



[2012] JMSC Civ 178

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.2011 HCV 00138

BETWEEN	PERCIVAL SYBLIS	CLAIMANT
AND	DELORES HAUGHTON	DEFENDANT

Ms. Gillian Mullings for the Claimant

Defendant absent and unrepresented

Heard: November 27 and December 7, 2012

*Libel/Slander/Malicious Falsehood/Assessment of
Damages/Allegations Concerning Paternity*

Straw J

Assessment of Damages

- [1] Mr. Percival Syblis, the claimant, obtained a default judgment against the defendant, Ms. Delores Haughton in relation to a claim for slander, defamation and malicious falsehood. He has asked that he be awarded general damages for a slanderous imputation against him that continued over a period of years [2002—2010], that he was the father of Ms. Haughton's child, Anthony Syblis and that he had refused or failed to maintain the said child.

He has also asked that damages be assessed in relation to a libellous publication made in July 2010 when Ms. Haughton spoke and published to Errol Smith, disc jockey of Mellow FM Radio Station in Montego Bay and its listeners, the following words:

"The child [Anthony Syblis] wants to contact his father Percival Michael Syblis he cannot concentrate on his schoolwork, he is biting up his clothes because he needs to know his father."

[2] Mr. Syblis avers that those words meant and were understood to mean that the claimant was irresponsible in nature and had abandoned his child and as a result, he has been greatly injured in his credits, character and reputation and has been brought into public scandal, ridicule and contempt.

[3] He has also requested that he be awarded the sum of \$600,000.00 as special damages, this being the amount he paid out to Ms. Haughton over the years as maintenance for the said child.

It is to be noted that the claim has arisen because Mr. Syblis received a DNA report on October 5, 2010 which showed that he was not in fact the biological father of Anthony Syblis.

Assessment for Libel and Slander

[4] A man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another. If the publication is made in a permanent form or is broadcast, the matter published is libel. It is slander where a defamatory sense is communicated by spoken words [Gatley on Libel and Slander, 7th Edition, pages 2 and 73]. Once libel is proved, the law presumes that some damage will flow from the publication. It is therefore actionable *per se*.

[5] However, in order for the publication of a slander to be actionable, some special damages must be proved to flow from it, unless it falls within certain specified

categories [none of which are relevant to these proceedings] except by virtue of Section 4 of the Defamation Act. The section reads as follows:

“4. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession or calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.”

[6] I have examined this section of the Act as Ms. Mullings, counsel for Mr. Syblis, has submitted that the defendant’s words were calculated to disparage Mr. Syblis in his calling for the following reasons:

[a] At a point in time when he worked at Brinks Jamaica Ltd., she constantly attended and pointed out that he owed money for child support to his employers. According to the claimant, this ruined his relationship with the company and he resigned his position.

[b] In July 2004, the defendant caused police officers to attend a ship owned by Royal Caribbean International Shipping Company who threatened to arrest him in front of ship security while the ship was on the port. He said this caused him severe difficulties as a report of the incident was placed on his permanent record. The claim made against him was that he had refused to pay her child support.

[7] It is to be noted that the words concerned the non-payment of child support. Although the defendant is not contesting liability, I must have due regard to the evidence before me. The claimant has not said that [on any of these occasions] the allegations of non-payment were false. Up to October 2010, he had apparently accepted paternity for the child and his evidence is that she had taken him before the St. James and Westmoreland Family Courts.

[8] As grieved as Mr. Syblis must have been after the fact, when the true position was revealed, I am not satisfied on a balance of probabilities, as to the nature of the untrue allegations spoken by Ms. Haughton to third parties in relation to the workplace. Section 4 cannot avail Mr. Syblis in the determination of an award.

Mr. Syblis can only receive an award for the slanderous words concerning the paternity of the child if he is able to prove special damages.

What is Special Damages?

[9] Special damage is some actual temporal loss, the loss of some material or temporal advantage which is pecuniary or capable of being estimated in money [Gatley, pg 202]. Mr. Syblis has pleaded and stated in his evidence that he paid out \$600,000.00 to Ms. Houghton as maintenance over a period of time. He also stated that he demanded a refund of the money and she refused to repay him. There were no receipts nor any other documentary proof of this. Ms. Mullings stated she had some receipts, however, I refused an application to put them in evidence as she had failed to file and serve the requisite 'Notice to Tender' document under Section 31 [E] the Evidence Act.

[10] I bear in mind the oft quoted words of Lord Goddard C.J. in **Bonham Carter v Hyde Park Hotel** [1948] 64 T.L.R. 177at 178 concerning proof of special damages:

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage: it is not enough to write down the particulars, and so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it."

[11] However, his evidence on the point is before the court and I can attach some weight to it. I will attach sufficient weight to this evidence because the defendant has not defended the claim although an acknowledgement of service was filed by counsel on her behalf.

I also bear in mind that she did put him before the Family Court and attended at his place of employment in relation to demands for maintenance. I will therefore make an award of \$600,000.00 as special damages in relation to claim for slander. My disapproval, however, will be reflected by the refusal of any order for interest on this sum.

Malicious Falsehood

[12] Ms. Mullings had requested that the court consider an award under the head of Malicious Falsehood. This is a species of defamation and could only be awarded as an alternative remedy in this particular case as the evidence relied on is the same as it relates to slander. In order to establish such an action at common law, the claimant would have to prove that:

The words are false.

That they are published maliciously.

That special damage has followed as the direct and natural result of the publication [**Evans v Johns and The Gleaner Co. Ltd.** [1961]4 WIR, 502].

[13] In the alternative an award for Malicious Falsehood can be sustained by virtue of Section 5 of the Defamation Act:

'5[1] In an action for slander of title, slander of goods or other Malicious Falsehood, it shall not be necessary to allege or prove special damage-

[a] if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

[b] If the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of publication.'

[14] Based on the common law, it is doubtful if Mr. Syblis would be entitled to any award under this head as there is no evidence that the publication of the words to his family and friends [that he was the father of her child] caused any actual pecuniary loss. It would have been due, no doubt, to court proceedings or what she actually told him.

[15] Ms. Mullings has submitted that the actual assessment could be made under Section 5 [1] [b] of the above Act i.e., that the words were calculated to cause pecuniary damage to him in respect of his office, etcetera. Under the Act, the court would be entitled to make an award whether or not he has demonstrated any actual pecuniary loss.

[16] She has asked the court to consider the case of **Khodaparast v Shad** [2000] 1 ALL ER, 54. In that case, the claimant was an Iranian woman resident in London and employed by an Iranian community school. Her former lover distributed what appeared to be photocopied pages from pornographic magazines containing photographs of the claimant advertising telephone sex services, with the result that she was effectively dismissed from her employment. Her claim for malicious falsehood was upheld and she was also awarded aggravated damages. There had been no claim for special damages. She had relied upon Section 3 of the Defamation Act which is the equivalent to Section 5 of the Jamaican Act.

[17] **Khodaparast** and the present case must be distinguished as the evidence revealed that the claimant effectively lost her employment due to the false pictures created by the ex-lover. There is no evidence that Mr. Syblis lost any employment or any benefit due to the malicious publication of the false words concerning paternity. In the unlikely event that such a charge is sustainable, there is no evidence on which the court could attempt an assessment. There is also no evidence from which I could draw the reasonable inference that the claims by the defendant were calculated to cause pecuniary damage to Mr. Syblis in his employment. The charges made were not done in connection with his professional duties [**Jones v Jones** [1916] 1 KB at page 360; **Evans v John**, supra. Those inferences could be drawn in **Khodaparast** based on all the existing circumstances. I am therefore of the view that it would not be appropriate to consider an award under malicious falsehood.

Damages Awarded for Libel

[18] Mr. Syblis is entitled to an award under this head based on the words broadcasted over Mellow FM.

In awarding damages under this head, I am entitled to take into account the conduct of the claimant, his position, his standing, the nature of the libel, the mode and extent of publication, the absence or refusal of an apology and the whole conduct of the defendant from the time the libel was published to the moment of verdict.

[19] The claimant is to be compensated for the damage to his reputation as a result of the libel. The court will also take into account the distress, hurt and humiliation caused by the publication. It must be noted that compensatory damages are not for punishment although regard is to be had of any highhanded, oppressive or insulting behaviour of the defendant which increases the mental pain and suffering of the claimant.

[20] Aggravated damages could be awarded based on the conduct of the defendant, her conduct of the case, her motives including proof of malice or recklessness as to whether the words are true or false. Any such award would reflect the court's natural indignation at the injury inflicted on the claimant and would be a legitimate motive in making a generous rather than a more moderate award to provide adequate consolation.

The Award

[21] Mr. Syblis is a ship worker employed to Caribbean International Shipping Co. Ltd., and residing in the parish of Westmoreland. He was engaged in an intimate relationship with the defendant several years ago. He stated that the words broadcasted over the radio, were heard by his family and friends as well as listeners of the said Mellow FM.

The libel was published on one occasion. This is not one of the major radio stations. No evidence was led as to the extent of the audience. However, Mr. Syblis indicated that it was heard by people in his community.

[22] He stated further that the words have greatly injured his credit, character and reputation and has caused him public scandal and ridicule. No specific details were provided. In relation to the behaviour of the defendant, there is nothing to indicate that she continued her harassment after the results of the DNA test became available. She did not prolong the matter by contesting liability. Mr Syblis did not state whether or not an apology was tendered. It is the view of this court that there is no valid basis for an award of aggravated damages.

[23] The case before me is unusual. There are no comparable cases that I am aware of. It is therefore of seminal importance. I have considered three (3) cases whose updated awards do provide some guidance in terms of the boundaries of this award. These are listed below with a brief summary:

1. **The Jamaica Observer Ltd v Orville Mattis**, Supreme Court Civil Appeal No. 24/2008

Date	April 2011
Career (Job Loss)	Serving Member of JCF, Constable at time of publication. Never had disciplinary proceeding brought. Promoted twice since libel but looking forward to early retirement.
Libel	Imputation of criminal activity in that he allegedly failed to hand to turn over seized narcotics.
Publication	Published once in the Jamaica Observer
Apology/ Retraction	No apology or retractions
Award	\$1,000,000.00
Aggravated/ Exemplary	None
Special Factors	Became ill after publication and was on 8 weeks sick leave.

The updated award is approximately \$1,116, 087.00.

It is to be noted that this was an imputation of criminal activity against a police officer. The publication was in a major newspaper.

2. **Edward Seaga v Leslie Harper**, Privy Council Appeal No. 90/2008

Date	December 2005
Career (Job Loss)	Deputy Commissioner of Police at time of Publication
Publication	Speech of Seaga widely reported in the media

Libel	Imputation of allegiance or bias to the PNP
Apology/ Retraction	No apology or retraction
Award	\$1,500,000.00
Aggravated/ Exemplary	None

The Privy Council reaffirmed the Court of Appeal's award of \$1,500,000.00. The updated award is in the region of three million dollars (\$3,000,000.00). The imputation of political bias was made against a Deputy Commissioner of Police by a former Prime Minister. The words were widely reported in the media and would have attracted national attention.

3. **Woman Corporal Jacquelin "Maxine" Kennedy v The *Gleaner Co Ltd.***,
Suit No. CL1995/ KO30

Date	April 2001
Career (Job Loss)	Corporal at time of publication; placed on guard duty and investigated due to publication
Publication	Published once in The Star
Libel	That the Corporal and her sister-in-law got into a fight in a church at a funeral resulting in the funeral being called off. That the Corporal was involved in an illegal activity.
Apology/ Retraction	No apology or retraction
Award	\$750,000.00
Aggravated/ Exemplary	Included in the award

This case also pertained to a Police Officer. There was one publication in The Star. She was, however, awarded aggravated damages which were included in the award. The updated award is in the region of \$2,500,000.00.

[24] In all the above cases, there was no apology or retraction. Bearing in mind all the circumstances of this case, the parties involved, the limited publication and the fact that there are no aggravating factors, I am of the view that an appropriate award is in the amount of \$1,000,000.00.

[25] The orders are therefore as follows:

Special damages of \$600,000.00 awarded

General damages of \$1,000,000.00.

Costs of \$40,000 awarded to claimant.