

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2021/0020

BETWEEN:

[1] Dolette Cyr Bartholomew
[2] Shem Pierre (In their capacity as administrators in the
estate of Peter Oscar Bartholomew, deceased)

Appellants

and

[1] Kenton Hazzard
[2] Edward Gibson
[3] Shaun Gannes
[4] Roddy Felix
[5] Wendel Sylvester
[6] Attorney General

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Mario Michel

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Derrick Sylvester and Ms. Alicia Lawrence for the Appellants
Mr. Adebayo Olowu for the Attorney General
No appearance for the 1st – 5th Respondents

2022: April 4

Civil appeal – Assessment of damages - Whether learned master erred in her assessment of damages - Aggravated damages - Injury to feelings - Whether the learned master erred in not awarding aggravated damages - Special damages - Whether the learned master erred in failing to make an award for special damages for the autopsy report - Whether the learned master erred in awarding only a nominal sum for the funeral expenses

REASONS FOR DECISION

- [1] **BAPTISTE JA:** This is the judgment of the Court in respect of an appeal against the master's assessment of damages in a bifurcated trial consequent upon a judge's finding of liability of four police officers for the death of Peter Oscar Bartholomew ("Bartholomew"). Bartholomew died as a result of serious injuries inflicted on him at a police station. The Attorney General was found vicariously liable for their action.

Background

- [2] At the assessment hearing, the master made various awards including loss of income of EC\$937,463.39 and EC\$10,000.00 for pain and suffering and loss of amenities. Nominal damages were awarded in the sum of EC\$4,000.00 with interest thereon at the rate of 3% per annum from the date of the incident to the date of judgment on assessment, for funeral expenses. No award was made for aggravated damages, neither for special damages for an autopsy performed by Dr. Daisley, a forensic pathologist.
- [3] The appellants, the executors of the estate of Bartholomew, appealed the award of the master as it relates to (1) the failure to make an award for aggravated damages, and (2) the failure to award special damages of EC\$53,400.00 in respect of an autopsy report; and (3) granting the sum of EC\$4,000.00 as nominal damages for funeral expenses, a sum they consider unreasonably low, instead of the amount of EC\$19,682.50 as pled.
- [4] The appellants seek an order from this Court that the order of the master in respect of special damages be set aside and substituted for an order that the appellants are awarded special damages in the amount of EC\$19,682.50 for funeral expenses and EC\$53,400.00 for the autopsy report, totalling EC\$73,082.50 and aggravated damages in the sum of EC\$100,000.00.

[5] This appeal represents a challenge to the master's discretion in awarding damages and thus, engages the established principles governing appellate interference with such an exercise. The chariness of a Court of Appeal to interfere with the amount of damages commending itself to a judge doing the assessment, is well established. Appellate interference would require a conclusion that the judge or master conducting the assessment, erred in principle or made an award so inordinately low or so unwarrantably high, that it cannot be permitted to stand.¹

[6] As Greer LJ stated in **Flint v Lovell**:²

“In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”

[7] An Appellate Court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. It must be satisfied either that the judge, in assessing damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.³

Grounds of appeal

[8] This Court will consider the appeal, mindful of the limitations indicated. In seeking to assail the master's award, the appellants contended on appeal that:

(a) The master misdirected herself in law in failing to apply the correct principles to determine whether an award for aggravated damages was appropriate in all the circumstances, in that the basis for refusing to award

¹ See *Terrence Calix v Attorney General of Trinidad and Tobago* [2013] UKPC 15 at paragraph 28.

² [1935] 1 K.B. 354 at 360.

³ Per Viscount Simon in *Nance v British Columbia Electric Rly Co Ltd* [1951] AC 601 at 613.

such damages was whether the defendants' actions were actuated by malice.

- (b) The master erred in failing to exercise her own independent judgment of the facts and evidence before her at the assessment hearing to determine whether the conduct of the respondents aggravated the injury caused to the deceased.
- (c) The master erred when she simply concluded that the learned judge had not made any findings or pronouncements on the issue of malice, spite or ill will so that there is nothing that she could utilise to make an award of aggravated damages.
- (d) The master erred in law in failing to award the special damages of US\$20,000.00 in respect of the autopsy report of Dr. Daisley. The master failed to recognise that the autopsy report was a debt owed by the claimants, albeit not yet paid by them. The master failed to consider that the defendants did not deny the sum pleaded as special damages in the autopsy report in their defence but only sought to challenge the sum by way of submissions at the assessment hearing; and
- (e) The sum of EC\$4,000.00 awarded as nominal damages for the cost of the funeral was unreasonably low. The master failed to consider that the sum of EC\$19,682.50 pleaded as special damages for funeral expenses was not denied by the defendants but was only challenged by way of submissions filed at the assessment hearing.

Aggravated damages

- [9] The ground of appeal relating to the failure to award aggravated damages falls to be considered. Before the master, the claimants contended that the deceased's estate was entitled to aggravated damages for the injury to feelings, mental distress, indignity, and humiliation that he would have suffered from being arrested and severely beaten without cause. Further, the conduct of the defendants

demonstrated malice, spite and ill will and a total disregard for the life and liberty of the deceased. Counsel for the Attorney General had argued that the learned judge made no pronouncement that the servants of the Crown were actuated by malice, spite or ill will and as such this disentitled the claimants to an award for aggravated damages.

[10] The master opined that aggravated damages are awarded in cases where the conduct of the wrongdoer is malicious and humiliating and is awarded to redress special injury to the innocent party's dignity or pride. The master went on to say that **Rookes v Barnard**⁴ identifies two components germane to the determination of an award for aggravated damages: first, exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, that is, injury to personality.

[11] The master stated that "... the sixth defendant [the Attorney General] argues that no pronouncement was made by the learned trial judge that servants of the Crown were actuated by malice, spite or ill-will and as such this disentitles the claimant[s] to such an award." The master stated, "I am inclined to agree with counsel for the sixth defendant." The master accepted the Attorney General's argument that the learned judge made no findings or pronouncements on the motives of the defendants or whether their actions were malicious or egregious. The learned judge made no comment on the actions of the defendants which would ground an award for aggravated damages. Further, the learned judge made no comments on the actions of the defendants which she could utilise to make an award for aggravated damages. Moreover, the claimants were not present in the interrogation room with the deceased and as such could not give evidence on what occurred during that time.

[12] The learned master opined that although the injuries sustained appeared to have been extensive, this is not sufficient to warrant an award of aggravated damages.

⁴ [1964] A.C. 1129.

Further, in accordance with the authority of **Richardson v Howie**⁵ which adjudged that it was 'no longer appropriate to characterise the award for damages for injury to feeling as aggravated damages' as well as the fact that these were pertinent considerations in the quantum of damages awarded for pain and suffering and loss of amenities, declined to make an award for aggravated damages.

- [13] Mr. Sylvester, the appellants' counsel, submitted that the master abdicated her responsibility in assessing aggravated damages when she agreed with the 6th respondent that the trial judge made no pronouncement that the respondents were actuated by malice, spite or ill-will thus disentitling the claimants to such an award. Counsel noted that the trial was bifurcated. The judge determined liability and forwarded the assessment of damages to the master; thus, the assessment of damages fell squarely within the domain of the master.
- [14] Learned counsel further submitted that **Richardson v Howie** was not authority for the proposition that aggravated damages must in every circumstance be included in general damages. Further, the learned master seemed to apply a universal principle in relation to **Richardson v Howie** thereby negating the circumstances via which an award for aggravated damages should be awarded separately.
- [15] Mr. Sylvester also contended that the master was free to examine the multiplicity of injuries highlighted by Dr. Daisley in his evidence placed before the court to make a determination as to the conduct and motive and therefore award aggravated damages. This, counsel asserted, the master failed to do.
- [16] Mr. Olowu, counsel for the Attorney General, highlighted that the evidence put before the court for the assessment was substantially the same as that put before the court at the trial on liability. The claimants led no evidence as to what occurred at the interrogation room and as such, the master was entitled to find that no evidence was led as to how the deceased felt before his death so as to enable her

⁵ [2004] EWCA Civ 1127.

to make any findings that the deceased was humiliated, or his feelings injured. In the circumstances, learned counsel submitted that the decision of the master to refuse to make a separate award for aggravated damages could not be faulted.

[17] Learned counsel also pointed out that the learned judge made no finding that the respondents were actuated by malice, spite or ill-will. No egregious conduct was attributed to the servants of the Crown. The master did not hear or receive any separate or additional evidence as to their motives so as to enable a different finding of their motives to have been made on the assessment of damages. In the circumstances, counsel submitted that the master was unable to make any findings or pronouncements on the motives of the defendants or whether their actions were egregious or malicious. Mr. Olowu asserted that although the finding was profound, there was no other evidence before the court at the assessment hearing regarding that matter. Further, the appellants did not present any evidence after the trial, at the assessment hearing to support an award of aggravated damages or to enable the master to depart from the pronouncement of the trial judge. Mr. Olowu submitted that in the circumstances, the decision of the master not to make any additional award for aggravated damages is in order.

[18] It would be useful at this stage to consider the basic principles governing an award of aggravated damages. In **Thompson v Commissioner of Police of the Metropolis**,⁶ the court stated that aggravated damages are:

“...awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or prosecution which showed that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution...”

⁶ [1997] EWCA Civ 3083.

[19] In **Commissioner of Police of the Metropolis v Shaw**,⁷ the court stated that aggravated damages are compensatory in nature and not punitive. The features that may attract an award of aggravated damages may be classified under three heads – (a) the manner in which the tort was committed, (b) the motive for it; and (c) the defendant’s conduct subsequent to the tort but in relation to it. These features affect the award of compensation because they aggravate the distress caused by the actual wrongful act.

[20] The issue of aggravated damages was also considered in **Phonographic Performance Ltd v Ellis (t/a Bla Bla Bar)**.⁸ Lewison LJ stated at paragraph 11:

“Aggravated damages are damages awarded for a tort as compensation for the claimant’s mental distress, where the manner in which the defendant has committed the tort, or his motives in so doing, or his conduct subsequent to the tort, has upset or outraged the claimant. Such conduct or motive aggravates the injury done to the claimant, and therefore warrants a greater or additional compensatory sum.”

[21] In **TVZ and others v Manchester City Football Club**⁹ the court stated at paragraphs 370 to 371 that aggravated damages are compensatory, not punitive. The court noted that the potential for overlap between the scope for general damages and aggravated damages makes it important to guard against over-compensation. If separate awards are made for general damages and aggravated damages, then there is a danger of double recovery.

[22] The reasons for the master’s decision not to award aggravated damages are set out in paragraphs 69 and 70 of her decision. The master agreed with Mr. Olowu that the learned judge at the liability hearing made no findings or pronouncements on the motives of the defendants or whether their action was malicious or egregious. The master went on to say that save for the judge’s statement that she found the defendants to be less than honest and therefore did not believe their

⁷ [2012] ICR 464, at paragraph 16.

⁸ [2018] EWCA Civ 2812.

⁹ [2022] EWHC 7 (QB).

version of events, the judge made no comment on the actions of the defendants which she (the master) could utilise to make an award for aggravated damages.

[23] In our respectful view, the learned master erred in principle in adopting that approach. The learned master seemed to have been influenced in part by the lack of findings of the learned judge on certain issues. However, the learned judge and the master were addressing different matters. The trial was bifurcated. The judge dealt with liability, the master with the assessment of damages. While the respondents' counsel emphasised that the evidence at the assessment mirrored that at the trial, the focus of the master had to be on the assessment and the available evidence before her in support thereof. The master's remit was to assess damages on the evidence before her as it related to the assessment. In that regard, it is our respectful opinion that the learned master misdirected herself and fell into error in relying on the absence of comment by the learned judge at the liability hearing, on the actions of the defendants, as a basis to influence, in this case deny, an award of aggravated damages.

[24] Bartholomew's wife gave evidence of the police taking him inside the police station. She heard sounds of a struggle coming from the room in which he was being held. He said he wanted a lawyer. He screamed her name. This was followed by groaning. An officer entered the room where he was being held with a truncheon. A long scream soon followed from the deceased. About an hour and 20 minutes after the deceased was brought to the police station, a doctor arrived. When the doctor opened the door, she (the wife of the deceased) saw him lying on his back on the ground unconscious with his feet bound with a belt and his hands handcuffed. Bartholomew died at 8 the following morning.

[25] Dr. Daisley, an experienced clinical and forensic pathologist had conducted over 1000 autopsies. He examined the deceased and found that he had suffered numerous abrasions, contusions, and lacerations about his body. There were multiple blunt force injuries involving his upper and lower limbs. There was also

extensive subdural haemorrhage of the right temporal and parietal lobes of the brain causing marked oedema of the underlying brain and coning. Dr. Daisley concluded that the deceased died from blunt force trauma to the skull caused by extensive subdural haemorrhage involving the right side of the brain, multiple skull bone fractures and had raised intracranial pressure and aspirated.

- [26] The master also stated that although the injuries sustained by the deceased appeared to have been extensive, this is not sufficient to warrant an award of aggravated damages. In making the award of EC\$10,000.00 for pain and suffering and loss of amenities, the master had noted the deceased was severely beaten by servants of the Crown resulting in severe and significant bruising, contusions, and lacerations all over his body. The master considered that, in particular, the deceased would have been in severe pain prior to being rendered unconscious; the repeated unlawful battery which the court estimated to be about an hour would have increased the level of pain felt; and the mental distress and anxiety the deceased must have felt, being beaten and restrained.
- [27] The master was thus clearly accepting that the extreme violence inflicted on the deceased would, among other things, have occasioned mental distress and anxiety. The law is that the manner of the execution of the tort is a factor which can attract an award of aggravated damages for mental distress.
- [28] In the Court's judgment, the conduct of the police in unleashing extreme violence on the deceased leading to the injuries and death as detailed by Dr. Daisley - profoundly critical evidence - leads inescapably to the conclusion that such conduct aggravated the injury done to the deceased, and therefore warrants an additional compensatory sum. The claimants only received a basic award of EC\$10,000.00 for pain, suffering and loss of amenities. The conduct of the police officers showed that they had behaved in a humiliating and oppressive manner. It warranted an award above a basic compensatory award, that is, a greater or additional compensatory sum.

[29] In declining to make an award for aggravated damages, the learned master also relied on **Richardson v Howie**. The master stated that the authority of **Richardson v Howie** adjudged that it was 'no longer appropriate to characterise the award for damages for injury to feeling as aggravated damages' as well as the fact that these were pertinent considerations in the quantum of damages awarded for pain, suffering and loss of amenities.

[30] In **Richardson v Howie**, a case of a single (non-consensual) assault resulting in lacerations, scarring and bruising, the judge made an award of £10,000.00 including £5,000.00 as aggravated damages. The court of appeal reduced the award to £4,500.00 pounds. Thomas LJ said, at paragraph 23:

"It is and must be accepted that at least in cases of assault and similar torts, it is appropriate to compensate for injury to feelings including the indignity, mental suffering, humiliation or distress that might be caused by such an attack, as well as anger or indignation arising from the circumstances of the attack. It is also now clearly established that aggravated damages are in essence compensatory in cases of assault. Therefore...a court should not characterise the award of damages for injury to feelings, including any indignity, mental suffering, distress, humiliation or anger and indignation that might be caused by such an attack, as aggravated damages; a court should bring that element of compensatory damages for injured feelings into account as part of the general damages awarded. It is, we consider, no longer appropriate to characterise the award for the damages for injury to feelings as aggravated damages, except possibly in a wholly exceptional case."

[31] In **Hugh Martins v Mohammed Choudhary**,¹⁰ the judge made separate awards for injury to feelings and psychiatric damages (but no separate award for aggravated damages) in a harassment case. On appeal, Smith LJ noted the different approaches in **Richardson v Howie** 'in the context of a case of modest damages for assault' and **Vento v Chief Constable of West Yorkshire Police (No 2)**¹¹ where the Court of Appeal upheld an award of the Employment Tribunal in a discrimination case, which comprised separate sums for injury to feelings,

¹⁰ [2007] EWCA Civ 1379.

¹¹ [2002] EWCA Civ 1871.

psychiatric damage, and aggravated damages. In **Hugh Martins** LJ Smith said at paragraphs 18 – 20:

“[18]...I would venture to suggest that there should be no hard and fast rule about whether separate awards should be made. It will all depend on the facts of the individual case. If, for example, as is sometimes the case, the psychiatric harm is very modest and to all intents and purposes merges with the injury to feelings, it will plainly be more convenient to make one award covering both aspects. If, as here, where the psychiatric injury is not insubstantial, it is positively helpful to the parties (and to this court) if the judge separates the award for psychiatric injury from that for injury to feelings...However, I do accept that there is a risk of double recovery by overlap if two awards are made and the judge must take care to avoid that.

[19] In the present case, I think the judge was justified in making separate awards as she did. Moreover, she warned herself to avoid double recovery by overlap...

[20] ... the judge did not make separate awards for injury to feelings and aggravated damages. ... I think she was right not to do so. It seems to me that, in the context of a case of this kind (and for that matter in a discrimination case) where damages fall to be awarded for injury to feelings, the quantum of damage should reflect the aggravating features of the defendant's conduct as they have affected the claimant. As 'aggravated damages' are supposed to be compensatory, that seems to me to be the most satisfactory way of dealing with them. If a separate award of 'aggravated damages' is made, it looks like punishment; in other words it looks like exemplary damages. I appreciate that differing views have been expressed on this issue in this court. I have expressed my view and, in the context of the appeal, it is obiter.”

[32] Lord Clarke MR added at paragraph 28:

“All thus depends upon the circumstances but, absent identifiable psychiatric injury there is much to be said for the approach in *Richardson v Howie*. Whichever course is adopted, it is of course important to avoid double counting, and as indeed the judge did in the present case.”

[33] In **TVZ and others v Manchester City Football Club** the court stated at para 375:

“These authorities [*Richardson v Howie*, *Vento v Chief Constable of West Yorkshire Police (No 2)* and *Hugh Martins*] do not lay down a blanket inflexible rule that there should be a single award for all non-pecuniary losses. The appropriate way of structuring an award will depend on the particular circumstances of each case, always taking account of the need to ensure full compensation but to avoid double recovery and to explain how the award has been calculated. In a straightforward assault case where the injuries are minor (as in *Richardson*) a single award may be appropriate, and the making of a separate award for aggravated damages may give the (erroneous) impression that the aggravated award is intended to punish. In cases where the only loss is injury to feelings then, again, it may be appropriate to make a single award to include any element that might otherwise be covered by aggravated damages. Here, however, it seems to me that damages for the abuse itself, and damages for any psychiatric disorder that flowed from it, are more appropriately assessed as separate awards to reflect what are two conceptually different forms of loss which can be distinctively addressed.”

[34] This Court accepts that **Richardson v Howie** does not lay down a blanket inflexible rule that there should be a single award for all non-pecuniary losses. In so far as the master relied on **Richardson v Howie** as a basis for denying aggravated damages, she would have erred. The Court also accepts that there is no hard or fast rule whether separate awards should be made. It all depends on the facts of the particular case. All the circumstances of the case should have been looked at in deciding the appropriate way to structure the award. The Court also recognises that the appropriate way of structuring an award will depend on the circumstances of each case, but always taking account of the need to ensure proper compensation but to avoid double recovery.

[35] There are aggravating features about this case which would result in the claimants not receiving sufficient compensation if the award were restricted to a basic award. This was not a case where the injuries were minor and a single award appropriate. The injuries as detailed by the pathologist, were not insubstantial. This was an exceptional case of extreme violence by the police leading to death. Neither was it a case where the making of a separate award for aggravated damages may give the (erroneous) impression that the aggravated award is intended to punish. This

was not a case where the only loss is injury to feelings where it may be appropriate to make a single award to include any element that might otherwise be covered by aggravated damages. There was much more than a loss of injury to feelings.

- [36] In looking at the circumstances of this case, including the oppressive conduct of the police officers, the manner in which they acted, the extent of the injuries they inflicted leading to death, the humiliation and mental stress, a separate award for aggravated damages should have been made. An award of EC\$60,000.00 would be reasonable as aggravated damages. This sum would not be punitive but represents reasonable compensation and there would not be double counting.

Special damages

- [37] As it pertains to the special damages, Mr. Sylvester, the appellants' counsel, invited the Court to set aside the master's order with respect to special damages and substitute the amounts of EC\$19,682.50 as funeral expenses and EC\$53,400.00 for the autopsy report, making a total sum of EC\$73,082.50.
- [38] The learned master noted that EC\$73,082.50 was claimed, representing the aggregate cost of funeral expenses and an autopsy. In respect thereof, invoices were exhibited. In rejecting the amount claimed, the master stated that special damages are damages which are capable of precise calculation and must be specifically pleaded and proved. In order for these damages to be recoverable, satisfactory evidence must be adduced by the claimants to prove that these expenses have been incurred.
- [39] In relation to the costs of the autopsy, the master noted the doctor's evidence that he had not been paid. The master concluded that the invoice therefore only represented sums due for services performed and were not evidence of payment. There being no incurred expense, the cost of the autopsy was not recoverable as special damages.

- [40] The master rejected the sum claimed as funeral expenses, indicating that the claimants only provided an invoice. The master stated that an invoice, unlike a receipt, is not proof of payment; it is only an acknowledgement of a debt. The master relied on **Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited**,¹² where it was accepted that neither an invoice which does not bear the words 'paid' thereon nor a proforma invoice which is a commitment to purchase, were a receipt or proof of payment. The master reasoned that it is therefore insufficient for the claimants to simply provide unendorsed invoices as satisfactory proof entitling a party to special damages. The documents submitted by the claimants have failed to meet the strict proof required and therefore are not subject to recovery.
- [41] The master stated that in the absence of proof, reasonable and nominal damages may be granted. Where loss is shown, but necessary evidence as to its amount is absent, the court can award nominal damages.¹³ The master accepted that the claimant would have incurred expenses associated with the burial of her husband and proceeded to award nominal damages of EC\$4,000.00. No award was made for the autopsy performed by Dr. Daisley.
- [42] The law on special damages is well settled. Special damages must be pleaded and proved with proper particularity. In **Uris Grant v Motilal Moonan**,¹⁴ the court drew a distinction between the fact of damage and the proof of damage. If the fact of damage is proved but not the amount, then the court could award nominal damages. The method and sufficiency of proof of special damage must depend on the particular circumstances of the case.
- [43] Mr. Sylvester posited that Dr. Daisley's submission of an invoice which was not challenged in cross-examination, was sufficient to satisfy the above test in **Motilal**.

¹² Civil Appeal No. 178 of 2005.

¹³ See *Greer v Alston's Engineering Sales and Services Ltd.* [2003] UKPC 46.

¹⁴ CA 162 of 1995.

In any event, nominal damages could have been awarded. The Attorney General challenged the ability to prove special damages.

[44] Mr. Olowu submitted that there being no payment, no proof of payment and no evidence that the claimants owed any debt or payment to Dr. Daisley, there was no basis upon which an award of special damages for any sum could have been made and there was no basis to disturb the master's refusal to make any award regarding same.

[45] As stated in **Motilal**, the fact and sufficiency of proof depends on the circumstances of the case. Dr. Daisley, a clinical and forensic pathologist examined the deceased at the funeral home on 31st December 2011. The fee for the service performed was US\$20,000.00. He testified that he has not been paid for his services. In circumstances where Dr. Daisley had performed the autopsy and had submitted an invoice of US\$20,000.00, which was not challenged in cross-examination, the fact that he had not yet been paid at the time he gave evidence, did not disentitle the claimant from being awarded, special damages.

[46] There is no issue that Dr. Daisley had examined the deceased. For the reasons given, the master erred in not making an award of US\$20,000.00 as special damages in respect of the autopsy. In the circumstances this Court makes the award.

[47] The Court recognises that the award of damages was a matter within the master's discretion and this Court would not interfere unless the award exceeded the generous ambit within which reasonable disagreement is possible. We cannot say that the amount of EC\$4,000.00 for funeral expenses was inordinately low. It was within the discretion of the master. With respect to the funeral expenses, we find no reason to disturb the master's award of nominal damages. The amount awarded is affirmed.

Order

[48] It is ordered that:

- (1) The appeal is allowed to the extent that the damages awarded by the learned master are increased to include (a) an award of EC\$60,000.00 as aggravated damages; (b) and EC\$53,400.00 in special damages in respect of the autopsy report.
- (2) The master's award of EC\$4,000.00 in respect of the funeral expenses is affirmed.
- (3) Prescribed costs to the appellant on the total damages awarded in the court below as varied by this Court in paragraph 1 of this order; and on appeal, two-thirds of the prescribed costs in the court below as varied by this Court.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar