

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**HCA No. 671 of 2000**

**BETWEEN**

**KAWAL RAJKUMAR**

**Plaintiff**

**AND**

**THE ATTORNEY GENERAL  
OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Hon. Madam Justice C. Gobin**

**Appearances:**

**Mr. Ratiram instructed by Mr. Hosein for the Plaintiff**

**Ms. Fournillier instructed by Ms. Hosein for the Defendant**

**REASONS**

On the 30<sup>th</sup> June 2005 I gave judgment for the Plaintiff on his claim for damages for Malicious prosecution.

**The Award**

2. I allowed the Plaintiff's claim for special damage in the sum of \$59,000.00 of which \$35,000.00 was to compensate the Plaintiff for legal fees incurred in his defence on the criminal charges which P.C. Salandy laid and prosecuted. The remaining \$24,000.00 represented loss of earnings at \$6,000.00 for a period of four months.

### **Loss of Earnings**

3. This is how this claim arose. The incident which led to the charges arose at sea while the Plaintiff and Charles Alphonzo were the occupants of his boat Sea Angel II. Coast Guard officers who were on patrol and who were the ones on the scene and directly involved, fired upon the vessel causing damage to its engine. In the course of this the Plaintiff sustained an injury. He was eventually removed for medical treatment by helicopter after the officers summoned assistance. The Plaintiff's vessel was eventually towed by other Coast Guard officers to their headquarters where it remained for four months. PC Salandy was contacted and he subsequently interviewed the plaintiff and laid the charges.

4. The Plaintiff who was a fisherman, claimed that as a result of the detention of his vessel following the incident and the laying of charges, his earning capacity was severely reduced. I accepted his evidence that his net monthly income prior to this incident was on average \$10,000.00 per month and I took into account his statement that he managed to earn approximately \$1,000.00 per week during the period of the detention of his vessel.

5. In her written submissions, attorney for the Respondent stressed that the Plaintiff's evidence had established that it was the Coast Guard officers who had detained his vessel and not PC Salandy. Counsel therefore urged that in the absence of any nexus between the detention of the vessel and the

prosecution by PC Salandy, the alleged loss of earnings should not be recoverable.

6. In his evidence in chief the Plaintiff said that his vessel remained in the custody of the Coast Guard for four months. Under cross-examination he said that when the vessel was returned to him, he signed a bond. Indeed it emerged in the course of the evidence that photographs of the vessel were produced at the preliminary enquiry. The signing of the bond would have arisen if the vessel had been detained by the police as part of the evidence in the case against the Plaintiff. I concluded that although the vessel had been removed from the scene by the Coast Guard officers and it remained at the Coast Guard Headquarters, its detention was directly linked to the Plaintiff's prosecution and continued under the authority of the Police until photographs were taken and the vessel was released upon the Plaintiff's undertaking to produce it if necessary.

#### **General Damages/Aggravated Damages**

7. On the issue of general damages and the Plaintiff's claim for aggravated damages, I approached the matter in the round and decided that the sum of \$60,000.00 to include an award of aggravated damages, was an appropriate award.

8. This is a case in which PC Salandy maliciously prosecuted not one, but seven informations. The plaintiff was subsequently indicted on seven charges in the assizes which included five individual counts of shooting at five Coast Guard officers. These charges remained pending for over five years.

9. I did bear in mind that the Plaintiff had been charged with very serious offences shortly before the incident which gave rise to this action. No evidence was led as to the outcome of those charges. I did not consider the mere existence of those charges at the time to have been a factor relevant to the mitigation of damages.

### **The Law**

10. The law on this aspect of the matter appears to be well settled. Diplock J, as he then was, in his judgment in **Berry v. British Transport Commission** 1961 1QB 149 @ p. 160 cites the much quoted statement of Holt C.J in the case of Savile v. Roberts (1698 1 Ld. Raym 374. Holt C.J said:

**“There are three sorts of damages, any of which would be sufficient ground to support this action. 1. The damage to a man’s fame, as if the matter whereof he is accused be scandalous...” 2. The second sort of damages, which would support such an action, are such as are done to the person; as where a man is put in danger to lose his life, or limb, or liberty. 3. The third sort of damages, which will support such an action, is damage to a man’s property, as where he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused.”**

11. Following an erudite analysis of several cases following Holt C.J.'s statement, including several which appeared to depart from that decision, Diplock J formulated the test that their lordships had intended to lay down in those cases as this:

**“was the charge one which necessarily naturally is defamatory of the Plaintiff”.**

The answer to this question in the instant case must be in the affirmative. The learning appears to suggest that in such a situation the result of laying the charges is analogous to what happens in defamation matters. It is actionable per se.

12. The charges were very serious and I found that by their very nature they impaired the fame and reputation of the Plaintiff. Shooting an officer of the law must be a most serious allegation carrying the imputations not only of a seriously violent disposition but of disregard for law enforcement and of involvement in activities that would require an attack to ward off and evade officers of the law.

13. The charges also exposed the Plaintiff to loss of liberty on conviction and must have caused him fear distress and worry. This satisfied the second ground identified by Holt C.J.

**Aggravated/Exemplary**

14. I consider that the circumstances of this case warranted an award of aggravated and/or exemplary damages. While the Defendant was not directly involved in the incident at sea, I found that he was nonetheless actuated by malice in the laying of the charges. In my oral reasons I indicated that I had found it must have been within PC Salandy's contemplation at the time he laid the informations of possession of firearms and ammunition that the charges could not have been proven. He nevertheless proceeded to charge the Plaintiff.

15. I further found that PC Salandy's enquiry did not approximate what can be considered a due and proper enquiry into the incident at sea on the night. The peculiar circumstances of this case which resulted in damage to the Plaintiff's property and his person at the hands of other armed officers of the State (the Coast Guard officers) warranted in my view a thorough investigation, moreso since I accepted that the Plaintiff would have explained that he was never armed and he would have told PC Salandy of his intention to sue the Coast Guard officers.

16. I indicated in my oral reasons for allowing the plaintiff's claim that I had found that the Coast Guard officers were actuated by malice. Their actions constituted a serious abuse of power.

17. I went on to indicate my finding that there was much more to the incident and the investigation than PC Salandy made out. I concluded he had made a calculated decision to suppress evidence as to both. I also found that both PC Salandy and the Coast Guard officers colluded to introduce evidence of a search and dive operation for the firearm allegedly used by the Plaintiff, at the trial before me for the first time and thirteen years following the incident at sea. In so doing both the Coast Guard officers and PC Salandy appeared to be attempting long after the fact to add some degree of credibility to the case. This confirmed a suspicion that indeed the laying of the charges might have also been the result of some sort of arrangement between the Police and the Coast Guard officers designed to bring pressure to bear on the Plaintiff because of his threat to sue. In these circumstances PC Salandy seriously abused his power as a police officer.

18. In all of the circumstances and bearing in mind the authorities referred to by counsel on both sides. I ordered the sum of \$60,000.00 general damages.

**CAROL GOBIN**

**JUDGE**