

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT & THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2008/0326

BETWEEN:

DEAN ENVILLE A.K.A BRIAN ENVILLE

Claimant

and

**[1] The Honourable Attorney General of Saint Vincent and the
Grenadines**

[2] The Commissioner of Police

[3] Police Constable Biorn Duncan

[4] Police Sergeant Sherrol-Lee James

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Patricia Marks of counsel for the claimant

Ms. Michelle Davidson of counsel for the defendants

2013: December 12;
2014: June 5.

JUDGMENT

[1] **ACTIE, M. [AG.]:** On 4th February 2013, Thom J. entered judgment for the claimant with damages to be assessed.

Background

[2] On the night of 14th May 2008, members of the Royal St. Vincent Police Force were on patrol and conducted a search on the claimant. The police found \$5,400.00 Barbados currency and a Silver Sony Ericson mobile phone on the

claimant. The claimant was arrested, taken to the Central Police Station and handed over to the Criminal Investigation Department where he was interviewed by Sergeant Sherrol-Lee James who suspected the claimant was engaged in drug trafficking. The claimant was kept overnight and on the following day a search was conducted at a house which the claimant identified as his home but nothing incriminating was found. The claimant was taken back to the Criminal Investigation Department. The claimant said that the fourth defendant asked him if he thought they were fools. She then told Corporal Duncan to take him in the room and teach him a lesson. Corporal Duncan grabbed the claimant by his shirt, took him into a bathroom and gave him several blows about his body with his fists. The claimant tried to raise his hand to defend the blows and Corporal Duncan pulled his gun from his waist and said "you want me to buss yuh face?" The claimant states that Corporal Duncan rushed towards him and stamped his foot into his groin. He bent over in pain. Corporal Duncan then grabbed the back of his head and pushed his head to the floor of the bathroom and told him to lick the floor but he twisted his face. Later that morning he was in pain when visited by his family. He was released after lunch and went directly to Dr. Dougan who gave him pain killers and sent him home. The pain intensified during the night. The claimant states that he was examined the following morning by Dr. Goodluck who summoned an ambulance to take him to the hospital where he was admitted.

- [3] The matter came before Thom J on 4th February 2013. The claimant did not pursue his claim for the wrongful and unlawful arrest and false imprisonment. Thom J. dismissed the claim against the fourth defendant and entered judgment for the claimant with damages to be assessed.

Damages

- [4] The claimant seeks the restitution of his cell phone, general, aggravated and exemplary damages for false imprisonment, assault and battery and assault occasioning grievous bodily harm.

Special Damages - Restitution of the Phone

- [5] The claimant claims restitution and loss of use of one black and silver Sony Erickson Mobile phone valued at EC\$800.00. The claimant alleges that he has been denied the use of the phone and is unclear whether the phone is still functional being in possession of the Financial Services Unit for over four and a half (4 1/2) years.
- [6] The defendants admit having the mobile phone in their possession but state that at no time was the claimant denied access to the phone. The defendants contend that the phone has always and is still available to the claimant. The defendants further contend that liability in relation to the cell phone has not been established and if established should be proven. The defendants rely on the authority of **British Transport v Gourley**¹ and **Heerallal v Hack Brothers (Construction) Ltd**².
- [7] It is a well-established principle that special damages must be pleaded and proved. However nominal damages may be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given.
- [8] The claimant has not furnished any evidence of the value of the phone. However the failure to provide evidence of value should not be a bar to compensation. Barrow J in **The Attorney General of Antigua and Barbuda v Cyril Thomas Bufton**³ states:
- “the failure of a claimant or counsel to provide evidence of value does not mean however, as counsel for the Government seemed to think, that the court is inescapably driven to refuse any amount for an undoubted loss”.
- [9] The court will not deny compensation in a clear case where a party has suffered loss but is unable to substantiate that loss with palpable evidence. I take into

¹ (1953) 3 All ER 803

² (1977) 24 WIR 117

³ Antigua & Barbuda Civil Appeal No. 22 of 2004 delivered on 6th February 2006:

account the length of the delay, the fact that the phone may not be of any utility to the claimant having been inactive in excess of four years, the loss of the plan which the claimant may have had with the telecommunication provider, the costs of replacement if dysfunctional and make a nominal award of \$800.00 for the value and loss of use of the phone. I also order that the mobile phone for what it's worth be returned to the claimant.

General Damages

[10] The claimant seeks damages for assault and battery. It is trite law that awards of damages in assault and battery cases resulting in bodily injuries are arrived at by the same channel as in any claim for personal injury. The usual principles in assessing damages for personal injuries would apply as set out in the seminal case of **Cornilliac v St. Louis**⁴. Sir Hugh Wooding, CJ listed the main factors to be taken into account as (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities, if any; and (iv) the extent to which pecuniary prospects are affected. These limbs have been considered against the backdrop of the evidence presented to determine the appropriate award as well as other guiding principles on assessments.

[11] An award of damages for pain and suffering is incapable of exact estimation and an assessment must necessarily be a matter of degree based on the facts of each case. Lord Hope of Craighead in **Wells v Wells**⁵ states:

“The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's basic estimate of the plaintiff's damage”.

[12] The nature and extent of the claimant's injuries are outline in several medical reports of Dr. Goodluck. In his report dated 19th May 2008, Dr. Goodluck states

⁴ (1965) 7 WIR 491

⁵ [1998] 3 All ER 481

that the claimant was experiencing severe pains predominantly to the left groin and the lower back at the examination. Following the initial assessment the claimant was subsequently referred to the Milton Cato Memorial Hospital for further consultation where he was hospitalised and then discharged a few days later with recommendation for clinical follow-up at his district medical clinic. The claimant has been assessed and managed on multiple occasions for the same complaints at the district clinics over the past five years. The claimant was diagnosed with “chronic exacerbated soft tissue inflammation of the left groin and cremasteric musculature. The claimant further also alleges that his sexual performance has decreased since the incident which in turn has impacted his relationship with his girlfriend. The claimant further alleges that his social life is also affected as he is unable to go out as much as before to dances and other events that require him to be on his feet for long periods. Ms. Marissa George, the claimant’s girlfriend in examination-in-chief supports the claimant’s contention.

The defendant objects to the reliance on the medical report of Dr. Goodluck filed on 14th October 2013 as he was not cross examined during the assessment of damages. The court notes the defendant filed a Form 31 giving notice of intention to cross- examine the claimant and Marissa George. The defendants did not make a request to cross examine Dr. Goodluck whose evidence was already on file.

- [13] The parties have submitted cases for guidance. Counsel for the claimant has suggested the authority of **(1) Shayne Richardson v Ag of Anguilla and Edison Charles⁶**:- in that case a police officer grabbed the claimant by his shirt sleeve and pulled him to his feet in a standing position and began to choke him. The officer then flung the claimant against the police vehicle then grabbed the claimant’s left arm and spun him into the road. The claimant who suffered pain though no bruising or other physical sign of trauma to his neck and throat or other parts of the body was awarded damages in the sum of \$6000.00 for assault and

⁶ AXAHCV2008/0012 delivered on July 7,2008

unlawful search. The claimant in the case at bar states that the nature of the injuries suffered by the claimant in the case at bar is more severe than **Shanyne Richardson's** case and seeks an award of \$25,000.00.

[14] The defendant in response states that the authority of **Shanyne Richardson** does not offer support to the claimant's claim of \$25,000.00. The defendant states that the court should strive for a measure of uniformity of awards as is reasonably practicable, as the damages awarded should be in keeping with comparable awards made in St. Vincent & the Grenadines. The defendants cite the cases of:

(1) **Hadley et al v Attorney General et al**⁷ where an award of \$5,000.00 was made for injuries were termed as serious and life threatening.⁸ - The claimants were involved in an altercation with the police. An award in the sum of \$5,000.00 for pain and suffering and loss of amenities was made to the claimant with the most severe injuries. The defendant also referred to **Browne v The Attorney General et al** where a similar award was made.

(2) In **Asquith Mc Lean v Sheldon Bynoe**⁹ - The defendant struck the claimant with a cinder block to the left side of his head. The claimant sustained a 4 cm laceration to the left region of his scalp, was treated and discharged but was subsequently admitted and remained in hospital for six (6) days for observation after complaining of headaches, vomiting and light headedness. Master Lanns in 2009, awarded the sum of \$15,000.00 for pain, suffering and loss of amenities.

(3) In **John v The Attorney General et al**¹⁰ the plaintiff suffered injuries at the hands of police officers following an arrest. The court awarded general damages in the sum of \$7,500.00 for injuries suffered.

⁷ Decided on 4th August 200.

⁸ SVGHCV 2000/022 delivered on 4th August 2000.

⁹ SVGHCV 2006/463 delivered on 3rd July 2009.

¹⁰ GND 1996/007 delivered on 28th March 1996

(4) The defendants also cited the cases of **Byron Williams v David Howe**¹¹; **Christopher McMaster v the Attorney General**¹²; **Carlton Greer v Alstons Engineering Sales and Services**.

The defendants contend that an award of \$5,000.00 for general damages would be just in the circumstances.

[15] I am guided by the decisions and notes the awards made in **Shayne Richardson v The Attorney General of Anguilla** and **Asquith Mc Lean v Sheldon Bynoe**. I am mindful of the fact that the nature of the injuries suffered by the claimant is more severe than the injuries suffered at the hands of the police officers in the **Shayne Richardson's** case. I also take into consideration the USD conversion rate and the fact that the decision was made in 2009. I also consider that the injuries in the **Asquith's** case were more severe than the injuries in the case at bar but also notes that the decision was made in 2009 and the rate of inflation since the decisions. I take into consideration the fact that the injury in the groin area has severely impacted the claimant who has been in continuous pain since the injuries were inflicted and make an award of \$20,000.00 for pain and suffering and loss of amenities with an upward lift for aggravated damages.

Loss of Future Earnings

[16] The claimant asserts that his work performance and earning capacity have been severely impacted since the injuries. The claimant has also been advised by his medical doctor to decrease from strenuous physical activities. He is unable to perform his job as a labourer which requires a lot of bending, lifting and standing for long periods which he now has difficulty doing as a result of the injury. The claimant states that he was employed as a labourer earning \$50 to \$100 per day depending on the job. The claimant claims to have lost about \$100,000.00 in earnings since the injuries. The claimant's assertions are unsubstantiated.

¹¹ DOMHCV2011/0178 delivered on 24th August 2012

¹² SVGHCV2009/0326 delivered on 3rd June 2011

[17] The defendants' state that the assessment of future loss is speculative as there must be evidence to establish the loss.¹³ The defendants contend that the claimant's injuries do not permanently limit his ability to earn wages and as such, an award for future loss of earnings should be refused. The defendants rely on the decision of **Philmore Skepple v Joseph Weeks**¹⁴. It is conceded that the medical reports on which the claimant rely do not attribute permanent disability. However the court notes the medical report of 27th August 2013 where the claimant was advised to decrease strenuous physical activity. The court also noted the claimant's discomfort during examination-in-chief at the hearing of the assessment of damages. The claimant's witness statement states that he is in continuous pain and is unable to stand for long periods. His evidence was buttressed by his witness Ms. Marissa George, the claimant's girlfriend.

[18] In **Christopher McMaster v The Attorney General et al**¹⁵ Lanns M. relying on **Greer v Alstons Engineering Sales and Services Ltd**¹⁶ stated:

"The fact that the claimant is unable to prove his earnings by way of salary slips etc, is no bar to him recovering special damages. Although he cannot prove loss of earnings, so long as he has shown that he has suffered a loss, he can still be awarded a nominal sum which is not out of scale".

[19] The claimant states that he was employed as a labourer earning \$50 to \$100 per day depending on the job. This type of job requires a lot of binding, lifting and standing for long periods which he now has difficulty doing due to the pain as a result of the injury. The claimant further avers that he does odd jobs and as a result is not able to provide any salary slips.

[20] Pecuniary loss generally forms the principal head of damage in personal injury actions. It consists primarily of pre-trial earnings and prospective loss of earnings commonly called loss of future earnings. As **McGregor on Damages 18th**

¹³ Adda International Ltd v Curio [1976] 3 All ER 620.

¹⁴ ANUHCVP2009/010 delivered on 23rd July 2009.

¹⁵ SVGHCV2009/00326 delivered on 3rd June 2011.

¹⁶ [2003] 63 WIR 388.

Edition¹⁷:

“the function of the pecuniary heads of loss is to ensure that the claimant recovers, subject to the rules of remoteness and mitigation, full compensation for the loss that he has suffered”.

The general method of assessment is the well-known multiplier/multiplicand method applied by taking the amount which the claimant has been prevented by injury from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it (multiplier). To reach a figure for the award of a lump sum, the normal method of assessment which is used by the courts, is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the claimant's pre-accident “take-home” pay. This is to be used as the multiplicand.

- [21] The defendants suggest an award of \$40 a day as the multiplicand and a multiplier of 2 as the claimant was not regularly employed and as such had no job security in the future. I accept that the claimant as a labourer did odd jobs for which he cannot provide evidence of payslips. It appears from the evidence that the claimant performs sporadic tasks and is not in fulltime employment as a labourer. In the circumstances I concede with the defendants' suggestion of \$40 a day for 5 days a week as a daily paid worker making a monthly award of \$800.00 making a multiplicand of \$9600. The claimant states that he was 30 years at the time of the injury. Taking into account the vicissitudes and uncertainties of life I consider a multiplier of 15 years. In keeping with the decision of **CCAA Limited v Julius Jeffery**¹⁸ I would discount the award by 20%. Although the evidence indicates that the claimant has been advised to avoid strenuous work. There was no evidence of permanent disability. Accordingly an award in the sum of \$144,000.00 less 20 % is discounted.

¹⁷Paragraph 35-056.

¹⁸ SVGHCAVAP 2013/10.

Exemplary Damages

- [22] The claimant seeks exemplary damages against the defendants. It is accepted in the seminal case of **Rookes v Bernard** that exemplary damages can be awarded where the offender's behavior amounted to oppressive, arbitrary and unconstitutional action and a court wants to show its displeasure. These terms must be read disjunctively. The offending act must have been done by one exercising government power and the award would only be given if compensatory damages are inadequate to punish the defendant or deter others and mark the court's disapproval (the "if but only if" test) and where it is clear that the defendant has not acted in good faith and the claimant has not caused or contributed to the behavior complained of.
- [23] The claimant seeks an award of \$30,000.00 for exemplary damages. The defendants contend that exemplary damages should not be awarded as the defendant's conduct was not sufficiently outrageous or appalling to merit such an award. I believe this case cries out for an award for exemplary damages as the evidence indicates that the injury to the groin area was inflicted as a result of the officer's frustration in being misled by the claimant to an unoccupied house. At the trial, Thom J accepted the claimant's assertions that the conduct of the police officers were arbitrary where at paragraph 28 she states:
- "I believe that as submitted by learned counsel for the claimant that the Police Officers were frustrated having been taken to a house that was unoccupied. As a result of the frustration and having worked a long shift, Corporal Duncan kneed the Claimant in the groin and as a result he suffered the injury described by Dr. Goodluck."
- [24] I find the conduct of the police officer inexcusable, arbitrary and highhanded and was motivated by bad faith. I consider that an award of \$5,000.00 would meet the justice in this case taking into consideration that I have already made an award of general damages which included an element of aggravated damages for pain and suffering and loss of amenities.

Conclusion

[25] The claimant is awarded:

- (1) Restitution and compensation in the sum \$800 for the value and loss of use of his Sony Erickson phone.
- (2) General Damages in the sum of \$20,000.00 for pain and suffering and loss of amenities with an upward lift for aggravated damages. .
- (3) Loss of Future Earnings \$144,000.00 less 20 % discounted.
- (4) Exemplary damages in the sum of \$5,000.00
- (5) Interest at the rate of 3% for the award of Pain and Suffering and Loss of Amenities from the date of service of the claim until judgment and at the rate of 6% from judgment until payment.
- (6) The claimant is entitled to prescribed costs in accordance with CPR 65.5.

Agnes Actie
Master [Ag.]