. It was inviting the Court to come to a different conclusion. Therefore left to the Claimant to call the investigating officer as his witness. Sgt. Ramdeen was subjected to cross examination on his credibility by State Counsel even when his findings had not been previously challenged.
11. The State should not need to be reminded that there is nothing to be gained by undermining the very processes which the law provides for maintaining the trust and confidence of the public in the investigation of disciplinary charges and complaints in the Police Service.

12. As for my own assessment of Sgt. Ramdeen's investigation and report, I found no reason to disagree with his conclusion. I considered that on the material he had before him, the recommendation of no further action was entirely justifiable. I found his assessment of the statements and the importance he attached to absence of a contradictory report in the station diary by any other officer including the sole witness at this trial PC Barclay, as well as a failure by him or any other officer to identify the location of the parlour, was indeed reasonable. These were among the very matters that I have considered in similarly rejecting the version of the events set out in the Defence.

13. The absence of a report in the station diary about the alternative version of how the claimant allegedly fell is also a factor which caused me to reject the Defence. The only entry made by PC Leotaud was made on the face of it, after the Claimant left the station. If at that stage, there was already concern about a false report by the officer, so serious as to warrant disciplinary proceedings, one would have expected to find a record of that other version in the station diary. The insistence by the Defendant in calling PC Barclay to support the case which has already been properly rejected in the internal investigation did not impress me. This witness it seems to me could have identified the parlour, at which he believed the claimant reportedly fell. He could have directed Sgt. Ramdeen to it, but he did not do so, at any stage even prior to this trial.

14. PC Barclay's answer to me that he went to examine the area at the back of the police station where the Claimant claimed he had fallen, made no sense against the background of his assertion that he had observed the Claimant limping when he first returned to the

station whereupon he said he (the claimant) had fallen in the parlour. This raised a further question as to Mr. Barclay's credibility which I considered material to my assessment.

15. I also found the failure of the Defence to produce Ms. Lewis as a witness to be less than satisfactorily explained and I am prepared to draw adverse inferences from her absence. In the end I preferred the Claimant's account that he fell at the back of the station in an area to which he had access and which he was required to traverse and patrol in the ordinary course of his work as a police officer.
16. I return to the remaining issue which is whether the fall was caused by the failure of the Defendant to provide a safe place of work. The Claimant's case was that he fell in an area at the back of the building of the concrete floor which was wet. At paragraph 6 of this Statement of Case the Claimant quoted and relied on the station diary entry made by his colleague Cpl. Leotaud (Ag) :-

That entry read as follows: -

“At 12:50 pm. Today, No.10906 Cpl. Pariagsingh reported to No. 13296 Ag. Cpl Leotaud that he Cpl. Pariagsingh whilst walking to the back of the area of the La Brea Police Station at 12:45 pm today, skidded on a wet area to the floor and fell thereby causing injury to his lower back. As a consequence, Ag. Cpl. Leotaud enquired from him as to where he actually fell and Cpl. Pariagsingh showed him Ag. Cpl. Leotaud an area to the back of the station and Ag. Cpl. Leotaud reported having observed a wet area on the ground to the back of the station, about one foot from the back door in the vicinity of a black 400 gallon water tank, with the pvc water line affixed to the said tank and it appeared that the water may have leaked from that line seen on the ground. No other observations or evidence of his fall was seen.”

My understanding of this entry is that the leaking pvc line was on the ground.

17. The answers to this aspect of the claim were provided at paragraph 3 (e) of the Defence which states:

“At the back of the said police station, there is a water tank and the area is known to be wet and damp. The cleaner assigned to the said police station regularly mops the area and a red bucket and mop were placed under a pipe close to the wet area.

Sometime after the Claimant’s false report, both the bucket and the mop were removed from under the pipe. Upon observation of the area of the back of the said police station after the Claimant’s alleged fall, there were no signs of a skid impression or a fall. Also, the Claimant’s clothes were not wet.”

18. When this response is considered closely it is clear that the Defendant has not specifically answered the matters relating to the condition of the area where the Claimant said he fell. The claim of the leaking pvc “on the ground” was not answered and the allegation that a red bucket and mop were placed “under a pipe close to the wet area” were insufficient to deal with the specific allegations made by the claimant. They were in fact irrelevant. What the Defendant was left with on this critical aspect of the claim in effect was at best a bare denial.

19. In his witness statement, Barclay for the first time, introduced the existence of a small leak by “a tap” near the tank with an insertion that there was a bucket collecting water from the leak. This is very different to what was in fact pleaded. This produced a shift from the pleaded defence – which only went so far as to accept a damp area. It introduced the existence of something quite different, a leaking tap with a bucket under it. While I

am aware that in our dialect the words pipe and tap are sometimes used interchangeably, I did not consider that in this case this is what was intended by Counsel setting a defence in Court proceedings.

20. The departure from the pleaded case in so material an aspect caused me to further doubt the credibility of the Defendant's case. It encouraged me further to accept the claimant's account that he slipped on the floor which was sufficiently and unusually wet because of a leaking pvc pipe. Because of my assessment of the unreliability of the Defendant's evidence, I do not believe that the area was mopped by the cleaners as part of route cleaning.
21. In her submissions Counsel for the Defendant submitted, relying on a passage from *Winfield and Jolowic*, the 9th Edition, that the Claimant's claim should fail because he has not pleaded and proved what was a safe system of work. In the circumstances of this case, on the basis of the Claimant's account as well as from the admissions as to the state of the floor and from the findings of Sgt. Ramdeen, I considered it justifiable for me to draw the obvious inference, that the duty to provide a safe place of work requires an employer to prevent water from a leaking pvc pipe to escape on the floor so as to prevent officers slipping and falling.
22. But beyond this, the Claimant specifically pleaded several particulars of negligence including specifically such circumstances as a failure to adequately maintain the leaking pvc etc. How did the Defendant answer these at paragraph 8 of its Defence? What was pleaded in the defence amounted to be a bare denial. So for example the Defendant did not allege that it took any steps to address the problem. In those circumstances, as I

understand the law, this bare denial left no issue to be determined by the Court. The Claimant was not required to lead positive evidence in support of them.

23. But I found as a fact that the wetness / dampness which was caused water leaking from the pvc pipe, presented an unusual danger which rendered the Claimant's place of work and his work environment unsafe. On the pleadings no case of contributory negligence arose. The fact that the claimant fell in the circumstances of a leaking pipe on the ground was sufficient in my mind to establish a breach of the employer's common law duty of care. The provision of a safe system of work required the employer to take such steps as were reasonably required to maintain the pvc pipes in the area around the water tank. It required the employer to repair or seal up leaks in that pvc pipe that was on the ground. The provision of a bucket and mop kept close to the pipe somewhere in the general area if that was to be believed, was insufficient to discharge the duty of care in this case. I quite frankly do not believe that the area was generally mopped.

24. In the circumstances, I gave Judgment for the Claimant against the Defendant and ordered damages to be assessed by a Master sitting in chambers on a date to be fixed by the Registrar. I ordered the Defendant to pay the Claimant's costs on a prescribed basis the calculation of which was to be deferred to the conclusion of the assessment of damages.

Dated 10th day of April 2018

**CAROL GOBIN
JUDGE**