



[2024] JMSC Civ.51

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2010 HCV 02973**

<b>BETWEEN</b>	<b>GRANVILLE NAULTY</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>THE TRANSPORT AUTHORITY</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

**Mr. Raymond Samuels instructed by Samuels Samuels Attorneys-at-Law for the Claimant**

**Mr. Dimitri Mitchell instructed by the Director of State Proceedings for the Defendants**

**Heard: February 5, 2024, March 14, 2024, and April 19, 2024**

**Damages for Malicious Prosecution – Special Damages must be specifically pleaded and proved.**

**CARR, J**

### **Introduction**

[1] The Claimant filed an amended claim form on November 14, 2011, seeking an award of damages for negligence, conversion and or wrongful interference with goods and for Malicious Prosecution. He averred that on March 20, 2009, he was travelling from Portland to Kingston when he was stopped by a member of the Island Special Constabulary Force (**ISCF**) and members of the Transport Authority

(TA). His motor vehicle was seized, and he was charged with the offence of Operating without a Road Licence and operating without PPV Insurance coverage.

- [2] He was acquitted of the charges in the St. Mary Resident Magistrates Court on October 13, 2009. The Claimant alleges that the members of the ISCF and the TA were not acting in lawful execution of their duties and that they acted falsely and maliciously towards him as they had no reasonable and probable cause to seize his vehicle and prosecute him for the said offences. Although a witness statement was filed on behalf of the Defendants, on the date of trial the witness Mr. Newron Henry did not attend. The matter was adjourned, and a witness summons was issued for him, but he did not attend either.

### **Issues**

- [3] With no evidence in opposition to the case for the Claimant, Counsel for the Defendants relied solely on his written submissions except for the paragraphs referring to malicious prosecution. The issues can be summarized as follows:
- (a) Whether the Defendants are liable in damages to the Claimant for detainee and or conversion / wrongful interference with goods.
  - (b) Whether the Defendants are liable in damages to the Claimant for malicious prosecution

### **The evidence**

- [4] The Claimant's witness statement filed on July 20, 2023, stood as his evidence in chief. He recalled March 20, 2009, and stated that he was travelling with his brother-in-law and his baby mother in his motor vehicle registered 0872 EP. Near Gray's Inn property in Annotto Bay, St Mary he observed a Hiace bus, he attempted to pass the bus when the bus swerved to the right. The bus came to a stop, and he saw a member of the ISCF step out and signaled him to stop. He complied. He also saw other people coming out of the bus who seemed to be TA members. He was asked to produce the documents for his motor vehicle, which he did. He and his passengers were questioned separately. He was then advised

that his vehicle would be seized as he was operating the vehicle unlawfully. Despite his protests the vehicle was wrecked to the TA's premises at Tower Isle, St. Mary and he was charged for the offences of No Road Licence and No PPV Insurance.

- [5] The case was adjourned on three occasions before the Resident Magistrate's Court in St. Mary. The trial commenced on October 13, 2009, and the Magistrate upheld a submission of no case to answer and dismissed the charges.
- [6] He indicated that the ISCF and TA officers had no basis to seize his vehicle or to prosecute him. It was his evidence that he lost substantial income as the vehicle was his tool of trade. He incurred legal fees, storage fees, wrecker fees and transportation costs for his trips to court.
- [7] In cross-examination, he denied that he was transporting passengers for compensation, and he denied that he was operating as a robot taxi on the date in question. He said his vehicle was returned to him about four months after it was taken.

### **The Law**

- [8] To establish a claim in detinue the Claimant must prove on a balance of probabilities that: -
  - a) he had a right to the immediate possession of the vehicle,
  - b) that he unconditionally and specifically demanded the return of the vehicle and,
  - c) that the defendant refused to comply with that request after a reasonable time.
- [9] For conversion or wrongful interference with goods, the Claimant has the burden of proving that there was willful interference with the motor vehicle by the Defendants without lawful justification that was inconsistent with his right to possession.

**[10]** On the issue of malicious prosecution, the Claimant must show by the evidence that the Defendants wrongfully instituted and pursued a legal action, without reasonable and probable cause and that the said action was dismissed in his favour. For a claim for malicious prosecution to be sustained the claimant must provide evidence that he suffered damage. This damage may be to his character, his person, or his property.

### **Discussion**

**[11]** There is no challenge by way of evidence to the events as described by the Claimant. It is therefore accepted that at the time he was stopped by officers he was not operating his motor vehicle as a public passenger vehicle. As there is no evidence to suggest that the officers were acting with reasonable or probable cause there is no defence to the claim.

**[12]** Despite this it is necessary to assess the torts pleaded to ascertain whether the Claimant has satisfied the requirements in law. For the claim of detinue and or conversion which also subsumes wrongful interference with goods, the Claimant has given evidence that he did nothing to warrant the seizure of his vehicle. In those circumstances, he was entitled to the immediate possession of the motor car. He also stated that he made several requests for the return of the vehicle from the Transport Authority and that they neglected or refused to return the vehicle until on or around July 16, 2009.

**[13]** Although the requests need not be in writing the evidence of the Claimant is lacking as to the specific details of the requests. He has not indicated when they were made, to whom, whether there was any stipulation or unconditional demand. Without those details there is no evidence to support the claim that the Defendants intended to keep the motor vehicle in defiance of the Claimant's request. Given the paucity of the evidence on this issue I am not of the view that the claim for detinue and or conversion or wrongful interference with goods has been made out on the case for the Claimant.

**[14]** I am satisfied that the claim for malicious prosecution has been made out on the evidence. There was a prosecution of the Claimant, evidenced by the Certificates of Dismissal, tendered, and admitted by agreement as Exhibits 1 and 2. The certificates outlined that the Claimant appeared before the Resident Magistrate on October 13, 2009, for the offences of No Road Licence and No PPV Insurance. For the offence of No PPV insurance no prima facie case was made out against him and for the offence of No Road Licence no evidence was offered. The charges were thereby dismissed. The matter was therefore determined in his favour. There is no evidence on the part of the Defendants to dispute the version of the Claimant that they acted without reasonable and probable cause.

### **Damages**

**[15]** In the circumstances, the Claimant is entitled to an award in damages for malicious prosecution. The Claimant set out his particulars of special damages totaling \$2,508,800.00 as listed below: -

Storage fees	23,500.00
Wrecker fees	20,000.00
Transportation Castleton to Tower Isle to deal with motor vehicle	16,000.00
Legal fees	40,000.00
Transportation	6,000.00
Four days attendance at Court At \$5,000.00 per day	20,000.00
Loss use of motor vehicle 20 <sup>th</sup> of March 2009 to 16 <sup>th</sup> July 2009 (In storage at Island Traffic Authority 119 days) and 21 days in garage totaling 140 days at \$8000 per day	1,120,000.00
Repairs to vehicle	32,000.00
Transportation to attend court 4 times	5,500.00

At \$200 per day \$800 Cost of new battery	
Transportation to overlook repairs	3,000.00
Loss of agricultural produce (pepper)	450,000.00
Loss of roofing contracts	700,000.00
Loss of tools 2 Drills	58,000.00
Extension cord	14,000.00
<b>Total</b>	<b>2,508,800.00</b>

- [16] It is trite law that special damages must be specifically pleaded and proved. In this case, there were no receipts provided supporting the special damages claim. What the Claimant has done in his witness statement is to throw the figures at the court without any evidential basis to support them. He did however exhibit three documents to establish the cost of the work done on the motor vehicle (Exhibit 3), the agreement for work to be done by the Claimant (Exhibit 4) which he said he was unable to complete because he was without his vehicle and the termination of the employment contract (Exhibit 5).
- [17] The documents were admitted by agreement, however the weight to be attached to them and their relevance to these proceedings rests with the Court.
- [18] Exhibit 3 has no date and no reference to the license plate of the Claimant's vehicle, additionally, there is no evidence that the Claimant was the owner of the mentioned motor vehicle as the space for his signature is blank. The document is therefore unhelpful in substantiating the cost of repairs to the motor vehicle, the subject of this claim.
- [19] Exhibit 4 outlines an agreement but does not indicate who the parties were. The work began four days before the seizure of the Claimant's motor vehicle. Exhibit 5 indicated that the agreement was terminated on March 23, 2009. The period of work was scheduled for March 16, 2009, to May 15, 2009. Exhibit 4 does not assist the court. I find that the Claimant has not shown a direct correlation between the loss of use of his motor vehicle and the loss of the contract which was to

complete a roofing project. He also has a duty to mitigate his loss, if the vehicle was used for transportation, he could have utilized an alternative method to complete the contract.

[20] I consider that in some cases there will be no receipts offered such as for taxi fares, however, there is a discrepancy as to this figure in the particulars of claim which has transportation as \$6,000 and then four days attendance at court \$5,000.00 per day and then transportation to attend court \$200.00 per day. This contrasts with his witness statement which only speaks to transportation to attend court at \$5,000.00 per day.

[21] Given that there are no receipts and there are clear discrepancies in the evidence of the Claimant as to the losses claimed I am not minded to make any award under the head of special damages.

#### **General damages for Malicious Prosecution**

[22] Counsel for the Claimant relied on the cases of **Robert Salmon v. Senior Superintendent Elan Powell and the Attorney General of Jamaica**<sup>1</sup>, in this matter the claimant was a police officer, who had been charged pursuant to Section 63(8) of the Road Traffic Act for operating contrary to the terms of his RoadLicence. He attended court on four occasions and did not have access to his motorvehicle for twenty- seven days, however, he was only in possession of his licence for five of those days and the court found that the vehicle could only have operated for twenty-two of those days. An award of \$500,000.00 was made which updates to \$977,568.74 as at March 2024.

[23] In the authority of **Hubert White v. Constable O'Connor and the Attorney General**<sup>2</sup> the Claimant, an electrician by trade, was ticketed for operating a motor

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<sup>1</sup> [2012] JMSC Civ. 15

<sup>2</sup> [2018] JMSC Civ. 09

vehicle without a Road Licence and no public passenger vehicle insurance, he attended court on five occasions over the course of five months and his vehicle was impounded for the same period. An award of \$600,000.00 was made, this updates to \$851,470.59.

**[24]** In the authority of **Clifton Francis v Constable Tucker #13431 and the Attorney General**<sup>3</sup> the claimant was ticketed for the offence of operating a public passenger vehicle without a Road Licence. The claimant was without his vehicle for 151 days, and though he could not recall the number of occasions he attended court, the court relied on the evidence of the 1<sup>st</sup> defendant that he attended court on three occasions. The award was reduced to account for the fact that the Claimant had fewer court attendances and an award of \$800,000.00 was made which updates to \$849,685.53.

**[25]** The Defendant did not provide the Court with any authorities as to damages. Counsel for the Claimant submitted that the Claimant in this case should be awarded \$1,200,000.00.

**[26]** The Claimant's prosecution lasted approximately seven months and he attended court on four occasions. The vehicle was returned approximately four months after it was seized. I find that the facts outlined in **Clifton Francis** are more in line with that of the Claimant. An award of \$850,000.00 is appropriate in the circumstances.

**Order:**

1. Judgment for the Claimant
2. General Damages is awarded in the sum of \$850,000.00 with interest at 3% from July 24, 2010, to April 19, 2024.

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<sup>3</sup> [2023] JMSC Civ 11



3. Costs to the Claimant as per the Parish Court Tariff of Fees to be agreed or taxed.