JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 11 OF 2003

BEFORE:	**THE HON. MR. JUSTICE PANTON, P.** **THE HON. MRS. JUSTICE HARRIS, J.A.** **THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**	
BETWEEN:	**THE ATTORNEY GENERAL OF JAMAICA**	**1ST APPELLANT**
AND	**CONS. RANSFORD A. FRASER**	**2ND APPELLANT**
AND	**HARVEY MORGAN**	**RESPONDENT**

Mr. Curtis Cochrane, instructed by the Director of State Proceedings for the Appellants.

Mr. Leon Green, instructed by Green and Moodie for the Respondent.

November 12, 2007 and March 14, 2008

PANTON, P.

I have read in draft the judgment of, Harris, J.A. I agree with her reasoning and conclusion and there is nothing further I wish to add.

HARRIS, J.A.

This is an appeal from the judgment of D. McIntosh, J. challenging an award of damages made in favour of the respondent.

The factual circumstances on which the appeal is grounded can be briefly stated. On March 1, 1991, the respondent was arrested and charged with

several offences inclusive of offences under the Larceny Act. At that time he was in the employ of the Government of Jamaica as a Forester 2 and was stationed at Port Antonio in the parish of Portland.

On the day of his arrest, he was detained in custody from 9:00 a.m. until sometime after 7:00 p.m. when he was released on bail. While in custody, he was exposed to the gaze and scrutiny of a crowd estimated to be between 700 to 1000 persons.

He was required to attend trial on numerous occasions to answer the charges which were brought against him. On October 4, 1995 the charges were dismissed. Prior to his arrest, he was a member of the Chamber of Commerce for the parish of Portland and an outstanding member of his community. He was a counsellor for young men, a sociable and congenial person, a good cricketer and a good dancer. After his arrest he became withdrawn. His health deteriorated. He eventually suffered a stroke which resulted in the paralysis of the left side of his body.

Medical evidence was furnished on behalf of the respondent, by Dr. L. G. Bloomfield. The respondent became his patient in 1990. At that time, he had a prior diagnosis of a pre-existing medical condition called Alterio-Venous Malformation, which, in essence, is a mal-formation of the brain tissue. This malady caused the respondent to experience epileptic seizures for which he was being treated and which were effectively under control prior to his arrest and

trial. After his arrest, the seizures increased. He eventually suffered a stroke on July 27, 1993.

There was also medical evidence from Dr. Randolph Cheeks who was called on behalf of the appellants. Dr. Cheeks had never treated the respondent. The evidence supplied by Dr. Cheeks was by way of an opinion as to his prognosis relating to a person who suffers from Alterio-Venous Malformation. This condition, he stated, was congenital. He asserted that it pre-disposes to the risk of spontaneous haemorrhage, or, a stroke, or epilepsy. He opined that emotional trauma may cause a stroke, but that such stroke would only occur on the very day of a traumatic event.

In an action commenced by the respondent on May 21, 1999, he claimed damages against the appellants for false imprisonment, malicious prosecution and for personal injuries sustained as a result of his arrest. The personal injuries were particularized as follows:

"(a) Massive stroke

(b) Left body paralysis

(c) Seizures"

No defence was filed. The matter proceeded to assessment of damages. Damages were assessed by the learned trial judge on February 14, 2003 and the following award was made:

"a. Special Damages in the sum of Twelve Thousand Seven Hundred and Eighty-six United States Dollars (US$12,786.00) and One Hundred and Seventy-seven Thousand Two Hundred and Sixty-seven Jamaican Dollars (J$177,267.00) with interest at the rate of 6% per annum from October 4, 1995 to November 22, 2002.

(b) General Damages in the sum of Fifteen Million Dollars ($15,000,000.00) with interest at the rate of 6% per annum from June 2, 1999 to November 22, 2002."

The following grounds of appeal were filed:

"(a) That the learned trial judge erred in finding that the stroke suffered by the Respondent in July of 1993 was caused from he [sic] being arrested and prosecuted.

(b) That the learned trial judge erred in unreasonably rejecting the medical evidence of the Appellants.

(c) That the learned trial judge erred in making an award of Fifteen Million Dollars ($15,000,000.00) for general damages, which was excessive, had no basis in law and was arbitrary in the circumstances.

(d) That the learned trial judge erred in awarding special damages that did not relate to the cause of action before the court."

Grounds (a) and (d) were abandoned.

Ground (b):— Rejection of the appellant's medical evidence.

The thrust of Mr. Cochrane's submissions was that the learned trial judge had fallen into error in that he rejected the medical evidence adduced by the appellants through Dr. Cheeks, a qualified consultant neurosurgeon and relied on

the evidence of Dr. Bloomfield who was inexperienced in the field of neurosurgery.

The fundamental issue in this case is whether there was evidence on which the learned trial judge could have found that the stroke suffered by the respondent was a direct result of his arrest and trial. In evaluating the evidence before him, the learned trial judge took into consideration the evidence of a witness, one Enasu Ellis, a former co-worker of the respondent, who described him as a sociable and congenial person prior to his arrest. He also considered evidence coming from the respondent's wife and son in relation to the gradual deterioration in his health after his arrest culminating in the massive stroke pending his trial.

It was a finding of the learned trial judge that these three witnesses' evidence was corroborated by Dr. Bloomfield. The learned trial judge then stated as follows:

> "The plaintiff was diagnosed with Brandom seizure in 1972. Thereafter he was treated with medication for the condition. He had been warned by the specialist to avoid stress which could result in a stroke and there is compelling evidence that his condition was stabilized and he was able to live a [sic] active, full and normal life up to the time of his arrest and trial.
>
> He was also advised that the condition could be corrected by surgery, which surgery could remove the malformations which caused the seizures and such surgery would make a probably [sic] stroke unlikely.

> His wife a nurse filed for him to join her in the USA where she went to work. It was her [sic] among her objectives to be able to afford the surgery for her husband and to ensure he had the best medical treatment and care.
>
> Having filed for him to join her in the USA he had to get a police record, He [sic] could not get one as he had a pending case in court.
>
> From the time of his arrest and during the trial, plaintiff [sic] showed increasing signs of emotional turmoil and stress, retreating into seclusion and evincing fear whenever his next court appearance was due. He was clearly emotionally devastated by his arrest and trial.
>
> Eventually he had a massive stroke which has left him paralysed and that has apparently shattered his expected life span. Doctors [sic] Cheeks gave him merely five to six more years to live."

He further stated:

> "Dr. Linval Bromfield [sic] of Port Antonio knew the plaintiff in a professional capacity from about 1988 and has treated him. His report was admitted in evidence as **Exhibit 1.**
>
> He treated plaintiff [sic] for his brain ailment which produced a fitting disorder. This disorder was effectively under control.
>
> After the arrest of the plaintiff in March of 1991, he found that the plaintiff started showing progressive [sic] increase of high blood pressure and anxiety syndrome.
>
> On about 27/7/93 plaintiff [sic] suffered a ceredral [sic] vascular event known as a stroke.
>
> The time proximity of arrest and trial over a period of time caused an increase in blood pressure as a result of prolonged stress."

He continued by saying:

> "During the period of trial he had seen the plaintiff frequently as plaintiff [sic] complained of increasing epelectic [sic] seizures, increasing acute anxiety, insomania [sic] and depression, loss of appetite, loss of weight, sense of helplessness and sense of powerlessness. Plaintiff eventually left his care to go to the USA. His level of disability would be in the high ninety percent (90%) for the whole person."

In dealing with Dr. Cheeks' evidence he said:

> "**The Defence** called one witness, Dr. Randolph Cheeks a neurosurgeon. He opined that the rigors of a trial could not induce a stroke in a person who had A.V.M. That if a stroke would be induced it would have been at the time of arrest or within 48 hours of arrest and not after.
>
> He admitted that he had never treated a patient when that patient was undergoing the rigors of a trial.
>
> That if the patient had been warned to avoid stress, that would mean physical stress. That there is such thing as mental stress which could lead to anxiety, depression and or raised blood pressure but later admitted that the trauma of an arrest could lead to a stroke as a result of stress [mental].
>
> At the instance of this court he did a cursory examination of the plaintiff, without ever having seen him before and without any instruments. He thought plaintiff probably had between a 55-60% impairment of the whole person and would only have another 5 – 6 years to live."

He later said:

> "Although Doctor Cheeks expressed a contrary view, he did admit that the trauma of arrest could trigger a stroke. In this case there is overwhelming evidence

> that the trauma of arrest and trial was the trigger which activated plaintiff's stroke."

It is clear that the learned trial judge examined the evidence and opinions of both medical practitioners and did not without good reason, indicate a preference for Bloomfield's diagnosis. Dr. Bloomfield attended to the respondent regularly before and subsequent to his arrest and trial. There was evidence from him as to his findings consequent upon his examination of the respondent during the periods in which he saw him. It cannot be said that as a general practitioner, in order to present a diagnosis, he was not equipped with the expertise to assess the effects of the arrest and the trial on the respondent. In contrast, Dr. Cheeks gave an opinion of the prognosis of the respondent based on his existing pre-condition. This is someone whom he had never treated as a patient, as the learned trial judge observed. He first saw him in court, when, at the request of the Court, he carried out a brief examination of the respondent unaided by any medical equipment or apparatus.

On the evidence before him, it was open to the learned trial judge to accept or reject Dr. Cheeks' opinion. It was perfectly permissible for him to have disregarded Dr. Cheeks' opinion that the trauma of the respondent's arrest could not have precipitated a stroke. He, however, did not fail to take into account the doctor's admission that the traumatic experience of the appellant's arrest and trial could have induced a stroke.

It was a further complaint of Mr. Cochrane that the learned trial judge, in assessing damages, ought to have paid due regard to the "egg shell skull" rule in support of this contention, he cited the case of **Smith v Leech Brain & Co. Ltd.** [1962] 2 Q.B. 405; [1961] 3 All ER 1159.

No ground of appeal had been filed to support the issue contended for. In passing, it is of worth to note that the "egg shell skull" rule would not have availed the appellant. The ratio decidendi of the case cited is that a tortfeasor must take his victim as he finds him. There would have been no necessity for the learned trial judge to have given consideration to the medical condition of the respondent which prevailed prior to his arrest and trial.

Ground (C):— Global award.

It was Mr. Cochrane's submission that the learned trial judge failed to specify the amounts awarded under the head of general damages with respect to each cause of action. He further argued that the cases of **Ivan Nettleford v. Attorney General** HCV 4393/2007and **Young v. Book Traders Caribbean Ltd. and Others** C.L. 1996 of Y003 decided on July 30, 1997 on which the learned trial judge placed reliance were inapplicable.

In addressing the question of general damages, the learned trial judge made a global award of $15,000,000.00. He said:

> "Although many cases were cited in respect to general damages, this court finds the unreported case

> of **Ivan Nettleford v. Attorney General** in which there was a settlement of $9,000,000 and of **Young v. Book Traders Caribbean Ltd and Others C.L. 1996/Y 003** decided on the 30/7/97 in which an award of over $34,000,000 was made very useful.
>
> This court being very conservative will award the sum of $15,000,000 as general damages with interest at 6% from the 2/6/99 to the 22/11/02."

On an assessment of damages, a judge has a discretionary power to make an award of a lump sum. However, the aggregate sum awarded may be broken down by him into constituent parts. It follows therefore, that an award for general damages may be broken down to allocate separate sums to cover several causes of action arising on a claim. It is evident that the failure of a trial judge to make separate awards, on separate causes of action, would not render the award a nullity. See **Banker v. Pidgen** [1937] 1 K.B. 664 at page 683. An appellate court will only disturb such an award if it is found to be excessive or inadequate. See **Beverley Dryden v. Winston Layne** (an infant by next friend Stanley Layne) S.C.C.A. 44/87 delivered on 12th of June, 1989.

In the instant case, it would have been desirable for the learned trial judge to have stated with specificity the sums awarded for each cause of action. In determining compensation to a claimant the Court is guided by comparable awards made in cases on which the claimant's cause of action is grounded. The causes of action in the instant case, are found in false imprisonment, malicious prosecution and for personal injuries arising therefrom. As a consequence, the

learned trial judge ought to have sought guidance from cases with respect to each of the foregoing causes of action.

The case of **Nettleford v. Attorney General** (supra) is distinguishable from the case under review; so too is the case of **Young v. Book Traders Caribbean Ltd. et al** (supra). In **Nettleford v. Attorney General** the claimant had been incarcerated for over twenty-eight years without being sentenced. Judgment was by way of the consent of the parties. In **Young v. Book Traders Caribbean Ltd. et al,** the claimant sustained serious injuries in a motor vehicle accident. The injuries and the resultant disabilities suffered by the claimant are distinctly different from those sustained by the respondent. It is our view that neither of these two cases offers useful guidance in assessing an appropriate award to the respondent.

So far as the claims for false imprisonment and malicious prosecution are concerned, the learned trial judge ought to have been guided by the case of **Ellis v. Attorney General and Others** S.C.C.A. 37/07 delivered on December 20, 2004. In that case, Ellis was arrested and charged for offences similar to those with which the respondent was charged. Ellis was detained in custody for several hours. The respondent was also detained for several hours. Ellis was an influential and respected man in his community, so was the respondent. **Ellis** was awarded the sum of $100,000.00 for false imprisonment and $2,000,000.00 for malicious prosecution inclusive of aggravated damages. We are of the view

that, in keeping with the foregoing awards and the current consumer price index, the sum of $124,172.30 for false imprisonment and an amount of $2,483,440.60 for malicious prosecution and aggravated damages would be adequate compensatory awards to the respondent under these heads.

A determination having been made as to the amounts to be awarded to the respondent for false imprisonment and malicious prosecution, it will be necessary to turn to the question of an award with respect to the personal injuries suffered by the respondent.

An examination of previous awards made in personal injury cases did not lead us to a case or cases by which we could be usefully guided. A compensatory award for physical disability may be measured, to a great extent, by the impact of the injuries on his daily life as opposed to the nature of his injuries. In **H. West and Sons Ltd. v. Shepherd** [1964] A.C 326 at pages 340 – 341 Lord Reid said:

> " 'The man whose injuries are permanent has to look forward to a life of frustration and handicap and he must be compensated, so far as money can do it, for that and for the mental strain and anxiety which results. There are two views about the true basis for this kind of compensation. One is that the man is simply being compensated for the loss of his leg or the impairment of his digestion. The other is that his real loss is not so much his physical injury as the loss of those opportunities to lead a full and normal life which are now denied to him by his physical condition – for the **multitude of deprivations and even petty annoyances** which he must tolerate. Unless I am prevented by authority, I would think that the

> ordinary man is, at least after the first few months, far less concerned about his physical injury than about the dislocation of his normal life. So I would think that compensation should be based much less on the nature of the injuries than on the extent of the injured man's consequential difficulties in his daily life.' " [Emphasis mine]

Given the circumstances of the case under review, we think it apt to consider that compensation of the respondent ought to be based on the fact that he has been deprived of the opportunity to lead a full and active life by reason of the physical disability visited upon him as a result of the stroke. His disability is permanent. He will never be able to pursue a normal life. The extensive deprivation which he has endured will obviously perpetuate. I am of the view that a sum of Eight Million Dollars ($8,000,000.00) would adequately compensate him for the physical disability he has sustained.

I would allow the appeal in part, set aside the award of $15,000,000.00 and in substitution therefor make the following award:

False Imprisonment	124,172.30
Malicious Prosecution and Aggravated Damages	2,483,440.60
Pain and Suffering and Loss of Amenities	8,000,000.00
	$10,607,612.90

with interest thereon at the rate of 6% per annum from the date of the service of the Writ of Summons. Half costs of the appeal to the respondent to be agreed or taxed.

DUKHARAN, J.A. (Ag.)

I too agree with the judgment of Harris, J.A. I agree with her reasoning and conclusion and there is nothing further I wish to add.

PANTON, P.

ORDER

The appeal is allowed in part. The award of $15,000,000.00 is set aside and in substitution therefor the following award is made:

False Imprisonment	124,172.30
Malicious Prosecution and Aggravated Damages	2,483,440.60
Pain and Suffering and Loss of Amenities	8,000,000.00
	$10,607,612.90

with interest thereon at the rate of 6% per annum from the date of the service of the Writ of Summons. Half costs of the appeal to the respondent to be agreed or taxed.