

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 3831 of 1994

BETWEEN

DOUGLAS

MUNRO

Plaintiff

AND

WINSTON

AQUI

AND

DEXTER

AQUI

Defendants

Before the Honorable Madam Justice Maureen Rajnauth-Lee

APPEARANCES:

Mr. Michael S. V. de la Bastide for the Plaintiff.

Mr. Mario Merritt for the First Defendant.

Mr. William David Clarke for the Second Defendant.

J U D G M E N T

INTRODUCTION:

Before the Court was the Plaintiff's assessment of damages heard pursuant to the Order of Narine J. dated 14th April, 2000 wherein judgment

was entered for the plaintiff against the defendants for assault and battery with damages to be assessed in chambers.

By his Amended Statement of Claim filed on the 1st May, 1996, the Plaintiff claimed general damages, aggravated damages and special damages in the sum of \$3,268.70. Included in the claim for special damages were the sums of \$2,796.00 representing transport costs and \$120.00 representing damage to clothing and watchband. The Plaintiff has presumably abandoned his claim for transport costs, while Attorneys for the parties have agreed medical expenses in the sum of \$121.20.

THE FACTS:

The Plaintiff who resided at the time of the incident at No. 27 Sierra Vista Gardens, Petit Valley (and still resides), testified at the assessment. He gave evidence that on the 2nd June, 1994, at approximately 8:30 p.m., on the roadway in front of premises at No. 29 Sierra Vista Gardens, Petit Valley, he was hit in his left eye. He was kicked and cuffed by the defendants and while on the ground, he was kicked and cuffed repeatedly. He collapsed when he was struck in his left eye repeatedly and on the left side of his head. According to the plaintiff, the assault and battery lasted for approximately between five and ten minutes. He testified that subsequent to the assault and battery, his left eye was bleeding tremendously. He had bruises on his left hip; his right ankle was also bruised, his right knee was

bruised and bleeding and his right thumb was paining. According to the plaintiff, there was a great amount of pain when he moved the thumb, because the defendants held his right hand to drag him from the roadway to the front of their premises at 29 Sierra Vista Gardens. The plaintiff further testified that the pain in the thumb which he described as intense pain was present even when he gave evidence before the Court. Despite this allegation, however, the plaintiff has produced no medical evidence to support any injury to the right thumb.

It is to be noted that the defendants have not challenged in cross-examination the evidence set out above, save for the duration of the incident. Accordingly, the Court accepts the plaintiff's evidence as to the beating inflicted on him by the defendants.

As to the duration of the incident, the Court accepts the evidence of the plaintiff. The second defendant's evidence was that the incident lasted no more than sixty seconds, which he conceded was an "estimate". The Court agrees with the submission advanced on behalf of the plaintiff that the second defendant's credibility was undermined by his admission in cross-examination that, although he gave evidence before Narine J. denying that he ever kicked the plaintiff, he may have kicked him. When the Court considers the damage to the second defendant's credibility by that admission, and that, in the view of the Court, on a balance of probabilities, the beating described above would have taken longer than

sixty seconds to inflict, the Court prefers the evidence of the plaintiff as to the duration of the incident.

GENERAL DAMAGES:

In the case of **Cornilliac v. St. Louis (1965) 7 W.I.R. 491**, Wooding C.J. set out the considerations to be borne in mind when awarding general damages as follows:

- (1) the nature and extent of the injuries sustained;
- (2) the nature and gravity of the resulting physical disabilities;
- (3) the pain and suffering endured;
- (4) the loss of amenities suffered; and
- (5) future pecuniary loss

Of the injuries mentioned earlier, the main focus of the plaintiff's case has been the injury to his left eye. According to the plaintiff's evidence, before the assault and battery took place, he had very good vision in both eyes with the corrective lenses which he wore prior to the incident. After the incident, he had blurred or no vision at all in his left eye. He was referred to Dr. Robin Hosein, Ophthalmologic Surgeon, who gave evidence before the Court. According to the plaintiff, prior to the assault, he participated in shot-gun shooting for which he needed the sight in both eyes. He testified in chief that he was a member of the Trinidad and Tobago Team and prior to the incident represented his country for about

5 - 6 years. After the incident, he represented Trinidad and Tobago in 1996 in Barbados and the last time he shot was in 2000. The other years because his scores were not up to mark, because of his diminished eyesight, he was not as good a shooter. He was called to trials after the incident but did not make the team. He did not make the qualifying scores.

Apart for a short period after the accident when the plaintiff alleged that he could not drive, there was no evidence adduced to the Court that the injury had affected any other aspect of the plaintiff's life. He does not claim to have suffered any pecuniary loss nor is there evidence of any future pecuniary loss.

The main thrust of the case for both defendants was that the plaintiff had failed to provide any corroborative evidence of the state of his vision prior to the incident. It was submitted on behalf of the defendants that it was open to the Court on the assessment of damages to find that the plaintiff had not proved that the defect in his vision found by Dr. Hosein was a consequence of the incident.

The plaintiff was cross-examined further with the leave of the Court and admitted that on the 24th July, 1970, while participating in a rugby match in Barbados, he was struck by lightning at half-time. He testified that a few days after that incident, he woke up in the Queen Elizabeth Hospital

suffering with burns to his left arm. He did not tell Dr. Hosein about this incident.

Dr. Hosein testified that he saw the plaintiff on the 24th August, 1994. The visual acuity in his left eye was diminished to 6/24. According to the witness, the plaintiff had sight in his left eye, but his ability to discern objects would have been greatly diminished. He tried to improve the vision in that eye with stronger lenses but there was no improvement to the left eye. The right eye on the other hand had slightly diminished vision. Dr. Hosein testified that if an injury occurred to the head in the region called the frontal lobe, there was a possibility of shock waves being generated by the injury that could cause injury to the optic nerve in the region of the optic canal, resulting in the reduction of vision. As to the significance of the visual acuity of 6/24, the witness testified that an object which a normal person could see as far as twenty-four metres away, could only be seen by the plaintiff at a distance of six metres. Dr. Hosein emphasised that such visual acuity (caused by disease or injury) could not be corrected by getting stronger lenses and that it was possible for that type of condition to occur by a blow to the head.

Dr. Hosein went on to testify that a visual field test was performed confirming that there was a diminution in the field of vision, suggesting optic nerve damage. According to the Medical Report tendered as "R.H.1.", the visual field analysis showed in the left eye, peripheral constriction with

absolute field defects to 10^0 from fixation, and relative defects within 10^0 from fixation. According to Dr. Hosein, it was as if a circle was made with his hand in front of the eye and the patient could only see through that circle.

The issue of the plaintiff's wearing dark glasses arose during the course of the evidence. According to the plaintiff, both before and after the incident he wore dark glasses. His eyes were sensitive to ultra-violet light before the incident. Dr. Hosein's evidence in that regard was useful. He testified that there were some people who were more sensitive to light and who chose to wear dark glasses. That, he said, was a separate symptom and might have nothing to do with the plaintiff's condition. In fact, sensitivity to light diminished with optic nerve injury. Optic nerve damage was not a cause of sensitivity to light.

Another aspect of the matter on which Dr. Hosein's evidence was useful was the issue of the lightning strike. According to Dr. Hosein, there had been reports of lightning strikes causing optic nerve damage, but usually to both eyes. Chances of a lightning strike affecting one eye was extremely remote, according to Dr. Hosein. Having regard to the Doctor's evidence, the Court accepts the submission advanced on behalf of the plaintiff that the fact that the plaintiff did not disclose to Dr. Hosein the incident of the lightning strike was not due to a lack of frankness, but rather to the fact that the plaintiff, being a lay person, could not be expected to

know that a lightning strike could lead to reduced vision or that such an incident which took place some twenty-four years before should be reported to Dr. Hosein.

The Court also agrees with the submission advanced on behalf of the plaintiff that the plaintiff's evidence of his eyesight prior to the beating has not been shaken or undermined in cross-examination nor contradicted by any evidence adduced on behalf of the defendants. In fact, when cross-examined on the plaintiff's prior history, Dr. Hosein remarked that a letter was written to Ferreira's Optical presumably requesting the plaintiff's previous notes, but Ferreira's Optical replied stating that they could not locate their notes.

On a balance of probabilities the Court is satisfied that the plaintiff's defect in vision is as a consequence of the beating inflicted on him by the defendants. The Court also accepts Dr. Hosein's evidence that from his understanding of shooting, an individual would use a dominant eye and take aim with that eye. If, however, this activity required the use of both eyes, the patient would not perform as well as if he had had proper vision in both eyes. I accept the plaintiff's evidence that he required both eyes to shoot and because of the defect in vision his performance in the shooting tournaments was adversely affected.

Dr. Hosein assessed the plaintiff's permanent partial disability at twenty percent. He arrived at that assessment taking into account the following factors:

- (1) the level of visual acuity; and
- (2) the extent of visual field loss

He testified that the disability for a complete loss of vision in one eye was normally assessed at thirty percent. Dr. Hosein further testified that he examined the plaintiff in the year 2000 and there had been no change in the left eye. According to him, if after six years there was no change in the left eye, he attributed that to an optic nerve injury. It was very unlikely that there would be an improvement in vision.

I have considered the cases and propositions advanced to the Court on the award of general damages, and in particular, the case of **Clifton Richardson & Ors. v. Kiss Baking Company Limited, H.C.A. 696 of 1996**. Whilst the victim in the **Richardson** case had to undergo emergency surgery and was hospitalised for two weeks, factors not present in the instant case, the Court considers the Richardson case still quite useful.

AGGRAVATED DAMAGES:

The evidence of the plaintiff in chief was that: *"After the assault and battery was completed, I felt humiliated"*. When the Court considers that the instant case involved two men (neighbours of the plaintiff) beating,

kicking, cuffing and dragging the plaintiff on the roadway of the neighbourhood and the humiliation suffered by the plaintiff, it is reasonable to conclude that the plaintiff's pride and dignity would have been hurt and that the news of the assault would have spread quickly throughout the neighbourhood. According to the plaintiff, at the time of the incident, he had lived in that neighbourhood for some fifteen years; there were approximately twenty houses on that street and the neighbours knew each other well.

In the view of the Court, this is an appropriate case for the award of aggravated damages following the case of **Thaddeus Bernard and Airports Authority of Trinidad v. Nixie Quashie Civil Appeal No. 159 of 1992**. Having considered all the facts and the evidence adduced on behalf of the plaintiff, and doing the best that I can, I think an appropriate award for general damages inclusive of aggravated damages in respect of the assault and battery inflicted on the plaintiff to be the sum of \$65,000.00.

SPECIAL DAMAGES:

In addition to the \$121.20 agreed between the parties, the Court accepts the plaintiff's evidence that he spent \$200.00 to purchase the watchband and that it was destroyed as a result of the assault. Accordingly, I award the sum of \$200.00 for the loss of the watchband.

AWARD OF DAMAGES:

Accordingly, damages are assessed against the defendants as follows:

General damages inclusive of aggravated damages in the sum of \$65,000.00 with interest thereon at the rate of 6% from the 1st December, 1994 to the 28th September, 2000 and thereafter to the date hereof at the rate of 12% per annum, and special damages in the sum of \$321.00 together with interest thereon at the rate of 3% from the 2nd June, 1994 to the 28th September, 2000 and thereafter to the date hereof at the rate of 6% per annum.

The defendants will pay the costs of the assessment, certified fit for Advocate Attorney.

Dated the 25th July, 2003.

MAUREEN RAJNAUTH-LEE
JUDGE