

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Appeal No. GYCV2015/006
GY Civil Appeal No 168 of 2008**

BETWEEN

**GLEN LALL & NATIONAL MEDIA
AND PUBLISHING COMPANY LIMITED**

APPELLANTS

AND

WALTER RAMSAHOYE

RESPONDENT

Before The Honourables

**Mr Justice R Nelson
Mr Justice A Saunders
Mr Justice D Hayton
Mr Justice W Anderson
Mme Justice M Rajnauth-Lee**

Appearances

Mr Sanjeev Datadin and Mr Stephen A. Singh for the Appellants

**Mr Anand Ramlogan SC, Mr Roopnarine Satram, Mr Chandraprathesh V. Satram,
Mr Mahendra Satram, Mr Ganesh Hira, Mr Alvin Paraigsingh and Mr Douglas
Bayley for the Respondents**

JUDGMENT

of

**Justices Nelson, Saunders, Hayton, Anderson and Rajnauth-Lee
Delivered by**

**The Honourable Mr Justice Anderson
on the 29th day of July, 2016**

Introduction

- [1] Glen Lall is the editor/proprietor of the Kaieteur News, a weekly newspaper which is printed by the National Media and Publishing Company Limited ('National Media'). Between 21st January 2000 and 10th February 2000, Kaieteur News published an article and two caricatures with accompanying captions ('the publications') all of which referred to Dr Ramsahoye in disparaging terms. The publications suggested that he had demonstrated dictatorial tendencies in relation to the Guyana Medical Association ('GMA'), had an elevated sense of importance, held himself out as being competent in areas outside his profession, and had failed to serve his country in any significant way. They also insinuated that he had mental health problems and had caused the death of several patients in his care. The published materials are now conceded to have constituted a libel on Dr Ramsahoye's reputation.
- [2] In an action brought by Dr Ramsahoye against the publishers, Glen Lall and the National Media, the High Court awarded Dr Ramsahoye G\$4.5 million in damages. The Court of Appeal increased this award to G\$15 million. Glen Lall and National Media appeal this decision arguing for a reinstatement of the original award while Dr Ramsahoye cross-appeals on the ground that the award ought to have been further enlarged. There is no issue of liability, Glen Lall and National Media having conceded that point in the court below. The sole question raised by this appeal and cross-appeal, therefore, is whether the increased award is appropriate having regard to the reputational damage suffered by Dr Ramsahoye.

Factual Background

- [3] Dr Ramsahoye is a highly qualified medical practitioner of long standing in Guyana. He is a specialist in the field of neurology with many distinctions in medicine. In its issue of the 21st to 27th January 2000, the Kaieteur News carried an article under the caption: 'Dr Walter Ramsahoye – GMA Dictator?' A further publication (28th January to 3rd February 2000) questioned, 'Incidentally what has THIS brilliant, well-bred knowledgeable DEMI-GOD done for his country?' And yet a further publication in the circulation of the issue of the 4th to 10th February

2000 carried the words, ‘I would remind that little NING – NING a great Irish writer once said that the reputation of great doctors is made by the number of distinguished patients who DIE under their care.’

- [4] Dr Ramsahoye initiated legal proceedings by way of a specially endorsed writ and statement of claim dated 28th February 2000, seeking damages in excess of \$1million and an injunction to restrain further publication of the said or any similarly offending material. He pleaded that the publications suggested that he had imposed a stranglehold on the GMA to such an extent that the Association could not operate independently. He also complained that the offending articles suggested that he did not contribute by way of public service to his country. His professional reputation was impugned by the suggestions that he was of unsound mind, was an incompetent medical practitioner with an unsuccessful practice and often held himself out as a lawyer or possessing legal expertise. In sum, the offending publications caused injury to his character and professional reputation and made him the subject of public ridicule, odium and contempt, occasioning him great distress and humiliation. By order of Kisoona J, dated 6th March 2000, Dr Ramsahoye obtained an interim ex parte injunction restraining any further writing, printing, publication or circulation of the said or any similarly offending material.
- [5] In their defence dated 25th January 2001, Glen Lall and National Media admitted publication of the offending material but denied that they were defamatory in character. They also pleaded that the publications were part of a fair and accurate report of an ongoing dispute between Dr Ramsahoye representing the GMA and the Ministry of Health, and amounted to fair and *bona fide* comment on this matter of public interest. They further defended the publications as being expressions of opinion in the vein of fair comment made in good faith and without malice, and as a responsible exercise of the right to freedom of expression as enshrined in the Constitution.

The High Court Proceedings

- [6] In a judgment delivered on 4th December 2008, the trial judge, Persaud J, found in favour of Dr Ramsahoye. The judge found that there were serious deficiencies in

the pleadings, resulting in many planks of the defence being struck out. First, the defence of fair and accurate report was misconceived given that this plea relates only to public proceedings. Second, the plea of fair and *bona fide* comment on matters of public interest lacked the specificity required by Order 17 Rule 25 of the Rules of the High Court.¹ Third, the reliance on the constitutional protections offered no defence given that freedom of expression cannot excuse defamatory statements: *Panday v Gordon*.² The only viable defence was that the published materials themselves were not defamatory but Persaud J held that this could not succeed since,

A perusal of the full text of the publication leads one to the inescapable conclusion that through the words, phrases and depictions, there was unprovoked and unlawful injury to the character and reputation of the plaintiff.³

- [7] In assessing damages, Persaud J noted that in libel cases damages are at large and are intended to be compensatory in nature: *Cassell & Co. Ltd v Broome*.⁴ In arriving at the appropriate award, the trial judge took into account that the publications were unprovoked and occasioned reputational damage to Dr Ramsahoye who was a medical practitioner of 32 years' standing and was widely recognised for his outstanding achievements in his field. The doctor would have suffered hurt feelings after being 'effectively painted as incompetent demeaned and humiliated in the eyes of the public'.⁵ Another important aggravating factor was the conduct of the litigation, namely the strident defence of the publications as well as the lack of an apology on the part of Glen Lall and National Media. This only served to exacerbate and prolong the reputational harm suffered by Dr Ramsahoye. Several mitigating factors also weighed in the balance such as the limited reach of Kaieteur News, the socio-economic realities in Guyana, the potential economic ruin of the publisher and the potential chilling effect on journalistic freedom. In the end, damages were

¹ CAP 3:02 of the Laws of Guyana.

² [2005] UKPC 36; (2005) 67 WIR 290.

³ *Ramsahoye v Lall and National Media and Publishing Company Limited* (High Court of the Supreme Court of Guyana, 4 December 2008), 5 (Persaud J); Record of Appeal, 199.

⁴ [1972] AC 1027.

⁵ *Ramsahoye* (n 3), 7; Record of Appeal, 201.

assessed at G\$4.5 million. The interim injunction granted by Kissoon J was made permanent and costs amounting to G\$125,000 were awarded against Glen Lall and National Media.

The Court of Appeal Proceedings

- [8] Both Dr Ramsahoye and Glen Lall and National Media were dissatisfied with the decision of Persaud J and appealed to the Court of Appeal. On 22nd December 2008 Glen Lall and National Media applied for a stay of execution of the damages and costs awarded by the trial judge arguing that they had a meritorious appeal, the payment of the sums ordered would occasion substantial difficulties and, in any event, that Glen Lall had sufficient assets to satisfy the judgment should their appeal prove unsuccessful. The stay was granted by order of Cummings-Edwards JA dated 27th February 2009 on condition that the damages awarded be lodged with the Registrar within 8 weeks, failing which the appeal by Glen Lall and National Media would stand dismissed. The order was entered on 6th March 2009 and payment was lodged on 6th April 2009.
- [9] The appeal launched by Glen Lall and National Media was initially founded on four limbs: first, that the trial judge's decision was against the weight of the evidence; second, that the trial judge erred in law regarding the defence of fair comment and its legal consequences; third, that the trial judge erred in finding that the publications had to do with Dr Ramsahoye in relation to his profession as a medical doctor; and fourth, that the award of damages was unreasonable and excessive. By the time of the hearing of the appeal, their position changed in that the liability point was abandoned. Therefore, the sole issue was whether the award of damages made by the trial judge was too exorbitant. Dr Ramsahoye's cross-appeal was based on the assertion that the award was inordinately low. He also contended that the trial judge erred in that he had failed to award exemplary or aggravated damages.
- [10] The Court of Appeal (Roy JA, Insanally J (Additional Judge), Cummings-Edwards JA (dissenting)) held that the award of damages by Persaud J was 'wholly inadequate and was not a fair estimate of the compensation which ought to have

been awarded on an aggravated basis'.⁶ Although the trial judge had correctly identified the relevant principles of law, he had failed to take account of all the aggravating factors and the gravity of the reputational injury to Dr Ramsahoye. The court noted that the offending publications cast aspersions on the doctor's record of long and distinguished service, integrity, honour and loyalty and therefore amounted to a very serious species of defamation which could not be taken lightly. References were made to *Crampton v Nugawela*,⁷ where a fairly large amount was awarded to a doctor in relation to an accusation that he lied at a medical conference, and to *Gleaner Co Ltd v Abrahams*⁸ where the Privy Council dismissed the Appellants' appeal and affirmed the Jamaican Court of Appeal's award of J\$35million (then equivalent to £533,000) to a former Minister of Tourism who was wrongly accused of taking bribes. The court acknowledged that since the decision in *Gleaner*, 'damages in libel cases often serve not only as compensation (sic) but also as an effective and necessary deterrent'.⁹

- [11] The court also expressed the view that the limited reach of the Kaieteur News could not, by itself, lead to the inference that the defamatory material was not in the public domain so as to justify an award on the lower end of the scale. It was generally 'impossible to track the scandal, to know what quarters the poison may reach'.¹⁰ As to a letter written by Dr Ramsahoye on 14th January 2000 regarding the GMA and which Glen Lall and the National Media suggested had provoked their publications but which was not considered by the trial judge, the court held that this letter did not warrant any reduction in damages, as it was irrelevant given that it was never published. The court also found it necessary to take account of the socio-economic conditions of Guyana as well as the falling value of money in the intervening years since the offending publications. Ultimately, the court awarded G\$12 million in general damages and G\$3 million in aggravated damages and it set aside the costs award ordering instead that the Respondent's costs to be taxed in default of agreement. The court accepted that the high award of G\$15 million might be said

⁶ *Ramsahoye v Lall and another* (Court of Appeal of the Supreme Court of Guyana, 29 January 2015), (2015) 85 WIR 399 [17] (Roy JA); Record of Appeal, 77.

⁷ (1996) 41 NSWLR 176 (cited as *Crampton v Nugawela* (1997) 41 NSWLR 176 in *Ramsahoye* (n 7) [10]).

⁸ [2003] UKPC 55.

⁹ *Ramsahoye* (n 6) [16] (Roy JA).

¹⁰ *Ley v Hamilton* (1935) 79 Sol Jo 573, 153 LT 384,386 (Atkin LJ) (cited as *Lee v Hamilton* in *Ramsahoye* (n 6) [14] (Roy JA)).

to run afoul of the guarantees of freedom of the press, but felt that the award might be a catalyst for more responsible journalism, media accountability and self-censorship.¹¹

- [12] Cummings-Edwards JA dissented on the ground that there was no justification for disturbing the award made by Persaud J. She considered that the judge had correctly applied the law as set out in *Cassell & Co. Ltd v Broome*,¹² and had ‘meticulously balanced those important factors relevant to the assessment of damages in reaching his decision’.¹³ She further reasoned that the purpose of damages in defamation is to compensate for the injury suffered rather than punish the wrongdoer: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1993] All ER 975, 997; [1994] QB 670, 696.¹⁴ In her view, Dr Ramsahoye did not provide any evidence of direct injury such as psychological trauma, mental anguish or economic or social loss and, as such, his reliance on the decision in *Gleaner* to buttress his argument for increasing the trial judge’s award was misplaced. She also disagreed with the conclusion of the majority that Persaud J had failed to make an award for aggravated damages, noting that the award made was a global sum in respect of which the trial judge had taken into account the several aggravating factors.

Appeal to the CCJ

- [13] In their notice of appeal dated 7th September 2015, Glen Lall and National Media challenge the decision of the court below in its entirety, arguing that there was no justification for the substantial increase in the damages awarded. In their grounds of appeal and submissions, they state that the court erred in making such a substantial increase in the absence of finding any perversity or fundamental violation of the relevant legal principles on the part of the trial judge. They also suggest that the award fails to properly account for the principle that in assessing damages due regard can properly be had to the socio-economic conditions of the particular jurisdiction and in this regard point to the relatively low Gross Domestic

¹¹ *Ramsahoye* (n 6) [21] (Roy JA).

¹² [1972] AC 1027.

¹³ *Ramsahoye v Lall and another* (Court of Appeal of the Supreme Court of Guyana, 29 January 2015) [21], (2015) 85 WIR 399 [43] (Cummings-Edwards JA).

¹⁴ *Ramsahoye v Lall and another* (Court of Appeal of the Supreme Court of Guyana, 29 January 2015) [37], (2015) 85 WIR 399 [59] (Cummings-Edwards JA).

Product (GDP) of Guyana: *Lawrence v Lightburn*.¹⁵ It followed, in their view, that in an assessment of damages, awards from other jurisdictions such as Trinidad and Tobago, Jamaica and the United Kingdom would not be apposite.

- [14] Further, unlike the *Gleaner* case, there was no comparable evidence adduced regarding the loss and suffering of Dr Ramsahoye, nor did the *Kaieteur News*, as a tabloid, have the same gravitas as *The Gleaner* newspaper. They also contend that the pendulum had now swung in favour of more modest awards in keeping with the objective of compensation rather than punishment, citing *Rantzen*,¹⁶ and alluding to a trend in personal injury cases, citing *Dukhi v GUYSUCO Sugar Corporation Ltd and Thakoordin*¹⁷ where G\$5,446,000 was awarded in a particularly serious personal injury case. Glenn Lall and National Media also argue that Dr Ramsahoye's letter which preceded the offending publications showed that he did not have a sterling reputation. Self-censorship and media accountability should not be accomplished through unjustifiably exorbitant awards in libel cases. The Court of Appeal had erred in determining that the trial judge had failed to take into account the aggravating factors and all the circumstances surrounding the claim. As such, they seek an order reversing and/or setting aside the court's decision as well as costs in this Court and the courts below.

The Cross Appeal

- [15] Dr Ramsahoye's cross-appeal is premised on the assertion that the award made by the Court of Appeal was too low. He emphasises that general damages were presumed as flowing from the fact of the publication of the defamatory material and places reliance on *Trinidad Express Newspaper Limited and others v Conrad Aleong*¹⁸ where Rajnauth-Lee JA opined that in defamation claims an award of damages must compensate for the damage to reputation, vindicate the person's good name, take account of his distress, hurt and humiliation and, 'The more closely it touches the claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is

¹⁵ (1981) 31 WIR 107.

¹⁶ [1993] All ER 975; [1994] QB 670.

¹⁷ Court of Appeal of the Supreme Court of Guyana, 20 January 2015.

¹⁸ Court of Appeal of the Republic of Trinidad and Tobago, 25 June 2014.

likely to be.’¹⁹ He identifies as a deficiency in the proceedings below, the failure to expressly state that a case for punitive and/or aggravated damages had been made out given the outrage which the offending publications have garnered, the cavalier attitude with which the publications were disseminated, that there was no apology, that the defences were contrived and prolonged the trial as well as the distress and humiliation that he suffered.

- [16] Dr Ramsahoye also submits that in assessing damages, a court should have regard to awards in libel cases from other territories and in particular Caribbean jurisdictions given that ‘Caribbean Nations are bound by treaty as one community with a Charter of Rights’.²⁰ In this regard he cites the awards in *Panday* (TT\$300,000), *Gleaner* (J\$35 million, equivalent to £533,000) and *Percival James Patterson v Cliff Hughes and Nationwide News Network Ltd* (J\$12 million, equivalent to US\$100,000)²¹. This, he asserted, should be the guiding consideration and not necessarily that the particular award was the highest ever granted in the local jurisdiction.
- [17] Dr Ramsahoye further contends that the court erred in failing to award interest on the damages and that he is entitled to interest at common law or, in the alternative, to statutory interest under the Law Reform (Miscellaneous Provisions) Act²². As such, he seeks an order increasing the award of damages. He also seeks four further consequential orders relating to costs and damages, namely that (1) costs before this Court be taxed certified fit for one Senior and two Junior Attorneys, (2) the monies lodged as security for costs of the appeal be paid to him towards the costs of his cross-appeal, (3) the costs of this appeal be taxed within 3 months of delivery of the judgment and in default for costs to be determined by this Court and (4) the damages awarded by the trial judge and paid into court be paid to him.
- [18] By application dated 13th April 2016, Dr Ramsahoye sought to adduce fresh evidence in the appeal by seeking an order admitting a 17th February 2014

¹⁹ *Trinidad Express Newspaper Ltd* (n 18) [94] (Rajnauth-Lee JA) citing with approval *John v MGN Ltd* [1997] QB 586, 607 (Sir Thomas Bingham MR).

²⁰ Submissions of Respondent on Appeal and Cross-Appeal at [16], Record of Appeal, 537.

²¹ Supreme Court of Jamaica, 30 October 2014; [2014] JMSC Civ 167; JM 2014 SC 79 (carilaw).

²² Cap 6:02 of the Laws of Guyana.

publication in the Kaiteur News which he alleged was defamatory of him. The Court was urged to make the order on the basis that it was published subsequent to the High Court proceedings and had not come to Dr Ramsahoye's attention until after filing these proceedings but was relevant to the issue of damages. Having considered the application and oral arguments, this Court dismissed the application as the matters complained of took place well before the commencement of proceedings in the Court of Appeal and before that court delivered its judgment. No attempt had been made to bring the offending publication to the notice of the Court of Appeal. In these circumstances the Court considered that the application had not complied with the requirements for the admission of fresh evidence as outlined in the oft cited case of *Ladd v Marshall*.²³ The dismissal of the application was without prejudice to any right to institute contempt proceedings having regard to the fact that the publication was covered by the ex parte injunction granted by Kisoona J and made permanent by Persaud J.

Discussion

- [19] The issue for decision is whether the increase of the award by the Court of Appeal was appropriate in light of the injury sustained to Dr Ramsahoye's reputation. It is now well settled law that an appellate court must be slow to interfere with a trial judge's finding on damages in defamation cases where the appropriate award is always a matter of impression and of common sense.²⁴ As is often said, damages are at large. It is not enough that the appellate court would itself have awarded a greater or lesser sum. To justify reversing the trial judge, it must be shown that the judge acted on a wrong principle of law, or misapprehended the facts, or had, for these or other reasons, made an award so extremely high or so very small as to make it a wholly erroneous estimate of the damages to which the defamed person is entitled: *Flint v Lovell*²⁵ and *Jagan v Burnham*²⁶. A useful statement of the

²³ [1954] 3 All ER 745.

²⁴ *Davies and another v Powell Duffryn Associated Colliers Ltd* [1942] AC 601.

²⁵ [1935] 1 KB 354,360 (Greer LJ).

²⁶ (1973) 20 WIR 96, 106 (Luckhoo CJ).

governing principle was made by Viscount Simon in *Nance v British Columbia Electric Railway Co Ltd*²⁷ when he said:

the 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 the 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...

- [20] This is undoubtedly the yardstick by which the Court of Appeal should decide whether to disturb an award of damages. But where that court does decide to intervene and does vary the award, a further question arises for an apex court such as ours. Should we review the appellate decision on the basis of whether it conforms to the well-established test for interference with the trial judge's assessment of damages? Or does the deference we naturally accord to decisions of the Court of Appeal justify a reversal of that decision only in exceptional circumstances where the new award is shown to be manifestly inappropriate because, for example, the appellate court acted on wrong principles in making the new award?
- [21] In the case of *Ley v Hamilton*,²⁸ decided in 1935, the House of Lords reversed the Court of Appeal and restored the jury's assessment of damages because there was no demonstrated error in the assessment by the jury. The Court of Appeal had suggested that the verdict had to be set aside on the ground that the damages of £5000 to a man who held high position in Australia and who had been libelled as an embezzler of mortgage funds, was excessive. The House could see 'no reason for inferring that the jury took into account any irrelevant consideration in fixing the amount of damages in question'.²⁹

²⁷ [1951] AC 601, 613.

²⁸ (n 10).

²⁹ (n 10).

[22] This is the classical approach to the review of the appellate decision but in a number of high profile cases the Judicial Committee of the Privy Council appears to have deferred to the award of the Court of Appeal without investigating whether that court had correctly reviewed the exercise of the trial judge's discretion. In *Gleaner*³⁰ the Appellant had published articles in two newspapers alleging that the Respondent, when Minister of Tourism for Jamaica between 1980 and 1984, had accepted bribes in return for awarding work to American companies. The Appellants had relied on qualified privilege and justification but were unable to plead any fact to support these defences which were eventually struck out by the Court of Appeal in 1994 after which the Appellants published an apology. The trial in 1996 concerned solely the quantum of damages and the jury awarded the Respondent J\$80,700,000 which was reduced to J\$35,000,000 by the Court of Appeal. The Privy Council declined to interfere with the Court of Appeal's decision, despite the fact that the appellate court did not explain how it arrived at that figure. The Board said that the Court of Appeal was 'perfectly justified in simply saying that it thought that \$35,000,000 was the amount necessary to compensate Mr Abrahams'.³¹ The Board thought the court was in the best position to say whether this was the right figure since as,

the highest court sitting in Jamaica, it would have had a knowledge which their Lordships do not share of, among many relevant matters, the standing in Jamaican society of the *Daily Gleaner* and the *Star*, the sensitivity of the local community to corruption and the links between the political, social and business life of the community which amplified the effect of the libel on the plaintiff.³²

[23] Similarly, in *Panday*,³³ the Appellant had appealed to the Privy Council against the Order made in October 2003 by a majority of the Court of Appeal of Trinidad and Tobago dismissing his appeal against liability for defaming the Respondent but reducing the quantum of damages from TT\$600,000, as awarded by Jamadar J, to

³⁰ (n 8).

³¹ (n 8) [69].

³² *ibid.*

³³ (n 2).

TT\$300,000. The Privy Council refused to interfere stating that the Court of Appeal had greater knowledge of local conditions than it did and that in making the new award the court had not misdirected itself. The Board considered that,³⁴ ‘the seriousness of a libel and the quantification of an award are matters where judges with knowledge of local conditions are much better placed than their Lordships’ Board’. Their Lordships could ‘detect no indication that when reducing the trial judge’s award in the present case and substituting the amount of \$300,000 the majority of the Court of Appeal misdirected themselves’.³⁵

[24] *Calix v Attorney General of Trinidad and Tobago*³⁶ was a case on malicious prosecution in which the damages for injury to reputation caused by being charged with the offence of rape had to be quantified. The Board considered that the question of whether an award of aggravated damages was appropriate given the conditions on which the appellant was held on remand was ‘best left to the judgment of the Court of Appeal’ which was ‘in a better position to assess, in the local context, how significant was the failure of the prosecuting authorities to follow the advice of the police officer in charge of the case and to reflect more assuredly the impact of the Appellant's experience in Golden Grove prison while on remand’.³⁷ The submissions on aggravated damages had not been presented to the Court of Appeal and the Board considered ‘that that court, being familiar with local conditions and circumstances, should have the opportunity to decide whether they warrant an award of aggravated damages’.³⁸

[25] To the extent that in these decisions the Board appears not to have engaged in a rigorous examination of whether the trial judge had properly applied the test for assessment of damages but rather placed express reliance on the fact that the Court of Appeal had greater ability to judge ‘local conditions’, the Board’s approach is not as readily available to this Court. The historical rationale and the institutional arrangements devised for the establishment and operation of this Court (including arrangements for the appointment of its judges) presupposes a close affinity

³⁴ *Panday* (n 2) [29].

³⁵ *Panday* (n 2) [30].

³⁶ [2013] UKPC 15.

³⁷ *Calix* (n 36) [33].

³⁸ *ibid.*

between the Court and the Caribbean people in their various jurisdictions and a better sense of the local conditions that transpire in these various communities. This permits the conviction of the Contracting Parties to the Agreement Establishing the Court that the Court ‘will have a determinative role in the further development of Caribbean jurisprudence through the judicial process’.³⁹

[26] An important and not unrelated aspect of the orderly development of indigenous jurisprudence is the responsibility to ensure that in appellate review of the award of damages, especially where those damages are at large as in defamation cases, the discretion of the appellate court is not substituted for that of the trial judge. In such cases the review function of the apex court is to determine whether the exercise of the trial judge’s discretion was plainly wrong having regard to the matters to be considered and the generous ambit to be accorded to the judge. It is to determine whether the Court of Appeal had regard to the narrow confines within which it could exercise its jurisdiction to interfere with the trial judge’s exercise of his discretion in making the award. The trial judge’s award can only be disturbed where it is an entirely erroneous estimate of the damages that ought to have been awarded to the person who was defamed.

[27] We are therefore of the opinion that the view of the relationship between an award of damages for defamation by a trial judge and the remit in the appellate court to vary that award was accurately summed up by the Privy Council in a statement of the general function of appellate review of damages awarded in the *Calix* case. Citing with approval the dictum in *Flint*⁴⁰ and *Nance*,⁴¹ the Board used language that we unhesitatingly accept as the applicable test namely that for interference with the trial’s judges award of damages, ‘It is well settled that before an appellate court will interfere with an award of damages it will require to be satisfied that the trial judge erred in principle or made an award so inordinately low or so unwarrantably high that it cannot be permitted to stand’.⁴²

³⁹ Preamble to the Agreement Establishing the Caribbean Court of Justice.

⁴⁰ (n 25).

⁴¹ (n 27).

⁴² *Calix* (n 36) [28].

- [28] At the trial in the present case, Persaud J, sitting as judge and jury, referred to Lord Hailsham's observations in *Cassell*⁴³ where it was said that, 'the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant'.⁴⁴ The trial judge recognized that these factors were not exhaustive. He stated that the quantum of damages to be awarded was compensatory in nature and dependent on the peculiar circumstances of each case. He then summarized the uncontroverted evidence that Dr Ramsahoye was a medical practitioner of 32 years' standing and that his distinctions recognized his significant personal sacrifice and dedication to the practice of medicine, his supremacy in diagnosis, his obsession with perfection and his abiding sense of civic responsibility.⁴⁵ The judge referred to the testimony of Raymond Gaskin and concluded that the doctor was of good character and outstanding in his profession.⁴⁶
- [29] The judge found that the offending publications unlawfully injured Dr Ramsahoye's character and reputation in that he was 'effectively painted as incompetent demeaned and humiliated in the eyes of the public which no doubt caused injury to his feeling'.⁴⁷ He recognized that this was aggravated by the lack of an apology, the insistence on the defence of fair and accurate comment and the general attempt to defend the publications. He also took into account that the *Kaieteur News* at the time was not a daily publication and was not available on the internet which would restrict its reach and effect. Finally, the judge expressed himself mindful of comparatively higher awards in more developed countries but considered that the local socio-economic realities had to be borne in mind. The judge concluded⁴⁸:

Having regard to all the circumstances I award the sum of \$4,5000.000 (four million five hundred thousand dollars) in damages to the plaintiff against the defendants jointly and severally... As far as I am aware this is the highest award in a case of this nature in our jurisdiction. In this context I am also

⁴³ (n 4).

⁴⁴ *Cassell* (n 4), 1071.

⁴⁵ *Ramsahoye* (n 3), 6; Record of Appeal, 200.

⁴⁶ *Ramsahoye* (n 3), 7; Record of Appeal, 201.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

minded of the potential of an award to inhibit responsible journalism and even economically ruin a publisher.

- [30] It is difficult to find any manifest error with the judge's reasoning such as to warrant a variation of the quantum of damages awarded. It is evident that Persaud J correctly identified the relevant legal principles and carefully weighed all the relevant considerations based on the material before him. He considered the factors in aggravation and in mitigation. It cannot be fairly said that he failed to appreciate the serious nature of the claim and the undeniable consequential effects of the libellous publications on Dr Ramsahoye's professional and personal life. He also frowned, in very strong terms, upon the conduct of Glen Lall and National Media in the publication of the libel.
- [31] The Court of Appeal disagreed with the judge's reference to the restricted reach of the *Kaiteur News Newspaper* to justify limiting damages. The majority essayed that it was not possible to gauge exactly the reach of what is published in a newspaper in circulation and quoted the graphic language of Lord Atkin in *Ley* : 'it is impossible to track the scandal, to know what quarters the poison may reach'.⁴⁹ This may well be so but in dealing with the issue of the quantum of damages the judge is entitled and indeed required to consider the scale of the publication.⁵⁰ It is true that the advent of publication of newspapers on the internet affects this consideration but, happily, the offending publications in the present case, were not published online and therefore we are not required to consider the impact of this important technological development at this time.
- [32] The Court of Appeal majority took issue with the amount awarded. In its view the award of G\$4,500,000 did not reflect the circumstances in which the claim was brought, the conduct of Glen Lall and National Media and the distress and agony suffered by the victim. It was wholly inadequate and was not a fair estimate of the compensation which ought to have been awarded on an aggravated footing given that the case was without local precedent and given the grave nature of the

⁴⁹ *Ley* (n 10), 386.

⁵⁰ *Cleese v Clark* [2003] EWHC 137 (QB) [38] (Eady J).

defamatory publications. The court considered that whilst the awards in other territories in the Caribbean are not binding on the courts of Guyana, they do give an indication of the approach which the judiciaries which observe the rule of law will take in assessing compensation in libel actions. In this regard the court considered the Trinidad and Tobago case of *Panday* in which the Privy Council refused to reduce the award of TT\$300,000 and the Jamaica case of the *Gleaner* in which the Privy Council allowed an award of J\$35,000,000 to stand. The court considered the circumstances in the present case to be closer to the claimant in the *Gleaner* case.

- [33] Mr Ramlogan SC, counsel for Dr Ramsahoye, contended that the trend of awards from other Caribbean countries must be considered based on the fact that Caribbean countries are bound by treaty as one community with a Charter of Rights. It is true that in fashioning the emergence of a Caribbean jurisprudence this Court pays keen attention to the growth and development of the legal concepts and principles that Caribbean jurisdictions have in common. Caribbean countries do not share a common Bill of Rights and the Charter of Civil Society for the Caribbean Community is not in legal effect but merely aspirational. However, there are legal principles which Caribbean countries do have in common and which can and do support the emergence of a common jurisprudence. The emergence of such a jurisprudence is at the heart of the mission of this Court. But the quantification of damages in a case of defamation is an entirely different matter. An award of damages is fundamentally a species of what used to be called ‘local actions’ in that the award is a function of the place and the extent to which the defamed person’s reputation was injured. This is normally dependent on the place in which the offending material was published. There is, as yet, no common space for such publications in the Caribbean Community. In this case, the publications took place in Guyana and there is no evidence of publication in any other Caribbean jurisdiction. But even if they had been published elsewhere in the Caribbean the ubiquity of the defamatory publication would not by virtue of that fact justify an award of damages that reflected awards in these jurisdictions. Damages are always conditioned by, *inter alia*, the prevailing socio-economic circumstances in the

country in which the assessment is being made. The damages must therefore be assessed in accordance with the law, practice and traditions of Guyana and cannot simply be analogized to awards in other territories of the Caribbean where socio-economic conditions, including GDP, are different.

- [34] Nor is the *Gleaner* case an apt comparator. There, Mr Abrahams proved that after the defamatory story he was unable to carry on business as a tourism consultant. He called medical evidence about the effect on him of the ostracism and humiliation he had suffered. A psychiatrist called on his behalf deposed that he had suffered both physiological and mental damage, the aggravation of asthma and diabetes, development of obesity through inertia and damage to his self-esteem. The persistence in the plea of justification until it was struck out by the Court of Appeal and the belated apology were further factors that influenced the size of the award. The diminution in social and professional standing was well documented in the evidence. The *Gleaner* had also been highhanded with Mr Abrahams with regard to his possibly obtaining alternative employment with one of its affiliate companies.
- [35] The present case is markedly different. There was no allegation of bribery or corruption. There was no evidence of pecuniary loss nor was there evidence of psychiatric injury. Dr Ramsahoye relied on his affidavit sworn for an ex-parte injunction in the High Court to restrain further publication of the defamatory material, an injunction which the trial judge made permanent. The affidavit was bereft of any particulars or evidence of loss. It is the case that failure to lead evidence to show the actual diminution and loss of reputation is not fatal to an award of general damages since, once it is shown that the offending publication was not justified, damage to the person's reputation is presumed: *TnT News Center Ltd v Rahael*.⁵¹ Furthermore, Dr Ramsahoye did lead evidence from a third party. At the trial, Mr Raymond Gaskin testified that the publications were false and constituted character assassination against a doctor of unequalled competence who was held in extremely high regard. However, special damages fall into a different category and must be expressly pleaded and proved. Here, there was no claim for special

⁵¹ Court of Appeal of the Republic of Trinidad and Tobago, 9 July 2009 [12] (Kangaloo JA)

damages and there was no evidence that Dr Ramsahoye remained anything other than an accomplished and distinguished member of the medical fraternity.

[36] Before us the case was pressed for an award of aggravated/punitive damages in addition to general and exemplary damages but this contention faces several difficulties. The fact of the matter is that the statement of claim which commenced these proceedings contained no reference to aggravated/punitive damages. In both the writ and statement of claim, the relief sought is ‘a sum in excess of \$1,000,000 as damages for [the publications]’.⁵² Further, in making the global award, the trial judge took account of the relevant aggravating factors⁵³: the lack of an apology; the Appellants’ insistence throughout the course of the trial of jurisdiction and fair and accurate comment; the attempt, generally to defend the publications; the manner in which the defence was pleaded and the ultimate fate of that defence. The award can therefore be taken to have included aggravated/punitive damages. In these circumstances, it cannot be said that the trial judge’s exercise of discretion was ‘plainly wrong’. We therefore see no need to interfere with the award as Persaud J, having considered all the circumstances of the case and having addressed his mind to the aggravating factors, made such an award as he found necessary to provide adequate compensation to Dr Ramsahoye and to re-establish his reputation.

[37] We would make a final point relating to the issue of damages. Mr Datadin for Glen Lall and National Media submitted that a direct comparison can legitimately be drawn between the quantum of damages in personal injury and defamation cases. Such comparisons may be superficially attractive and it is true that matters such as evidence of inability to work and consequential financial loss including loss of earnings could be relevant in both cases. Further, in defamation cases the strict requirement of proving causation between the libel and such losses is more difficult to satisfy and may justify a moderation in the overall figure awarded: *Gleaner*.⁵⁴ But at their core awards for defamation and personal injuries are incommensurables. Injury to a person’s good name cannot readily be assimilated to injuries to a leg such as a broken tibia and fibula. There are some who would

⁵² Record of Appeal, 143 and 148.

⁵³ *Ramsahoye* (n 3), 7; Record of Appeal, 201.

⁵⁴ (n 8), [49] – [56]

rather die than have their good name besmirched. At the heart of defamation is the protection of a person's reputation, a factor which does not readily feature in personal injury claims. Damages for defamation are intended to demonstrate to the public that the defamed person's reputation has been vindicated; if there is no apology and no withdrawal of the defamatory publication the award should amount to a public proclamation that the defamation has inflicted a serious injury. The sum that is required to achieve this objective must necessarily vary from case to case.

Interest

[38] Counsel for Dr Ramsahoye argued with conviction for the award of interest. He conceded that the statement of claim contained no plea relating to interest. There was no discussion of interest in the courts below and no award of interest was made by them. The Notice of Cross-Appeal to this Court did, however, contain a claim for interest among the reliefs sought but the written submissions were innocent of any explicit reference to an award of interest. During the proceedings, counsel argued that interest, like costs, was not part of the cause of action and did not require the leading of evidence. He argued that an award was in the discretion of the Court and urged that the fact that the final resolution of the case had taken sixteen years, coupled with the erosion of purchasing power of the currency, was a strong indication that an award of interest was required to do complete justice in compensating for the reputational injury to Dr Ramsahoye.

[39] The Law Reform (Miscellaneous Provisions) Act⁵⁵ was enacted, among other things, to amend the law as to the awarding of interest in civil proceedings and Section 12 provides as follows:

12. (1) In any proceedings tried in any court for the recovery of any debt or damages, the court may, if it thinks fit, order that there should be included in the sum for which judgment is given interest at such rate not exceeding six per cent *per annum* as it thinks fit on the whole or any part of the debt or damages for the whole or any

⁵⁵ (n 22).

part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section-

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

(2) Every judgment shall carry interest at the rate of four per cent *per annum* from the time of entering the judgment until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.

[40] Section 12 (1) clearly grants a discretion to the Court, subject to exceptions which do not apply to the present case, to award interest on damages awarded for the period or part of the period between the date when the cause of action arose and the date of judgment. The defamatory materials were published beginning on 21st January 2000 and judgment was delivered virtually eight years later on 4th December 2008 therefore raising the prospect of a substantial award in interest. We readily accept the *dicta* of Lord Denning MR in *Jefford v Gee*⁵⁶ on the equivalent English statute, the Law Reform (Miscellaneous Provisions) Act, 1934, section 3(1):

It should be noticed that it is not necessary for a plaintiff to claim interest in his pleadings. The court can award interest without any claim being made in the pleadings: see *Riches v Westminster Bank* [1943] 2 All ER 725.

⁵⁶ [1970] 2 QB 130, 144 (CA).

See also *Greer v Alstons Engineering Sales and Services Ltd.*⁵⁷

[41] We accept that this Court has jurisdiction to award interest even where the matter has not been pleaded or argued before the courts below; but we will adopt such a course only in exceptional circumstances. A belated claim for interest from the date of the cause of action to the date of judgment deprives a final court of the views of the courts below. Bare assertions of the fall in the purchasing power of money do not constitute exceptional circumstances. Accordingly, we refuse to award interest pursuant to section 12(1) of the Law Reform (Miscellaneous Provisions) Act.

[42] Section 12(2) of the same Act mandates the award of interest on a judgment debt of 4 percent per annum from the date of entering the judgment until the judgment is satisfied. In the present case, the judgment sum was paid into Court on April 6, 2009, 39 days after Cummings-Edwards JA ordered the Appellants to do so, that is 124 days after the judgment of Persaud J. Payment into court does not affect judgment debt interest, although it may have an impact on costs. As was said in *Jefford v Gee*.⁵⁸

If the plaintiff recovers more (apart from interest) he gets his costs.

If he recovers no more (apart from interest) he does not get his costs from the date of payment in and he will have to pay the defendant's costs. The plaintiff will, of course, in either case get the appropriate award of interest irrespective of the payment into court.

In the present case, judgment debt interest continued to run despite the payment into Court.

Conclusions

[43] For the reasons given in this judgment, this Court concludes that:

- a. There was no justification to vary the award of damages made by the trial judge in that it was not shown that the judge acted on a wrong principle of

⁵⁷ [2003] UKPC 46; (2003) WIR 388.

⁵⁸ (n51), 149-150.

law, or misapprehended the facts or, for these or other reasons, made an award that was a wholly erroneous estimate of the damages to which Dr Ramsahoye is entitled;

- b. The trial judge's assessment of damages took into account the relevant factors in aggravation and mitigation and, in making what the judge described as the highest award in a defamation case in Guyana, properly considered the exemplary nature of the award;
- c. There was no basis for awarding special damages since these were neither pleaded nor proved;
- d. As the publications took place in Guyana and there was no evidence that the defamatory publications occurred in any other Caribbean territory, there was no legal basis for awarding damages in accordance with awards made in other Caribbean jurisdictions where socio-economic conditions, including GDP, are different;
- e. The falling value in the currency did not justify increasing the award in this case since damages must be assessed at the time and in the circumstances where the injury was sustained; and
- f. An award of interest for the period from the cause of action to judgment, or a part thereof, is within the discretion of the court. It is only in an exceptional case that this Court will award such interest where the point was not canvassed in the courts below and no exceptional circumstances were placed before this Court in this case.

Orders

[44] The Orders of the Court are:

- a. The Appeal is allowed.

- b. The Cross-Appeal and consequential orders sought are dismissed save that the sum of G\$4.5 million (with interest accrued thereon), lodged on the order of Cummings-Edwards JA dated 27th February 2009 and representing the damages awarded by the High Court, must be paid to the Respondent.
- c. The Respondent is to pay the costs of the Appellants in this Court and the court below to be taxed if not earlier agreed.

/s/ R. Nelson

The Hon Mr Justice R Nelson

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ D. Hayton

The Hon Mr Justice D. Hayton

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ R. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee