



the matter came up for trial, the prosecution offered no evidence against him and the charges were dismissed. A firearm was never recovered.

- [2] Despite a formal order for the police to return his motor bike on May 4, 2011, neither it nor his helmet has been returned. After the charges against him were dropped he could not return to work because he no longer had the bike which was integral to his occupation as a bearer and delivery man. While he was being held at the Half Way Tree lockup he contracted chicken pox and says was in constant fear of an attack from other inmates who were hostile, he also complains of a lack of bathroom facilities and a place to sleep.

His claim is for "... damages for false imprisonment and/or malicious prosecution, aggravated damages, exemplary damages and damages for breach of constitutional rights."

- [3] The Defendant filed a Defence Limited to Quantum of Damages and as a result, Judgment on Admission as entered. The matter now stands for assessment of these damages. On the question of damages I am guided by the written submissions of the parties and the evidence given at the hearing of the Assessment of damages.

I therefore make the following awards:

#### **Loss of Motor Bike and Helmet**

- [4] In this regard the court is guided by the authorities of *Webb v Chief Constable of Merseyside Police* [2000] QB,427 and *Walton Richards v Woman Detective Corporal Campbell* unreported C.L R-019/1996
- [5] The claimant is entitled to recover the full replacement cost of the Motor bike and helmet and to be put back in the position he would have been in so far is reasonably possible. This is because he has successfully made out a case in conversion since it is unlikely that these things can be returned and the defendant has also conceded on this issue. The claimant purchased his bike in

2008, the cost to purchase a similar Motor bike and Helmet is recoverable as damages for conversion.

Exhibit 4 - \$149,000.01 Proforma invoice from JAMCO

Exhibit 5 - 3,495.00 Proforma invoice from Jamaica motor cycle Ltd.

The sum \$152, 495.01 dollars is an acceptable figure and is awarded.

### **Loss of Income/Loss of earning capacity**

[6] Since being cleared of the charges he is unable to return to his former employment as a bearer and deliveryman. Before this unfortunate set of events he worked Monday - Saturday at One Stop Furniture Shop as a bearer between the hours 8-6 pm. He also made deliveries five days of the week between 11:30-1:30 pm for a restaurant. The claimant earned 10, 500 per week or 42,000 per month prior to his detention and arrest. He now earns 22,000 per month. The claimant took steps to mitigate his losses by working as a vendor. He is therefore entitled to recover the deficit in his earnings. I am guided by the authority of **Crosfield v Attorney General CL E-219 of 2001 (unreported)** where the judge in relying on the dicta in **Moeliken v Reynolle Ltd. [1997] All ER, 9** where the court approved the principle that a claimant in this position is entitled to claim for a loss of earning capacity if he loses his job and/or is obliged to take a job at less pay.

[7] In his evidence he indicated that he did not contribute to the National Housing Trust scheme neither did he pay income tax. The defendant has submitted that these are mandatory payments and must be taken into account in reckoning what is due to him. The court notes however that these payments are subject to a threshold which the claimant had not achieved based on the prevailing government rates.

[8] The award as to his period for compensation is calculated as follows;

1. Compensation from November 5<sup>th</sup>, 2010 at his full lost wages, the date on which he was first detained, and lost his earnings until February 24<sup>th</sup>, 2011, when he started his new income making endeavour. November 5<sup>th</sup>, is the starting point because contrary to the submission by Ms. Pinnock, this is the period from which the defendant is responsible for the claimant not being able to go about his business and earn his living. If as submitted also, the income tax threshold was \$441,168 up to 2011, then at this income the claimant would not be liable for payment of income tax until he had passed that earning amount and at that time in the year, the claimant would not have attained that earning.

111 days or some 15 weeks at \$10,500 per week = \$157,500.00  
Compensation for loss of earning capacity from February 24, 2011 to May 2013, (27 months).

27 months at \$42,000 per month=	1,134,000.00
Less earnings over the period \$20,000x27mnths	<u>540,000.00</u>
	\$ 594,000.00
	<u>594,000.00</u>
	\$ 751,500.00

This is the award then for loss of income and lost earning capacity is \$751,500.00.

### **False Imprisonment**

- [9] The period in question here is November, 5th 2010 when he was first detained to November 19<sup>th</sup>, 2010, when he was taken before the court (14 days). I am guided here by the authority of **Martin v Halliman** and the ATTORNEY GENERAL JM 2011 SC 114, and **Hassock and Wilson v Attorney General** SCCL 2008 HCV 02530. These awards update to approximately \$1.9m in the case of Halliman and \$1.5m using the current CPI of 231.2.

[10] I have also been influenced by the evidence of the illness that was contracted by the claimant while imprisoned and the evidence given of lack of medical treatment during the illness when he was placed in the position of having to borrow medication from another inmate to ease his symptoms, even while residing in less than comfortable circumstances, as well as the evidence of constant fear for his life from other detainees.

I feel that an award of \$2m is appropriate in the circumstances.

### **Malicious prosecution**

[11] In this regard I am guided by the authority of **Maxwell Russell v Attorney General [2006] HCV04024** where Mangatal J, outlined at page 7 the criteria to be met for a viable award under this heading to be sustained. It is my finding that the claimant has met the threshold required. He was held in custody from the 5<sup>th</sup> November 2010 without charge and when finally taken before the court, the charges of illegal possession of firearm and shooting with intent were only laid just before his attendance in court. No firearm was recovered from him or anyone else with him and the shooting was alleged to have been done by someone else who was allegedly with him. The prosecution went on for over two years, quite a long period, during which he had the charge hanging over his head, with the accompanying embarrassment. It would seem that the motives of the officers were not a genuine one and was activated by malice and or ill will. The cases of **Thompson v Attorney General of Jamaica SCCL 2008 HCV02530** delivered May 2011 and **Kidd v Attorney General of Jamaica** were also quite instructive in arriving at a final award under this heading.

In the circumstances the court finds that an Award of \$1.4m is reasonable and just in the circumstances as it compares favourably with the circumstances of similar case when up dated using the current CPI of 231.2.

## **Aggravated Damages**

[12] The claimant in this case was put in similar circumstances as that in which the claimants in both the **Greenwood-Henry v Attorney General of Jamaica** JM 2005 SC 96 and the **Leaford Kidd v Attorney General of Jamaica** 2013 HCV00293 were. They were arrested and placed in handcuffs in full view of passersby, their liberty restricted for a lengthy period of time and all while being accused of heinous crimes which were never on sound footing, or could not be supported by an inkling of reasonable or probable cause or evidence. The claimant is entitled to an award of damages under this heading which compares favourably with the aforementioned similar awards when updated with the current CPI. I took into account that in the Greenwood – Henry case she was subjected to the deliberate administering of laxatives and the body cavity search and scans and was prevented from travelling abroad where she was going to seek medical treatment for a relative and so the updated award of some \$1,708,000.00 there for me represented the upper end of the scale. While in the Kidd case the award was some \$850,000.00 and was relatively recent. **The Maxwell Russell** case was also instructive but the figure proposed by Miss Pinnock of \$200,000.00 is considered to be too conservative, bearing in mind that in the case at bar the claimant who was an enterprising individual lost both his jobs and not to mention his motor bike and helmet which were pivotal to his livelihood.

I consider that the police having seized the motor bike had a separate duty to keep it safe and at the appropriate time to either return it to the claimant or make the case for its forfeiture. The claimant here lost out on his liberty, his livelihood and his property. I consider an appropriate award under this heading to be \$800,000.00

## **Exemplary damages**

[13] The claimant has made a claim for exemplary damages. An award is normally made under this heading where the type of conduct which merits punishment is particularly oppressive, highhanded and outrageous. (per Mangatal, J, in **Marcia Russell v Attorney General**) . In the normal run of awards the court will not award exemplary damages if the awards already made for compensatory damages and aggravated damages is deemed appropriate to punish the wrongdoer. I am also bearing in mind the words of Lord Woolf M.R. in **Thompson v Commissioner of Police the Metropolis** [1998] Q.B 498, where he opines that an award under this heading is more difficult to justify where the amount is to be paid by the employer rather than the wrongdoer himself.

Sykes J, makes the same observation in the **Greenwood-Henry** case since it seems that the object of the award is to be “a deterrent to future conduct of this nature, one wonders whether the laudable objective is achievable without some financial contribution from the offender.”

[14] The state through the police force has a duty to supervise and properly control the actions of its members and to set up systems of accountability for the seizure and detention of property and persons. The officer would not have been alone in that obligation and as such I consider this incident serious enough to warrant an award of exemplary damages. The fact that someone could remain in custody for two whole weeks, urinating in a bottle and in fear of one’s life, without charge and his valuable property and means of transportation confiscated and just disappears into thin air, is oppressive, highhanded and outrageous.

I therefore award the sum of \$300,000 for exemplary damages.

### Summary of Awards

1. Loss of motor bike and helmet	152,495.01
2. Loss of income /Earning Capacity	751,500.00
3. False Imprisonment	2,000,000.00
4. Malicious prosecution	1,400,000.00
5. Aggravated damages	800,000.00
6. Exemplary damages	<u>300,000.00</u>
	\$ 5,403,995.01

Interest is awarded on the judgment sum at a rate of 3% from the date of service of the claim for to the date of judgment.

Costs are awarded to the claimant to be agreed or taxed.