

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2010**

CLAIM NO. SKBHCV2006/0075

BETWEEN:

COLLIS KING

Claimant

And

THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

And

LEON LAKE

Defendants

Appearances:

Mr Jason Hamilton of Hamilton & Co. for the *Claimant*

No appearance on behalf of the *Defendants*

2011: November 7

2012: March 7

JUDGMENT

- [1] **THOMAS J:** On the trial of the issue of liability, it was ordered on 19th December, 2008 by this Court that Claimant be awarded damages to be assessed.
- [2] The background of the case is that the Claimant brought proceedings against three Defendants for malicious prosecution, and assault and battery. The claim against the second and third Defendants was dismissed and no malicious prosecution was proven against any of the Defendants.
- [3] The matter of damages revolved around the fact that the Claimant was struck by a rubber bullet from the Federal Riffle Gun (FRG) when the first Defendant tried to disperse a crowd on 6th November, 2005 at Oceanfest.
- [4] The First Defendant was held to have assaulted and battered the Claimant and the issue now concerns the quantum of damages.

Damages for assault and battery

Submissions

[5] It is submitted on behalf of the of the Claimant that in assessing damages for assault and battery which are actionable without proof of actual damages, it has been held that nominal damages at least are recoverable and substantial damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved.

[6] The submissions continue in this way:

“The Claimant in his affidavit speaks to his injury which is supported by the medical report attached of Dr. M. Laws. It is without dispute that the suffered an injury to his right leg as a result of the actions of the 2nd named Defendant and as such is entitled to damages. The authority of **Shagma Richardson v Attorney General of Anguilla and Eason Charles** AXAHC2008/0012 are both illustrative as to the quantum to be awarded in similar circumstances.

Analysis and Conclusion

[7] It is common ground that assault is a direct threat or some other action on the part of one person whereby that person is put in reasonable fear for his safety. Battery on the other hand, connotes an intentional act on the part of the Defendant which has the effect of causing some bodily or by some material object without consent of the person affected¹.

[8] The legal position with respect to the assessment of damages for assault and battery is as follows²:

“Where the [Claimant] is physically injured as a result of an assault and battery by the Defendant, damages are assessed in the same way as in cases of physical injury caused by negligence, and the same heads of general damages, such as pain and suffering, loss of amenities, loss of expectation of life and loss of earnings apply. But apart from the damages for any physical injury, which are compensatory, the [Claimant] may recover aggravated damages, for injury to his feelings, ie for any indignity, disgrace, humiliation or mental suffering occasioned by the assault. For instance in the Trinidadian case of **Sudan v Carter**³ where a 26 year old student was knocked unconscious by a karate ‘black belt’ who was employed as a bouncer at a disco, Hosein J considered that the assault warranted an award of aggravated damages”.

[9] The cases⁴ cited are not in alignment with this case in that they all involved unlawful actions by the Defendants. For instance in **Shayne Richardson v The Attorney General of Anguilla and Edson Charles** involved an unlawful search and assault. This following are the findings of the learned trial judge:

‘I also accept that the evidence that the 2nd Defendant pulled the Claimant to his feet by his shirt sleeve and that the 2nd Defendant held him by his throat against a tree and

¹ See: Winfield & Jolowicz on Tort, 16th Edition para 4.4

² See: Gilbert Kodilinge, Tort – Text, Cases and Materials, p20

³ (1992) High Court, Trinidad and Tobago, No. 17.35 of 1990 (unreported)

⁴ Shayne Richardson v Attorney General of Anguilla and Edson Charles, Claim No. AXAHC2008/0012

then spun him around in the road. I find that the 2nd Defendant assaulted the Claimant”.

- [10] In this case the Court accepts that the first Defendant was acting in the lawful exercise of his duties in circumstances where, as the Claimant concedes, there was skirmish between members of the Royal St. Kitts and Nevis Police Force and persons. In such circumstances the cases of reasonable force is lawful, but the Claimant has shown that he was not apart of the skirmish. He just was in the vicinity so that the action of the first Defendant caused the Claimant reasonable apprehension of the infliction of a battery on him by the said Defendant. The Court also accepts the undisputed fact that it was a rubber bullet fired from a FRG that was involved as distinct from the regular ammunition used by the police officers. So it is rubber with its propensities as opposed to lead with its propensities.
- [11] The medical evidence of Dr M Laws reads in part thus: “He was found to have a large area of swelling and bruising of posterior aspect of the lower thigh the injury was consistent with moderate to severe blunt trauma to the area”.
- [12] In his affidavit in support the Claimant deposed to a number of relevant facts: At about 9:45 p.m. on the night in question near to Inon’s Beach Bar in Frigate Bay a skirmish ensued between members of the Royal St. Kitts and Nevis Police Force and other person or persons. At the time of the skirmish he heard what appeared to be gun shots being discharged. He saw Leon Lake [the first Defendant] with what appeared to be a riffle which he was pointing at individuals and discharging. While leaving [the area] he saw Leon Lake discharge a round of ammunition which struck me in the lower thigh.

General Damages

- [13] The injury to the Claimant is not in doubt so that general damages arise for consideration. The leading case in this is **Cormilliac v St Louis** in which it was held that one of the bases for the award of such damages is pain and suffering.
 - [14] In his affidavit the Claimant deposes extensively as to pain he suffered as a consequence of his injury. According to him pain killers were prescribed. Over the period of his discomfort which he said lasted three to four months.
 - [15] The incident occurred on or about 6th November 2005, the receipts in the Claimants’ name are dated variously in February 2006 and Dr Laws’ medical report is dated 23rd March 2006 but it indicates that the Claimant was seen and examined on 7th January 2006.
 - [16] The Court therefore accepts that the Claimant was injured and he endured pain from between two to three months given Dr Laws’ findings on 7th January, 2006 and his affidavit evidence which is not challenged. At the same time the Court bears in mind the context of the event in that the First Defendant was not acting unlawfully. This fact distinguishes this case from those cited.
 - [17] In all the circumstances the Court awards \$3000.00 in general damages.
- Aggravated Damages**

- [18] Aggravated damages arise where the Claimant's dignity and pride are injured consequent on the Defendant's motive, conduct and the manner of committing the tort⁵. Therefore, given the circumstances of the tort the Court considers that this **specie** of damages cannot be awarded.

Exemplary damages

- [19] In this classical case of **Rooks v Bernard**⁶ one of the relevant circumstances in which exemplary damages lie where there is 'oppressive, arbitrary or unconstitutional action by a servant' of the government'. In this connection it has already been determined that the first Defendant was acting in the lawful exercise of his powers as a police officer so that the issue arbitrary or oppressive or unconstitutional action does and arise so that exemplary damages cannot be awarded.

Costs

- [20] Given the award of general damages the Claimant is entitled to prescribed costs in accordance with Part 65.5 of CPR 2000.

ORDER

- [21] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. The Defendants must pay the Claimant general damages in the amount of \$3000.00.
2. There is no award with respect to aggravated or exemplary damages.
3. The Claimant is entitled to prescribed costs in accordance with the quantum of damages awarded in accordance with Part 65.5 of CPR 2000.

ERROL L THOMAS
High Court Judge (Ag)

⁵ See for example *Owen et al v Frederick* SLUHCv2001/0108

⁶ 16th Edition