

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. B094 of 1995

BETWEEN AUDLEY BROWN PLAINTIFF
A N D JAMAICA HERALD LTD. DEFENDANTS
A N D KEAN WRIGHT

Alvin Mundell for plaintiff
Andrea Walters for defendants

Heard: January 12 and 17, 1996

PANTON, J

The plaintiff was unfortunately hit down on May 30, 1993, by a motor vehicle owned by the first defendant and driven by the second defendant. Both legs were fractured. He spent a night in the Black River Hospital from which he was transferred to the Kingston Public Hospital. He spent seventeen days in the latter institution. He was referred back to the Black River Hospital, according to Dr. Mena's report, for treatment as an outpatient.

The plaintiff has insisted that instead of being treated as an outpatient, he was admitted as an in-patient and kept for nearly six months as such. During this period, he was taken on several occasions to the "fracture clinic" at the Kingston Public Hospital. According to the plaintiff he was subsequently treated as an outpatient at that institution for five weeks. He resumed his occupation as a district constable on June 8, 1994.

The medical report indicates that the plaintiff has suffered a permanent functional impairment of fifteen percent to his left leg and ten percent to his right leg, and twelve to fourteen percent of the whole body.

The impairment is more noticeable in relation to his left leg which is half an inch shorter than the right leg. The plaintiff occasionally suffers pain in the left leg.

Prior to the incident, he used to play football. He is no longer able to do so; nor can he run.

Against this background, the plaintiff is seeking general damages in the region of \$800,000.00. His attorney Mr. Mundell submitted that the case of Miller v. Larmand C.L. 1990 M425, an unreported judgment of Granville James, J., delivered on June 5, 1992, supports such an award. In that case, there were fractures of the tibia and fibula of the right leg. There was deformity of the right leg. The plaintiff remained in hospital for six days, and was unable to work for five months. For pain and suffering, the sum of \$208,000.00 was awarded.

On the other hand, Miss Andrea Walters for the defendants submitted that the case Hepburn Harris v. Carlton Walker (Supreme Court Civil Appeal 40/90) is a more appropriate guide. In that case, the Court of Appeal upheld on December 10, 1990 an award of \$100,000.00 for pain and suffering and loss of amenities, which award had been made by Langrin, J. on May 10, 1990. The plaintiff Harris had suffered a fracture of the upper end of the tibia and fibula with an unusual fracture of the acetabulum socket. The consequential injuries were: wasting of the quadruped muscles, swelling around the upper third of the left lower leg, scarring, 3/4 inch shortening of the left leg, and pain in the hip. There was a fifty percent impairment of the left leg which translated into a twenty percent impairment of the whole person.

The disability involved an inability to stoop or stand for long periods, a limping gait, pain in the hip, anxiety, depression, inability to garden and swim, and inability to drive a minibus.

In my judgment, the case of Hepburn Harris v. Carlton Walker is more in keeping with the facts of the instant case. When I consider the suffering of the plaintiff, the level of the disability, and the acknowledged slippage of the Jamaican currency since 1990, it seems that an award of \$550,000.00 is appropriate.

So far as special damages are concerned, the following awards are made:

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|--|---|----------------------|
| (1) Loss of earnings as a district constable for twelve months at \$3,000.00 per month | = | \$ 36,000.00 |
| (2) Loss of earnings as a farmer | = | 1,800.00
(agreed) |
| (3) Transportation | = | 9,800.00 |

(4) Medication	=	\$ 1,500.00
(5) Crutches	=	350.00 (agreed)
(6) Damaged clothing etc.	=	2,000.00
		<hr/>
		\$ 51,450.00

For completeness, it should be mentioned that the plaintiff's age was not given in his oral evidence. However a medical report dated 11th October, 1994 (Exhibit 1) refers to him as aged 28 whereas the other medical report dated 6th July, 1995 (Exhibit 2) describes him as being aged 31 years.

INTEREST

The Court is not unmindful of the fact that Jamaica has been operating for almost a decade within the framework of high interest rates. It is indeed a notorious fact. It seems anachronistic therefore for the Supreme Court to be awarding interest of 3% on damages for personal injuries. It seems also that the interests of justice would be better served if successful litigants in these cases had a higher rate of interest attached to the awards. With this in mind the Court considers that an award of 10% interest is the least that ought to be made.

The assessment is summarised as follows -

General damages: \$550,000.00 plus interest at 10% from the service of the writ.

Special damages: \$51,450.00 plus interest at 10% from May 30, 1993.

Costs to the plaintiff are to be agreed or taxed.

NAICS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. V013 OF 1984

BETWEEN

LINETTE VASSELL
CYRIL VASSELL

FIRST PLAINTIFF
SECOND PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

Mr. Richard Small and Mr. A. Rattray instructed by Rattray, Patterson and Rattray for Plaintiffs.

Mr. Lennox Campbell, Mr. Evan Oniss and Mr. Audley Foster for Defendants.

HEARD: 25TH, 26TH, 27TH, 28TH, OCTOBER, 1993, 2ND, 3RD, NOVEMBER, 1993,
13TH, 14TH, 15TH DECEMBER, 1993 AND 19TH JANUARY, 1996.

JAMES GRANVILLE J.

In this action the Plaintiffs are claiming damages for trespass to property. The first Plaintiff also claims to recover damages for false imprisonment and malicious prosecution. Originally there were three Defendants but a Notice of Discontinuance was filed in respect of the Second and Third Defendants so that the sole Defendant is now the Attorney General.

At the close of the Plaintiff's case the Defence represented by Mr. Evan Oniss informed the Court that the Defence conceded on the question of liability. Judgment was accordingly entered in the Plaintiffs' favour. The parties were unable to arrive at a mutually acceptable figure in respect of damages and so it remains for damages to be assessed by the Court.

The background to this action is that in December, 1983 there was a bank robbery in St. Mary and one McDonald was arrested in connection with the robbery. A car allegedly used by McDonald in the robbery was owned by the First Plaintiff (hereafter referred to as Mrs. Vassell). McDonald was a supporter or member of the Workers' Party of Jamaica, Mrs. Vassell was also a member of that party. The party had a system whereby vehicles belonging to members were made available for party work. According to Mrs. Vassell it was in those circumstances that she made her car available, she was totally unaware that McDonald was involved in any criminal activity or that her car was likely to be used in such activity.

On 16th December, 1983 while she was at her place of work the police went there and questioned Mrs. Vassell about the car and she told them of the

circumstances in which she had loaned the car to McDonald. Mrs. Vassell said in evidence that the behaviour of the police became hostile and she sought to exercise her right to have her attorney-at-law present before she answered further questions. This right was denied by the police and, indeed, she was ridiculed for seeking to exercise such a right.

Mrs. Vassell was taken to her home by the police, a number of other policemen were already there when she arrived. The house was searched in the presence of her helper, her five year old daughter, an ailing and elderly mother-in-law and a cousin. Mrs. Vassell's husband (second plaintiff) arrived while the search was being conducted. A small quantity of ganja was found in a closet and the Second Plaintiff (hereafter referred to as Mr. Vassell) admitted that it belonged to him.

Mr. and Mrs. Vassell were taken to the Central Police Station, Mr. Vassell was granted bail but Mrs. Vassell was kept in custody, she was placed in the lock-up. On the following day Mrs. Vassell was questioned by Superintendent Richards. She gave a statement to the police and was released on bail in respect of the charge for possession of ganja.

On 20th December 1983 a group of policemen led by Superintendent Richards invaded the Plaintiffs' home at about 6.15 a.m. It appeared to Mrs. Vassell that they scaled a fence to enter the premises. Mrs. Vassell was taken once more to the Central Police Station where she was again placed in the lock-up. Superintendent Richards had informed Mrs. Vassell that he wanted to ask her certain questions at the station. Such questions were never asked neither did Mrs. Vassell see Superintendent Richards at the station despite efforts by her attorneys to contact the Superintendent.

Mrs. Vassell's attorney prepared and served the necessary papers to ground a Habeas Corpus application; that was on 22nd December, 1983. The matter was set for hearing on 23rd December, 1983. On that morning (23.12.83) shortly before Mrs. Vassell was due to go to Court she was charged with a series of offences. The habeas corpus proceedings were frustrated.

On 29th December, 1983 Mrs. Vassell was taken to the Resident Magistrates Court in Port Maria, that was in connection with charges related to the bank robbery. An application was made for bail but this was strongly opposed by Superintendent Richards. The accused was remanded in custody until 5th January, 1984. On that

date (5.1.84) Mrs. Vassell was granted bail. The case was then listed for mention on 12th January 1984 and a Preliminary Enquiry was due to begin on 21st February 1984.

In Mrs. Vassell's own words, "On 21st February 1984 I went back for the Preliminary Enquiry and the Prosecution offered no evidence against me, the Information was dismissed, the Resident Magistrate told me I was free to go".

The evidence in this case clearly shows that Mrs. Vassell was embarrassed and humiliated as a result of harrassment by the police. The harrassment began on 16th December, 1983 when she was taken from her office by the police, it continued when her house was searched and the embarrassment and humiliation climaxed in her incarceration at the Central Police Station lock-up.

On the question of damages, two amendments were granted in the Statement of Claim.

- (i) the deletion from the Particulars of Special Damage item (B) the sum of \$16000 and to replace therefor the sum of \$18000; and
- (ii) the addition of a paragraph 11 claiming Exemplary Damages.

Mrs. Vassell's reputation was damaged both at her workplace and in her home environment. She suffered the humiliating and degrading experience of incarceration in the lock-up for a prolonged period including the Christmas holidays. The evidence discloses that the conduct of the police was arbitrary, oppressive and unconstitutional.

Mr. Small addressed the Court at length on the question of quantum of damages. He brought to the attention of the Court the publication Civil Actions against the police by Richard Clayton and Hugh Tomlinson (Sweet & Maxwell 1987). The Court was referred in particular to page 357 paragraphs (2)(a) and (b) where it is suggested that the best approach in determining the quantum of damages for falso imprisonment is to consider an hourly rate. The hourly rate suggested is £300 (Pounds) in 1986. This sum might be considered unrealistic in Jamaica.

Numerous cases were cited in an effort to assist the Court in arriving at the appropriate quantum of damages.

These include:-

- (i) Carrington and Another v Karamath 38 W.I.R. 306.
- (ii) Cassell & Company Ltd. v. Broome [1972] 1 All E.R.
- (iii) Peter Flemming v Detective Corporal Myers and the Attorney General
Suit No. S.C.C.A. No. 63/85

Judgment delivered December 18, 1989.

In this latter case the Plaintiff/Appellant was arrested and taken to Bull Bay Police Station but was discharged on a charge of murder at the end of a Preliminary Enquiry. There was imprisonment for thirteen days before the accused was brought before the Court - Award \$3000.

The Court (Coram Carey P. Ag., Forte and Morgan JJA) was of the view that the matter was deserving of punitive damages but such damages were not claimed.

In his address on the quantum of damages Mr. Oniss was quite frank, he conceded that the period of incarceration before Mrs. Vassell was taken to Court could be regarded as a breach of her Constitutional rights. Mr. Oniss cited a number of authorities. There were two instances of imprisonment of Mrs. Vassell thereby aggravating the matter.

I have considered the arguments on both sides and all the authorities cited including the case of Colin S. Henry v. The Attorney General of Jamaica, Assistant Superintendent T.K. Whyte and Detective Constable Lmond Brown decided by Panton J. on 17th May, 1993.

I have examined some recent awards for Malicious Prosecution and False Imprisonment - a pattern emerges. Each case must be considered on its own facts. In the result I make the following awards:-

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|------------------------------|----------|--------------------|
| (i) Damages | \$10000 | to |
| for Trespass awarded to both | | |
| Plaintiffs | | |
| (ii) General Damages for | | |
| False Imprisonment and | | |
| Malicious Prosecution | \$600000 | } Awarded to First |
| Exemplary Damages | \$300000 | |
| (iii) Special Damages | \$20210 | Plaintiff |

Costs to the Plaintiffs to be agreed or taxed.

Interest on \$910,000 @ 5% per annum with effect from 30th May, 1984.

Interest on \$20210 @ 5% with effect from 16th December, 1983.