

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV 2010/0013

BETWEEN:

YOHANNA GEORGE

Claimant

and

[1] VERNON M O'BRIEN
[2] THE ATTORNEY GENERAL OF THE COMMONWEALTH OF
DOMINICA

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Dawn Yearwood-Stewart for the Claimant

Ms. Tamika Hyacinth for the Defendants

2012: November 22;

2013: April 15.

JUDGMENT

[1] **ACTIE MASTER [AG.]:** This is an application for assessment of damages.

[2] By Claim Form with Statement of Claim filed on 13th January 2010 the claimant claims against the defendants for (i) general, aggravated and exemplary damages;(ii) assault; (iii) battery; (iv)false imprisonment and (v) malicious prosecution.

- [3] On 9th March 2010 judgment in default of defence was granted to the claimant with damages to be assessed.
- [4] On assessment on 27th October 2010 Master Mathurin awarded damages in the sum of \$266,567.50 as follows: (i) Damages for false imprisonment \$100,000.00 (ii) Assault and battery \$25,000.00;(iii) Malicious prosecution \$100,000.00;(iv) Aggravated damages \$25,000.00;(v) Exemplary Damages \$10,000.00 (vi) Special Damages \$6,557.50 together with prescribed costs at 60 % in accordance with CPR 2000 Part 65.
- [5] The defendants appealed the assessment Order made by the Honourable Master Mathurin. The Court of Appeal by Order dated 1st may 2012 set aside the Order on the ground that the Court was unable to discern the basis for which the Master came to the quantum of damages in the absence of reasons for the decision. The matter was remitted to the High Court for assessment of damages.

Background Facts

- [6] The claimant on carnival Tuesday 5th February 2008 at about 10 p.m. while walking on a bridge accompanied by two friends was approached by the 1st defendant, a police officer. The claimant alleges that the 1st defendant without giving any reason pushed her and demanded that she walked faster across the bridge. The claimant states that she told the 1st defendant that she was unable to do so as the bridge was too crowded. The claimant states that she was assaulted and beaten by the 1st defendant as a result. The claimant states further that she was arrested, remanded in a cell for 19 hours, charged and then released on bail. The claimant was acquitted on all charges when the matter came before the court on 26th June 2009.

Assessment of damages

- [7] **Special Damages:** The claimant claims the sum total of \$6557. 50 in relation to special damages for items of jewellery worn when the 1st defendant grabbed and beat her. In her affidavit in support of the assessment for special damage the claimant stated;

“As a result of being beaten by the first defendant I was wearing a short gold chain valued at \$550.00, a long gold chain valued \$1200.00, a flat gold chain valued at \$1000.00. Wristlets with diamonds valued at \$3000.00, fashion jewellery valued at \$70.00, T. shirt value \$60.00; Belt valued \$10.00, Prada shades valued \$667. 50. After being beaten I only found the pendant for the long chain in my brassiere. None of the items listed above could be located after I was rough-handed by the first defendant”.

The claimant did not present any evidence, receipt or invoice in support of her claim.

- [8] On cross examination counsel for the defendants challenged the value and description of the jewellery given by the claimant. The defendants state that the value and descriptions given by the claimant were merely guesses and that the claimant had not given a correct description of the items. The claimant in response stated that she gave slight descriptions of the size and design of the items.

- [9] It is the law that special damages must be specifically pleaded and proved. See **British Transport Commission v Gourley**¹. Special damages in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularized, it is plain law that one can recover in an action only special damage which has been pleaded and, of course proved. See **Lord Diplock L J in I K I W v Samuel**². However nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given as in this case.

¹ [1956] A.C. 185 at p.206

² [1963] 1 W.L.R 991 at 1006

- [10] In **The Attorney General of Antigua and Barbuda v Cyril Thomas Bufton** Barrow J said “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 toward any amount for an undoubted loss”
- [8] The Court is of the view that the unchallenged description of the manner in which the claimant was handled by the 1st defendant supports the claimant's assertions that she suffered the loss of the items mentioned in her claim. However having regard to the authorities and in the absence of any evidence to support the value of the items a nominal sum of \$ 5000.00 is awarded for special damages.

General Damages

- [9] The claimant's claims for general damages for assault and battery, false imprisonment and malicious prosecution. The claimant also claims aggravated and exemplary damages.
- [10] **Mc. Gregor on Damages**³ states that the object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he has suffered. The claimant cited the following authorities in support of the assessment of damages;

Tamara Merson v Drexel Cartwright & The Attorney General of The Bahamas⁴ where the Privy Council affirmed the decision of High Court Judge when the claimant was awarded \$8,160.00 by way of special damages; \$90,000.00 damages for assault, battery and false imprisonment; \$90,000.00 damages for malicious prosecution and \$100,000.00 including amounts of aggravated and exemplary damages in a case against police officers.

Mahadeo Sookhai v The Attorney General of Trinidad & Tobago⁵ where the court awarded \$25,000.00 for assault and battery; \$10,000.00 for aggravated

³ Fourteenth Edition Para 9 page 10

⁴ Privy Council Appeal No. 61 of 2003 delivered 13th October 2005

⁵ CV 2006/00986 delivered on 15th October 2007

damages;\$20,000.00 for exemplary damages and \$6000.00 for false imprisonment. The claim was for assault and battery and false imprisonment for half-an- hour by a police officer.

Myster Peter Matthew v The Attorney General of Dominica⁶, where the claimant was awarded \$ 10,000.00 for assault and battery, \$ 20,000.00 for false imprisonment and \$5000.00 for exemplary damages. The claimant was seized by his trousers, forcefully taken to the police station, shackled with handcuffs in the presence of his wife. The Court awarded \$10,000.00 for assault & battery; \$20,000.00 for false imprisonment; \$5,000.00 for exemplary damages.

Inasu Everaldd Ellis v The Attorney General of Jamaica etal⁷ where the claimant was detained and interrogated for seven (7) hours, charged with several offences and released. The charges were all dismissed. The Court awarded \$ 100,000.00 false imprisonment; \$ 2,000,000 for malicious prosecution including aggravated damages.

Shayne Richardson v The Attorney General of Anguilla etal⁸ a claim for wrongful and unlawful assault upon the claimant by a police constable. The claimant was awarded general damages for assault and unlawful search in the sum of \$6,000.00 and damages for constitutional right in the sum of \$2,000.00.

Assault and Battery

- [11] An assault is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact. Battery covers intentional or reckless use of unlawful force on another person, resulting in harmful or offensive contact. Thus, anything that amounts to a blow whether

⁶ DOMHAP claim 472 of 2000 decided in 2006

⁷ Civil Appeal no 37/01 decided December 20,2004

⁸ AXAHCV2008/0012 delivered on July 7,2009

inflicted by hand, weapon or missile, is a battery. See **Clerk and Lindsell on Tort at paragraph 17-03**.

[12] The claimant is seeking compensation for assault and battery and loss of amenity in the sum of \$100,000.00.

[13] The defendants suggested an appropriate award for assault and battery should be in the amount between \$5000.00 - \$6000.00 taking into consideration the account of the injury suffered by the claimant and inflation.

[14] The defendants cited the following authorities:
Leon Cherry v Charles Leriche⁹ where an award of \$5000.00 was made for pain and suffering in a claim where the defendant had thrown acid in the claimant's face.

Danny Severin v The Attorney General of St. Lucia¹⁰ A claim where the claimant was detained at the police station for more than 24 hours. The Court awarded \$12,000.00 for pain and suffering; \$8000.00 for false imprisonment; \$12,000.00 for aggravated damages.

Charlesworth Morancie v Marlon Guiste et al¹¹, a claim for damages for assault and battery. The claimant was violently assaulted by the defendant, a minor at the time, by inflicting severe wounds to both arms, the left wrist and forearm permanently deformed and four fingers were severed from the right hand. The Court awarded \$100,000.00 for pain suffering and loss of amenities.

[15] The nature and extent of the assault and battery were outlined by the claimant in her claim and submissions in support of the assessment of damages. The claimant states that she was assaulted by the 1st defendant who (i) held her

⁹ SLUHCV 2006/0204 delivered on November 13, 2007

¹⁰ SLUHCV 2008/0973 delivered on February 10, 2011

¹¹ DOMCV 2002/0291 delivered on September 10, 2012

tightly;(ii) hit her with a baton under her stomach;(iii) dragged her across the bridge towards a vehicle; (iv) threw her onto the back seat of the police vehicle;(v) slapped her across her face;(vi) at headquarters dragged her from the vehicle along a small passageway towards the cell of Roseau police station(vii) threw her against a wall; (viii) picked her up and body slammed her to the ground;(ix) kicked and punched her in ribcage.

[16] The nature of the injuries suffered by the claimant was outlined in the medical report of Dr. Robertson Thomas as follows:

- (i) painful distress on minimal movement;
- (ii) ambulation evidently difficult
- (iii) Head:- Frontal tenderness
- (iv) Cervical spine tenderness
- (v) Neck tenderness (post cervical Spine)
- (vi) Hyper pigmented Erythematons area in left scapular and base of neck
- (vii) Supra pubic, lower abdominal wall tenderness
- (viii) Right and left anterior thigh tenderness.

The medical report concluded that the injuries suffered by the claimant were as a result of "Blunt trauma induced multiple soft tissue injury with predominant right side involvement."

[17] There is clear evidence that the claimant suffered injury to feelings, indignity, disgrace and humiliation. The circumstances leading to the arrest of the claimant occurred in the presence of a crowd on carnival Tuesday night. The claimant said she was in the company of a friend visiting from Barbados and other friends after the parade. She also suffered embarrassment at the Police Station in the presence of her father and other inmates in the cell.

[18] **Mc Gregor on Damages** states "the tort of assault affords protection from insult which may arise from interference with the person". In making an award the Court

must take into the indignity, mental suffering, disgrace and humiliation that may be caused”.

[19] The court notes that the claimant's suggestion of an award of damages in the sum of \$100,000.00 is not buttressed by any authority from the Commonwealth of Dominica or neighbouring jurisdictions with similar legal systems and socio-economic conditions. The decision in **Tamara Merson v Drexel Cartwright & the Attorney General of The Bahamas** in which the court awarded \$90,000.00 for assault and battery cannot be used as a bench mark having regard to the plethora of decisions of similar issues emanating from the Commonwealth of Dominica and the neighbouring jurisdictions.

[20] In **Matuszowicz v Parker**¹² Georges J in an assessment of damages stated;-
“ ... The issue of the jurisdiction to which a court may look in considering an assessment of general damages was discussed by the Privy Council in *Chan Wai Tong v Li Ping Sum* [1985] 2 WLR 396. The Board stated (at page 401):
“..... their lordships think it right to refer to the substantial body of authority, both in the Court of Appeal of Hong Kong and in this Board, to the effect that a court should in general have regard only to awards in the same jurisdiction or in a neighbouring locality where the relevant conditions are similar. In *Jag Singh v Toong Fong Omnibus Co. Ltd* [1964] 1 WLR 1382 at page 1385 Lord Morris of Borth-y-Gest delivering the advice of the Board says- In deciding this appeal their lordships think that three considerations may be had in mind..... (3) That to the extent to which regard should be had to the range of awards in other cases which are comparable such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial condition exists’ .”

¹² (1987) 50 WIR 24

[21] I am of the view that having regard to the evidence and the applicable considerations in law that the court is called upon to apply that an award of \$25,000.00 inclusive of an uplift for aggravated damages is an appropriate award to be made in this case for assault and battery.

False Imprisonment

[22] In the instant case, the claimant alleges that she was wrongfully arrested and imprisoned by the 1st defendant and placed in the cells at Roseau Police Station for 19 hours. The claimant is seeking compensation in the sum of \$100,000.00.

[23] The defendants contend that the sum claimed by the claimant is excessively high and is not supported by any line of authorities. The defendants suggested an award of \$8000.00 for false imprisonment.

[24] It is clear that the claimant in this instant case was completely deprived of her liberty. In computing damages for false imprisonment **Mc Gregor on damages**¹³ states: "the details of how damages are worked out in false imprisonment are few; generally it is not a pecuniary loss but a loss of time considered primarily from a non-pecuniary viewpoint, and the injuries to feelings, i.e the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status".

[25] According to the evidence the claimant was in the company of friends and in particular a friend visiting from Barbados. The restraint took place in the open in the presence of a crowd on carnival Tuesday. The claimant faced further humiliation at the police station in the presence of her father and in the prison cell in the presence of other inmates.

[26] The Court takes into consideration the awards made in several authorities. In **Danny Severin v The Attorney General**¹⁴ the claimant detained in custody for more than 24 hours was awarded \$8000.00 for false imprisonment.

[27] In **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**¹⁵, the court awarded the first claimant \$20,000.00 for false

¹³ at Para 1850

¹⁴ SLUCHCV 2008/0973 delivered on 10th February 2011,

¹⁵ Claim No.DOMHCV2006/OO38

imprisonment for six hours and \$25,000.00 to the second defendant for false imprisonment for 9 hours.

- [28] In **Elihu Rymer v The Commissioner of Police et al**¹⁶ where, in 1999, the Court of Appeal, awarded the Claimant/Appellant \$20,000.00 for three hours unlawful detention in a situation where none of the charges against the appellant were pursued before the Magistrate. They were either struck out or dismissed for want of prosecution
- [29] In **Omari Small v Michael Laudat et al**¹⁷ the court awarded \$100,000.00 on a claim for false imprisonment where a murder charge was withdrawn after 78 days incarceration.
- [30] The awards made by the court are inconsistent. Upon review of the various awards made by the court I am guided by the decision in **Myster Peter Matthew v The Attorney General of The Commonwealth of Dominica** where the claimant was arrested and suffered humiliation in the presence of his wife. His detention was of shorter duration than the case at bar which was 19 hours. I note that in this instant case the arrest was made in public in the presence of a visiting friend from Barbados, her father and revellers on last lap carnival Tuesday. I also take into consideration the rate of inflation since the award in **Myster Peter Matthew's** case and make an award of \$60,000.00 for false imprisonment.

Malicious Prosecution

- [31] The claimant is seeking compensation for malicious prosecution in the sum of \$90,000.00. The claimant avers that she was wrongfully arrested and the prosecution by the first defendant was malicious. The claimant further avers that she made 12 appearances over an approximate period of a year and 3 months before the charges were dismissed.
- [32] The claimant relies on the Jamaican case of **Ellis v Ransford A. Fraser & The Attorney General of Jamaica** where the appellant a forestry officer was taken onto custody detained, interrogated for 7 hours, charged with several offences under the Larceny Act, interdicted from duty and thereafter the charges against him were dismissed. An award of JA \$2.1 million equivalent to approximately EC \$65,000.00 was granted in 2004. The claimant states that taken into consideration inflation an award should be between \$80,000.00 - \$100,000.00.

¹⁶ BVI Civil Appeal No 13 of 1997

¹⁷ DOMHCV 2010/0012 delivered in 2011

- [33] The defendants urge the court to make an award of \$10,000.00 and rely on **Dexter Smith v Attorney General Commissioner Corporal Portia Nicholas Sergeant Samuel Smart**¹⁸. The defendants said that it was necessary to make an adjustment noting that the arrest was made at a friend's home whereas in this present case it was done in the public and also noting the time that has passed since the incident in 2008.
- [34] **Mc. Gregor on Damages** at paragraph 1367¹⁹ states that in malicious criminal prosecutions "the principal head of damage is to fair fame of the plaintiff, the injury, to his reputation. In addition it would seem that he will recover for the injury to his feelings, i.e. for the indignity, humiliations and disgrace caused him by the fact of the charge being preferred against him.It therefore seems that the plaintiff can recover in respect of the risk of conviction that is basically injury to feelings."
- [35] The case of **Ellis v Ransford A. Fraser & The Attorney General of Jamaica** is distinguishable from the case at bar. In **Ellis** the claimant was dismissed from employment as a result of the arrest and charges laid against him by the police. The claimant in the case at bar, other than the indignity, humiliations and disgrace suffered, did not lead any evidence on the impact on her employment. In making the award I take into considerations the number of appearances in court over a protracted period. I have considered all the evidence and taken into account other awards of similar nature within the jurisdiction and award the sum of \$40,000.00 for malicious prosecution.

Exemplary Damages

- [36] As noted in **Rookes v Barnard (1964) AC 1129**, exemplary damages are awarded where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action. It has been said that "a person's liberty is sacred. To be deprived of it through the wrongful actions of one who has sworn to protect and serve the community, compounded by the bringing of a false criminal charge is wholly unacceptable and must not be tolerated under any circumstances" see **Kuddus V Chief Constable of Leceistershire**²⁰. The facts in this case do not prove that there was a false criminal charge. However the highhandedness and callous actions of police officers and to act to deter officers concerned from repeating such conduct in a small jurisdiction like Dominica necessitates an award for exemplary damages. The action of the 1st t defendant, an officer, who is trained to serve and protect, is unacceptable. I note the award of \$5000.00 made in 2006 in the **Myster Perter Matthew's** and taking into account the distinguishable circumstances in the case at bar and also inflation over the years. On the totality of the evidence and the authorities cited I am of the view that an award in the sum

¹⁸ GDAHCV 2008/0328

¹⁹ 14th Edition Page 928

²⁰ [2001] UKHL/29

of \$10,000.00 for exemplary damages is an appropriate amount in the circumstances.

Order

[33] For the reasons above and upon review of the facts and authorities it is hereby ordered that the claimant is awarded;

- (1) **Special Damages** in the sum of \$ 5000.00.
- (2) **Assault and Battery** in the sum of \$25,000.00 inclusive of an uplift for aggravated damages.
- (3) **False Imprisonment** in the sum of \$60,000.00.
- (4) **Malicious Prosecution** in the sum of \$40,000. 00.
- (5) **Exemplary Damages** in the sum of \$10,000.00.
- (6) **Costs:** Prescribed costs to the claimant


Agnes Actie
Master [Ag.]