



[2025] JMSC Civ.12

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015 HCV 03800

BETWEEN	STEVON ACKEEM CAIN	CLAIMANT
	(Administrator of estate Granville Cain, deceased, intestate)	
AND	ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN OPEN COURT

Mrs. Marion Rose Green and Ms. Andrea Lannaman instructed by Marion Rose Green and Company for the Claimant

Mr. Robert Clarke instructed by the Director of State Proceedings for the Defendant

Heard: November 26, 2024, and February 7, 2025

**Negligence – Whether police officers acted with reasonable and probable cause –
Damages – Aggravated Damages – Section 33 of the Constabulary Force Act**

CARR, J

Introduction

[1] On March 15, 2014, Mr. Granville Cain was a passenger in a motor vehicle driven by Mr. Dwayne Colely. Mr. Colely was operating his private motor vehicle as a public passenger vehicle without a road licence.

[2] While traversing Mountain View Avenue in St. Andrew, Mr. Colely was signalled to stop by police officers who were travelling in a marked service vehicle. He did not comply and tried to evade the police. The vehicle crashed into a wall on Crest Road, and it is alleged that the police fired several shots from their firearms in the

direction of the vehicle. Mr. Cain received gunshot injuries and was transported to the hospital. He filed a claim against the Attorney General on July 30, 2015.

- [3] Mr. Cain died on September 29, 2015, and on October 28, 2021, an order was made substituting his son Stevon Cain as the Claimant in the proceedings.

Issues

- [4] The Attorney General is sued in its representative capacity by virtue of the Crown Proceedings Act. There is no dispute that the police officers involved in the incident were acting within the scope of their duty.
- [5] The sole issue for determination therefore is whether they were negligent in the performance of those duties.

The Law

- [6] A claimant who pleads negligence is required to prove the following:
- a. That the Defendant owed him/her a duty of care,
 - b. That the Defendant breached that duty,
 - c. That the Claimant suffered loss, injury or damage because of the breach of duty.
- [7] In cases involving police officers the Claimant must prove that the action of the officer was malicious or without reasonable cause. This principle is encapsulated in Section 33 of the Constabulary Force Act which provides:

Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause - and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant.

Disposition

- [8] The evidence in this case is not heavily disputed in relation to the genesis of the incident. There is a divergence with respect to the reason the officers opened fire at the vehicle. Mr. Colely the sole witness as to fact on behalf of the Claimant has indicated that no one in his vehicle fired at the police. This was not denied by the sole witness on behalf of the Defence, what is alleged is that there was someone who fired at the police from behind a wall where the vehicle crashed.
- [9] I rejected the evidence of the witness for the Defendant and judgment is entered on behalf of the Claimant. The particulars of the order with respect to damages are set out at the end of this decision.

Evidence on behalf of the Claimant

- [10] Mr. Colely admitted that he was driving his private motor vehicle as a public passenger vehicle without the requisite documentation on the day in question. He stated that he had picked up four passengers and was travelling along Mountain View Road when he observed a police car some distance behind him. Despite seeing the flashing light on the vehicle, he said he did not know the police were signalling him.
- [11] He continued driving and eventually he recognized that the police vehicle was trying to stop him. He tried to get away from them as he knew that he did not have his insurance document at the time.
- [12] He drove onto Crest Road where he said the police vehicle deliberately collided with him causing him to lose control and he crashed the car into a fence on the left side of the road.
- [13] At this point the police fired several shots into his car. He said no one in the vehicle fired at the police. He was aware that one person in his car was shot but he said he did not stick around to see what happened further as he ran away.

- [14] He indicated that there was no “shoot out” and that the police were the only persons who fired on the day in question.
- [15] Mr. Granville Cain gave a statement to the police arising from the shooting that was dated March 16, 2014, and admitted as exhibit 1. The incident was also investigated by the Independent Commission of Investigations (INDECOM) and a report was prepared and admitted as Exhibit 3.
- [16] In his statement Mr. Cain indicated that Mr. Colely crashed into a wall and that as the vehicle hit the wall, he heard gunshots and things started to fly through the window. He was approached by a police officer as he sat injured in the car and he was assisted to the hospital. He did not fire at the police, and he did not see anyone fire at the police.

Evidence on behalf of the Defendant

- [17] Corporal Wycliffe Brown was a Constable at the time of the incident. He was stationed at the Bull Bay Police Station. At approximately 10:00 pm he was the driver of a service vehicle. He was accompanied by Corporal Orett Cephas. A radio transmission was received and the officers proceeded to Mountain View Avenue. They observed a motor vehicle driven by Mr. Colely and went in pursuit of that vehicle.
- [18] Near Rockingham Road and Hillcrest Avenue he heard explosions and on their approach to Hillcrest Avenue he observed that the vehicle had crashed into the perimeter wall at No. 23 Hillcrest Avenue. The driver exited the vehicle and jumped over the wall. He got out of the service vehicle and saw another man on the inside of the gate of the said premises. The man pointed a firearm in his direction and fired at him. He said that he feared for his life and fired in the direction of the man while taking cover behind the service vehicle.
- [19] After the shooting ended, he heard a voice coming from the direction of the vehicle. He found an injured man in the front passenger seat, and they transported him to the Kingston Public Hospital for treatment.

Discussion and Analysis

- [20] In cross examination Mr. Colely admitted that at that time of night he was unable to see what was on the other side of the wall. It was also accepted that the right side of the vehicle crashed into the wall and that his view was blocked at that time. He could not then say if there was someone on the other side of the wall that night. He disagreed with the suggestion that he could not be sure that someone was firing at the police.
- [21] Corporal Brown in cross examination denied that the police vehicle stopped alongside Mr. Colely's vehicle.
- [22] He was asked about the man behind the wall that fired at him. He told the court that the man fired a barrage of shots, and that he took cover while the shots were being fired. He was not shot and neither did Corporal Cephas receive any injuries.
- [23] The police vehicle was about 15ft away from the gate of the premises. The front side of the service vehicle stopped at the rear left panel of the other vehicle less than 5ft away.
- [24] The man who fired from behind the gate never left through that gate, and the officers never went into the yard in pursuit of him.
- [25] He did not know how Mr. Cain got shot, and he denied that he and Corporal Cephas intentionally fired into the vehicle in which Mr. Cain was travelling.
- [26] The statement of Detective Corporal Ryan Newman was agreed as exhibit 2. He was the Scene of Crime Officer. He observed Mr. Colely's motor vehicle and noted the appearance of bullet holes in the left front passenger door as well as the left front passenger seat. There were also what appeared to be bullet holes in the driver's door and glass. Nine (9) expended 5.56 casings were found at the scene.
- [27] The credibility of Mr. Colely is questionable, he stated in cross-examination that he was not running from the police as he had not done anything wrong, yet in his

witness statement he agreed that he did not want to stop and tried to avoid the police because he did not have all his documents. He also insisted in cross examination that the police vehicle hit his vehicle. There is no evidence of this from the crime scene investigation and Mr. Cain in his statement, although not tested, stated that the vehicle collided with the wall.

- [28]** I do not find however that he was unreliable as it relates to the shooting. There is no evidence before this court to suggest that anyone in the vehicle fired at the police. The evidence from Corporal Brown is that the shooter was in the yard behind a gate. Who was this person? It certainly was not Mr. Colely. As Corporal Brown said, he saw the driver exit the vehicle. He did not say that it was the same person that fired at him.
- [29]** Is it that this person was just standing in the yard armed with a firearm when Mr. Colely collided with the wall of the premises? I find that to be highly unlikely. Furthermore, what would be the reason for firing at the police? A vehicle crashed into the wall of the premises followed by a police vehicle, the driver ran, why fire at the police?
- [30]** I do not accept the evidence of Corporal Brown that there was a man firing at them from the yard. The evidence as to the number of spent casings recovered supports my view. The spent casings found were all the same Caliber. The reasonable inference to be drawn from this is that they were all fired from one type of firearm. What is the likelihood that the shooter in the yard had a similar Caliber weapon to that of the police?
- [31]** I rejected the evidence of Corporal Brown. I find that the officers fired at the vehicle in which Mr. Cain was a passenger without reasonable or probable cause. They were negligent in so doing because when they fired, they must have known that passengers were in the vehicle. There was no threat to their lives as it is agreed that no one in the vehicle fired at them. As police officers they owed Mr. Cain a duty of care, they breached that duty, and he was injured. He is therefore entitled

to compensation for those injuries and the loss he may have suffered due to their conduct.

General Damages

[32] At the conclusion of the trial, an order was made that the parties were to file and serve written submissions and authorities by specified dates. The defendant failed to comply with the court's orders. Consequently, in the absence of any submission or authority from them I can only consider the submissions and authorities filed on behalf of the Claimant in the determination of the award for damages.

[33] In making an assessment as to general damages I am mindful that the court must seek to compensate the Claimant for all losses suffered. In this case there can be no future loss due to the death of Mr. Cain. His estate must therefore be compensated in such a way as if the tort had not been committed. Although the reference to precedents is a useful tool in guiding that assessment, I am aware that there will be no case that will fit squarely within the injuries described. As such I will consider the extent and nature of the injuries sustained, any resulting physical disability, the pain and suffering endured, and the duration and effect upon his health.

[34] The Medical Report of Mr. Granville Cain revealed that he suffered the following injuries:

- a. Multiple Gunshot wounds
- b. Large degloving injury to posterior aspect of left arm, active bleeding noted.
- c. Significant injury to triceps
- d. Vascular injury
- e. Multiple pellet wounds to forehead and left chest wall

Diagnosis: Multiple gunshot wounds with vascular injury.

[35] It is Counsel's submission that the sum of Five Million Dollars (\$5,000,000.00) would be a reasonable award for damages for pain and suffering and loss of

amenities based on the circumstances of the instant claim. Three authorities were provided in support of this submission: **Jennifer Williams v Jamaica Urban Transit Company Limited and Jeremy Stewart**¹, **Kennesha Harris (infant by mother and next friend Beverly Harris) v Hall et al**², **Michael Jolly v Jones Paper Co. Limited et al**³.

[36] The case of **Jennifer Williams** was the most useful. The Claimant suffered unconsciousness, head injury, chest and upper right limb injury, abrasions to the forehead, tenderness over the sternum, degloving injury to right arm, deformity to arm and forearm, weak pulse in right wrist hands. The court considered the deformity and degloving injuries, as well as a 4% whole person disability and made an award of Five Million Dollars (\$5,000,000.00) in October 2021 for pain and suffering. This updates to Six Million One Hundred and Eighty-Five Thousand Three Hundred and Forty-Four Dollars and Forty-Five Cents and (\$6,185,344.45) using the current Consumer Price Index (**CPI**).

[37] It is noted that the Claimant in **Jennifer Williams** did not suffer a gunshot injury. A case involving a gunshot injury is that of **Xienna Morgan v Corporal Delroy Brown, Constable Junior Hall, Constable Kevin Davis and The Attorney General of Jamaica**⁴. The injuries to the Claimant were outlined as a gunshot wound to the back and arm with vascular injury, ulnar nerve injury and extensive scarring on the left hand, loss of main artery in the left arm, loss of sense of touch in fingers, resulting in the Claimant's left hand being weaker than her right. The Claimant was awarded the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) which updates to Four Million Four Hundred and Forty-Five

¹ [2021] JMSC Civ. 170

² Suit C.L. 1987 H084

³ Suit C.L. 1996 J014 at Khan Volume 5 at page 20

⁴ [2013] JMSC Civ 135

Thousand Four Hundred and Seventy-Seven Dollars and Eight Cents (\$4,445,477.08) using the current CPI.

- [38] The injuries suffered by the Claimant in **Jennifer Williams** are more severe than that of Mr. Cain because Mr. Cain did not suffer any whole person impairment. The multiple gunshot wounds coupled with the degloving injury, and the vascular injury are more serious than the injuries outlined by the Claimant in **Xienna Morgan**. It is my considered view that an award of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) for general damages is appropriate in this case.

Aggravated Damages

- [39] Counsel submitted that aggravated damages ought to be awarded in the sum of One Million Dollars (\$1,000,000.00). Citing the authority of **John Crossfield v the Attorney General of Jamaica and Anor**⁵, among others, counsel argued quoting Morrison P “*aggravated damages ... is intended to reflect the fact that the particularly egregious nature of the defendant's conduct has been such as to cause greater or aggravated damage to the claimant*”.

- [40] In the authority of **Claudette Pamela Thompson v Commissioner of Police of the Metropolis and Kenneth Hsu v The Commissioner of Police of the Metropolis**⁶ Lord Woolf MR stated in relation to aggravated damages:

“... Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high-handed insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.”

⁵ [2016] JMCA Civ 40, Paragraph 38

⁶ [1977] 2 All ER 762, page 775, direction (8)

[41] I find that this is a claim for which an award for aggravated damages is appropriate. The conduct of the police officers on the day in question was oppressive and high handed. The fact of firing at a vehicle transporting passengers in circumstances where no one in that vehicle had fired at the police is inexcusable. I agree with counsel for the Claimant that the aggravating circumstances of this case warrant an award in damages under this head. The sum of One Million Dollars (\$1,000,000.00) is reasonable.

Loss of Income

[42] A claim was made for loss of income. In cross-examination Stevon Cain told the court that his father did regular gardening jobs and odd jobs. This was in stark contrast to the statement of Mr. Cain, which was given to INDECOM, where he indicated that he was unemployed. I rejected the evidence of Stevon Cain who at the time was a child. The statement of Mr. Cain is more plausible. There is no evidence to support a finding that Mr. Cain was employed and lost income because of the incident.

Order:

1. Judgment for the Claimant.
2. General Damages is awarded to the Claimant in the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) with interest at 3% per annum from the 30th of July 2015 to the 7th of February 2025.
3. The Claimant is awarded the sum of One Million Dollars (\$1,000,000.00) for aggravated damages.
4. Costs to the Claimant to be agreed or taxed.