

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 18/99

PRIVY COUNCIL REFERRAL

**BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE K. HARRISON, J.A.**

**BETWEEN: INEZ BROWN (near relation of
PAUL ANDREW REID, deceased) APPELLANT**

**AND: DAVID ROBINSON and
SENTRY SERVICE CO. LTD. RESPONDENTS**

**Barrington Frankson and Ms. Jacqueline Cummings instructed by
Archer Cummings & Co. for the appellant.**

John Vassell, Q.C., instructed by Dunn Cox for the respondents.

November 28, 29 and 30, 2005

PANTON, J.A.

1. This matter is before us on a referral from the Privy Council. Paul Reid, who was seventeen years old at the time of the tragic incident which gave rise to this suit, was shot and injured by David Robinson, an employee of Sentry Service Co. Ltd. The unfortunate incident took place on October 8, 1985, at a football match at the famous cricket ground bearing the name Sabina Park. Reid was shot while Robinson, a guard who was armed with a firearm, chased him. The chase had followed Robinson's unsuccessful efforts to control an unruly crowd.

Reid suffered paraplegia and was hospitalized. He developed septicaemia, and died three and a half months later from his wounds.

2. The subsequent suit by Inez Brown, mother of Paul Reid, saw proceedings in the Supreme Court, the Court of Appeal and the Privy Council. In the Supreme Court, the late Courtenay Orr, J. awarded a total of \$3,717,838.20 against the respondents. The Court of Appeal reversed this judgment on the ground that Robinson had been acting outside the scope of his employment, so the company, which had appealed, was not liable for the tort committed by Robinson. The appeal by the company had also challenged the amount of the damages on the basis that it was excessive. The written judgment of the Court of Appeal, understandably in the circumstances, did not deal with the quantum of damages.

3. By special leave, there was a further appeal to the Privy Council which restored the judgment of Courtenay Orr, J. so far as liability is concerned. However, the award of damages was set aside due to the fact that the learned judge had failed to apply the principle in *McCann v. Sheppard* [1973] 1 WLR 540, although he had made reference to it in his judgment. The principle, simply put, is that damages for pain and suffering and loss of amenities should be limited to an amount appropriate for the length of time that the injured party had survived.

4. In my view, our task in this exercise has been specifically defined and limited by the Privy Council. Ms. Cummings for the appellant does not think so. I

fail to see how her position can be sustained. She submitted that although the learned judge at trial had been requested by the appellant's attorney-at-law to make an award of \$3m (as opposed to \$500,000 suggested by the respondent's attorney-at-law), today, this Court is at large to fix an amount beyond \$3m for pain and suffering and loss of amenities. Indeed, she submitted that this Court should award \$6m. She has advanced that position, she said, on the basis of hindsight in that we now have Court judgments and precedents that were not available at the time of the trial and we should therefore use them in assessing the damage. She has ignored contemplation of the fact that such "precedents" were available at the time of the hearings in the Court of Appeal and before the Privy Council, yet no notice was given by the appellant of application for an increase in the damages.

5. The position as I see it is that the Privy Council was guided by the submissions of the parties, and accordingly made an interim award on that basis. It used the minimum suggested by the respondent as an appropriate amount for payment on an interim basis under the "heading" concerned.

6. The Privy Council has instructed that this Court in assessing the damages take into consideration the circumstances of the assault, the public indignity inflicted upon the deceased and the fear which he may have felt when the assault took place. In my view, given these instructions, the amount of \$3m cannot be exceeded, nor can this Court go below the \$500,000. The



circumstances include being struck with a baton, chased, fired at, having to dodge behind parked cars, being stopped, hands in the air, then being shot while being threatened with death. Taking these things into consideration as well as the age of the individual enduring this hostility, I am of the view that an award of \$2m is appropriate as compensation for pain and suffering and loss of amenities. The estate has already received \$500,000 of this amount, so the amount outstanding is \$1.5m.

SMITH, J.A.

I agree.

K.HARRISON, J.A:

1. This appeal is concerned solely with the assessment of damages for pain and suffering and loss of amenities in respect of Paul Reid (now deceased) who was shot and injured on the 8th October, 1985. The matter was referred to this Court by the Privy Council for the assessment to be done since Courtenay Orr, J., the learned trial judge who presided over the trial, is now deceased.
2. It is clear from the dicta in their Lordships' judgment, that in assessing damages, the award should not exceed the sum of \$3,000,000.00 and secondly, the Court should bear in mind, the circumstances of the assault, the public indignity inflicted upon the deceased and the fear which he may have felt when the assault took place.

3. Both Mr. Vassell Q.C., and Miss Cummings, have been unable to unearth a comparable case, in order to assist the Court in the assessment of the damages. The Court is therefore faced with a difficult task and bears in mind what Carberry, J.A stated at page 5 of the judgment in ***United Dairy Farmers Ltd. and Another v Gouldbourne (by next friend Williams)*** SCCA No. 65/81 (un-reported) delivered on the 27th January 1984 that:

"Awards must be based on evidence. A plaintiff seeking to secure an award for any of the recognized heads of damage must offer some evidence directed to that head, however tenuous it may be."

4. What then, is a proper award in the circumstances of this case? There is no direct evidence of the pain and suffering the deceased man experienced during the period of 3 ½ months that he had survived. However, the court is able to draw reasonable inferences of pain and suffering from the evidence of Doctor Cecil Batchelor, Senior Medical Officer at the Princess Margaret Hospital, who saw him during the period that he was incapacitated.

5. The medical evidence reveals that the deceased had sustained a gunshot wound on the left axilla, which caused paraplegia with loss of sensation at the level of the ninth thoracic vertebra. He had cardiac respiratory distress on admission to hospital and a left-sided haemothorax and a right-sided pneumothorax. He was doubly incontinent and a catheter was inserted. He developed repeated infections in his lungs and urinary tract infections and had to

be reintubated. He developed pressure sores, which led to anaemia and hypoprotoanaemia.

6. Miss Cummings, agreed that the proper period to make the computation for damages must be calculated as of 18th December 1998, when judgment was given. She referred us to a number of cases and has submitted that an appropriate award should be in the region of \$6M. The cases of ***Anthony Wright v Lucient Brown***, Khan's Recent Personal Injury Awards Vol. 5 page 201, ***Clinton Bernard v The Attorney General***, Ibid. at page 182 and the ***Attorney General v Maurice Francis***, SCCA No. 13/95 relied upon by her, are therefore irrelevant since those cases were decided post 1998.

7. Mr. Vassell Q.C, on the other hand, submitted that the learned trial judge did not make any findings of spite or improper motive on the part of the first respondent against the deceased. He agreed however, that the shooting of the deceased was as a result of an inappropriate reaction on the part of the first respondent hence, the element of public indignity cannot be disregarded. He submitted that a figure ranging between \$500,000 and \$750,000 would be appropriate in the circumstances.

8. Having regard to the evidence presented and the general principles with respect to the assessment of damages under this head, it would be appropriate to make a total award of \$2,000,000.00 for pain and suffering and loss of

amenities. A balance of \$1,500,000.00 would now be due since the estate has already received payment of \$500,000.00.

PANTON, J.A.

ORDER:

Damages for pain and suffering and loss of amenities assessed at \$2,000,000.00, plus interest at the rate of 4% per annum from the date of the issue of the writ of summons, March 6, 1990.

