



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1982/R249

BETWEEN	EARNEST REID	PLAINTIFF
AND	CARIBBEAN PROTECTIVE SERVICES LIMITED	FIRST DEFENDANT
AND	DUDLEY CLAYTON	SECOND DEFENDANT
AND	ERIC HAMILTON	THIRD DEFENDANT
AND	GEORGE DAWSON	FOURTH DEFENDANT

Mr. John Graham and Mr. Bert Samuels instructed by Mr. Maurice H. James for Plaintiff.

Mr. Michael Vacciana for ^{First} Defendant.

Heard: June 29, 1983 and October 21, 1983

Delivered: December 19, 1983.

Walker J.:

This matter comes before me for assessment of damages, interlocutory judgment in default of defence having been entered against the first defendant, Caribbean Protective Services Limited, on March 3, 1983.

The second, third and fourth defendants were at all material times the servants and/or agents of the first defendant and were acting within the scope of their employment as security guards.

The incident in which the plaintiff was injured occurred at White Marl in the parish of Saint Catherine on December 15, 1981. The plaintiff was at the time a cabinet maker aged 36 years living and working in St. Ann's Bay in the parish of St. Ann. On the day in question the plaintiff had travelled from St. Ann's Bay to Kenmore Upholstery and Woodworks Limited, a business place at White Marl with reference to matters concerning his own business. Having arrived at White Marl shortly before 7 o'clock in the morning the plaintiff was

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confronted by two security guards who, at gun-point, demanded to know the purpose of his mission. The plaintiff said he complied with this demand whereupon he was immediately accused of lying and told to raise his hands in the air which he did. The plaintiff's interrogators next enquired of him where he had come from and, upon being told St. Ann's Bay, they insisted that the plaintiff had come instead either from Sufferers' Heights or from Central Village nearby. At this point in time the guards voiced their intention to kill the plaintiff while suggesting that the plaintiff's presence was somehow connected with a robbery which had taken place within the complex on the previous night. Upon hearing this statement of intention the plaintiff sought to convince the guards of his bona fides by inviting them to look at certain bills which he had in his pockets or, alternatively, to call Mr. Tennant, the owner of the business place to which he had been going. The plaintiff's invitation was cavalierly rejected by the guards, whose members had by this time increased to about seven persons, after which one of them casually stepped forward from the rest and, using a rifle, shot the plaintiff in the region of his left knee causing the plaintiff to buckle and fall to the ground. Then as the plaintiff lay helpless and writhing in pain on the ground another of the defendant guards pulled a revolver from his waist and shot the plaintiff again in his side, at the same time derisively expressing surprise and disappointment at the fact that the plaintiff was taking so long to die. That the plaintiff suffered no further injury at this time was due to no fault on the part of his assailants but rather to the timely intervention of a crowd of onlookers who demanded that the plaintiff should be taken to hospital. Eventually the plaintiff was taken to the Spanish Town Hospital by the guards who were prevailed upon after having at first proffered the lame excuse that they could not

do so firstly for the reason that the case was a police case and, secondly, for the reason that their vehicle had no petrol in it to make the trip.

In the Spanish Town Hospital the plaintiff was arrested by the Police on charges of illegal possession of a firearm, shooting with intent and warehouse-breaking and larceny and kept under police guard.

Upon his discharge from hospital one month later the plaintiff, still in police custody, appeared before the Resident Magistrate's Court, St. Catherine sitting at Spanish Town whence he was transferred to the Gun Court. In the Gun Court the plaintiff was admitted to bail some time in the month of February, 1982. Thereafter the case against the plaintiff was fixed for trial and adjourned on several occasions. On the last trial date, June 2, 1982, the plaintiff was dismissed of all the charges which had been preferred against him.

His innocence having been vindicated the plaintiff returned to his native parish, St. Ann, where, according to him, the people slighted and ignored him. The plaintiff's evidence on this point is, however, to be contrasted with the evidence of his witness, Mr. Leroy George Henry, who said that upon his return home the plaintiff was greeted "with open arms" by the people, hardly any one of whom it appeared believed that the plaintiff had in fact committed the offences with which he had been charged. Be that as it may, the plaintiff said that after his ordeal was over he felt ashamed and "less of a man" and experienced difficulty in facing people.

The medical evidence in the case revealed that on admission to hospital the plaintiff was found to have sustained an entry wound above the superior aspect of his left iliac crest. There was no corresponding exit wound. There was evidence of tenderness in the lower abdomen. He had also sustained an entry wound in the left leg lateral to the tibial tuberosity

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with a corresponding exit wound sited 6 cm. below the tuberosity on the medial aspect of that bone. This injury was associated with crepitus and lacerated muscle. He had no pulses that were palpable below the wound in the left leg. An emergency laparotomy which was performed on the plaintiff the same day revealed a retro-peritoneal haematoma. On exploration of his left leg it was discovered that the plaintiff had sustained comminuted compound fractures of his left tibia and fibula. No evidence of the anterior and posterior tibial arteries were seen. On December 17, 1981 the plaintiff's left leg became gangrenous necessitating a left above knee amputation. His recovery was slow but relatively uneventful and he was discharged from hospital on January 16, 1982. Thereafter the plaintiff was seen in the out-patient's clinic from which he was finally discharged on June 17, 1982. It was the evidence of the plaintiff's witness, Dr. Paul Brown F.R.C.S., that the plaintiff would have suffered excruciating pain from his injuries and, indeed, the plaintiff himself testified that he suffered "terrible" pain and never lost consciousness at any time after receiving those injuries. Dr. Brown said that the plaintiff would not be likely to suffer adversely in the future from the fact that a bullet still remained in his body. The doctor also said that the plaintiff would be able in the future to wear a prosthesis which would enable him to walk reasonably well. However, it was the doctor's opinion that the plaintiff would be unable to indulge in any strenuous activity in the future and, in particular, would no longer be able to climb on to roof tops in pursuit of his profession as a carpenter.

I come, therefore, to assess damages and I propose to do so under the broad heads of special damages in the action as a whole, general damages for negligence or assault, general damages for malicious prosecution and general damages for false imprisonment.

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Under the head of special damages the following items were agreed by the parties:-

Legal expenses	\$1,500.00
Travelling expenses to and from	
Court and hospital	500.00
Cost of medical report	25.00
Additional medical expenses	150.00
Items of clothing lost	80.00
Estimated cost of prosthesis	9,000.00
Estimated cost of plastic surgery	<u>2,000.00</u>
	\$13,255.00

In addition to the above the plaintiff also claimed for loss of earnings. The evidence showed that the plaintiff's injuries prevented him from working during the period December 15, 1981 to the last week of November, 1982. On December 15, 1981 he had been performing a specific contract which would have engaged his attention for a further month after that date. During this time his regular workshop in St. Ann's Bay was closed and would in any event have remained closed with the result that he would have earned nothing from that workshop. On this particular contract the plaintiff suffered no loss attributable to his misfortune. In the circumstances I accept the submission of counsel for the first defendant that the period December 15, 1981 to January 15, 1982 should be disregarded in the computation of the plaintiff's loss of earnings. With regard to the period March to December, 1982, while it is true as counsel for the first defendant has submitted that the evidence established that the plaintiff's business received no orders for work during that period of time, I consider the probabilities to be that this state of affairs was due to the fact that the plaintiff was, during that time, personally absent from his business and out of contact with those private individuals from whom the evidence showed he was accustomed to receive the

greater volume of work. I am, therefore, prepared to entertain the plaintiff's claim covering this period of time. The plaintiff has proved his loss of earnings at a rate of \$350.00 per week and, accordingly, I award him an amount of \$15,750.00 computed on the basis of 45 weeks from January 15, 1982 to November, 1982 at \$350.00 per week. The total award for special damages is, therefore, \$29,005.00.

I turn next to consider the plaintiff's claim in negligence or assault. There can be no doubt that as a consequence of the conduct of the defendant guards the plaintiff suffered serious injuries and permanent disability. He underwent two operations to his left leg, the second of which resulted in an above knee amputation of the leg. He suffered excruciating pain upon receiving his injuries and remained conscious throughout his agony. He had to be hospitalized for one month and had to have follow-up treatment for some six months afterwards. When he gave evidence before me the plaintiff said that he was still experiencing periodic cramps in the stump which remained after amputatuion of his leg, and he also said that he felt pain in his abodomen from time to time. He was unable to stand for a long time on his right leg which would become swollen and painful at such times. It was submitted by counsel for the first defendant that a sum of \$60,000.00 for pain and suffering and loss of amenities would adequately compensate the plaintiff, and by counsel for the plaintiff that an award of a sum of between \$100,000.00 to \$110,000.00 would meet the justice of the case. This is, indeed, a bad case for even if it could be said that the plaintiff was initially shot in the mistaken, though honest, belief that he was a wrong-doer, there could be no justification for shooting the plaintiff a second time as he lay helpless on

the ground. This was wilful, cruel, cold-blooded conduct on the part of the defendant guards and conduct which occasioned great suffering to the plaintiff. It is conduct which aggravates the plaintiff's injury and demands an award of damages which should be correspondingly increased. Accordingly, I award the plaintiff a sum of \$70,000.00 for pain and suffering and loss of amenities.

It was agreed by both counsel appearing before me that on the facts of this case the plaintiff is also entitled to an award of damages which would compensate him for his handicap on the labour market. The Plaintiff is now 39 years of age and will most certainly suffer such a handicap as a direct consequence of his permanent disability. Counsel for the first defendant has submitted that a sum of \$10,000.00 would be a reasonable award in this regard and I find myself in complete agreement with that submission. I, therefore, award a sum of \$10,000.00.

I come now to consider the plaintiff's claims for malicious prosecution and false imprisonment and here I must confess I entertain the strongest bias in favour of the plaintiff. The inescapable inference to be drawn from the evidence in this case is that, having shot the plaintiff and almost murdered him, the defendant guards proceeded to invent and to report to the police the most outrageous lies against the plaintiff, lies which later obliged the police to prefer grave criminal charges against the plaintiff. A conviction on at least one of these charges, namely illegal possession of a firearm carried at the time a mandatory sentence of imprisonment at hard labour for life, and on another, namely shooting with intent a maximum sentence of a similar nature. These reports to the police were made mala fide and as such they aggravate the circumstances of the plaintiff's lot and represent conduct which in my opinion justifies a substantial award of damages to the plaintiff. Accordingly, on his claim for malicious prosecution I award the plaintiff a sum

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of \$15,000.00.

Dealing with the plaintiff's claim for false imprisonment, the evidence revealed that having been arrested by the police on December 15, 1981 the plaintiff remained continuously in custody until late March, 1982 when he was admitted to bail in the Gun Court. He was, therefore, incarcerated for slightly over three months during which time he was kept at different times at the Spanish Town Lock-Up, the Gun Court prison and the General Penitentiary. In the Gun Court the plaintiff said that the warders treated him badly inasmuch as they classified him as a gunman. On his claim for false imprisonment I award the plaintiff a sum of \$10,000.00 to reflect the aggravating circumstances of his detention.

In the result damages herein are assessed in a total sum of \$134,005.00 with costs to the plaintiff to be agreed or taxed.

There will be interest on the sum of \$18,005.00 awarded for special damages at a rate of 4% per annum from December 15, 1981 to December 19, 1983.

There will also be interest on the sum of \$105,000.00 awarded for general damages at a rate of 8% per annum from December 9, 1982 to December 19, 1983.