[2016] JMSC Civ. 65

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2006 HCV 03966

BETWEEN	**OSCAR CLARKE**	**CLAIMANT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

Michael Palmer, instructed by Palmer, Smart and Co., for the Claimant

Marlene Chisholm, instructed by the Director of State Proceedings, for the Defendant

Heard: February 5, 2016 and February 18, 2016

CLAIM FOR DAMAGES FOR NEGLIGENCE/EMPLOYER'S LIABILITY – ATTACK ON ARMED POLICE OFFICER AT A POLICE STATION BY MEMBER OF THE PUBLIC WHO WAS A VISITOR TO THE POLICE STATION COMPOUND – DUTY OF CARE OWED BY OCCUPIER OF POLICE STATION COMPOUND TO PERSON WORKING WITHIN THAT COMPOUND – DUTY OF CARE OWED BY GOVERNMENT TO PERSONS WORKING ON AND VISITING THAT COMPOUND – *RES IPSA LOQUITUR* – FAILURE OF DEFENDANT TO DO ANYTHING OTHER THAN PUT CLAIMANT TO PROOF OF HIS CASE – FAILURE OF DEFENDANT TO LEAD ANY EVIDENCE OR TO CHALLENGE THE CLAIMANT'S CASE IN ANY SIGNIFICANT WAY DURING CROSS – EXAMINATION OF THE CLAIMANT – PRIMA FACIE CASE NOT EQUIVALENT TO PROOF OF CASE ON A BALANCE OF PROBABILITIES – WHETHER DEFENDANT IN BREACH OF DUTY OF CARE OWED TO CLAIMANT

ANDERSON, K. J

The Factual Background

[1] Jamaica is, unfortunately and undoubtedly, a nation which cannot properly be described as one which is typically peaceful. It is in fact well known to all who live in this nation, which is, in several other respects, one which can also properly be described as beautiful, that this nation is one in which acts of violence have, for decades now, been the norm. This court has, for the purposes of this claim, taken judicial notice of same.

[2] For the claimant, unfortunately, he was the victim of a single such act of violence. On January 19, 2002, at about 10:30 a.m., while he was employed as a police officer and then on station guard duty at the Wakefield Police Station, Trelawny, he was attired in police uniform and armed with a police service revolver which then had in it, twelve (12) rounds of 38 cartridges. At that time, he was accompanied at that police station, by a corporal of police and a special corporal. At that time, those two (2) other officers were at the station, cautioning a juvenile in a case of larceny.

[3] At that time also, one David Walden, otherwise called, 'shine helmet,' of Wakefield, in the parish of Trelawny, then walked up to the police personnel and demanded the release of the said juvenile. While the police continued cautioning the juvenile, David Walden, who was then armed with a, 'turn bill' machete, immediately attacked the claimant with that machete and thereby began inflicting several wounds all over his body, which caused bleeding all over his body.

[4] The claimant then tried to run while he was still under attack, but rather than having succeeded in running away, instead, fell to the ground, whereupon Ms. Walden seized the opportunity and chopped at the claimant's neck. The claimant then held up his left hand and was chopped on that hand several times, as a consequence of which, his left wrist was partially severed.

[5] At that stage, the claimant drew his police service revolver and discharged six (6) rounds in the direction of Mr. Walden, who then threw away the machete and ran

away from the police station compound, whereafter, he locked himself in an abandoned building nearby.

[6] This court received no evidence at trial, as to the mental condition of Mr. Walden either at the time of his attack upon the claimant, or at any other time, nor did the court receive any evidence at trial, as to what was done by anyone, in respect of Mr. Walden, after he had locked himself in that abandoned building, nor as to what happened to Mr. Walden at any time thereafter.

[7] What happened to the claimant as a consequence of the attack upon him though, is known. He was taken to the Falmouth Public Hospital and subsequently transferred to the Cornwall Regional Hospital, where he underwent surgery.

[8] Due to the severity of the injuries received as a consequence of the attack upon him by Mr. Walden, the claimant's fifth left finger was amputated and his left wrist was re-planted the same day. The claimant remained in hospital for two (2) weeks, initially and thus, was initially discharged on February 2, 2002.

[9] On September 25, 2002, the claimant was re-admitted to hospital, at the St. Joseph's Hospital in Kingston, where he underwent surgery to his left ankle, left side of abdomen and extensive reconstruction of flexor tendons, nerve and soft tissue cover to his left hand and he was subsequently discharged from that hospital, on November 18, 2002.

[10] What has been recounted above, was, save and except for the claimant's present address and his evidence that he is presently a corporal of police stationed at the Montego Bay Police Station in the parish of St. James, the sum total of the claimant's evidence-in-chief in this case.

[11] For the purposes of cross-examination, only one question was posed to the claimant by the defence counsel and that question was as regards whether he had received any payments from his employer, towards his medical expenses. The claimant's answer to that question was as follows: '*No. I was told that a part*

of my medical expenses would have been taken care of by the government, so I am not aware if it was done, because I have not received any cheque or cash to substantiate that.'

[12] In the circumstances, the claimant's entire evidence-in-chief was undisputed by the defendant.

[13] It is not surprising that it was undisputed though, because the defendant did not seek to rely on any evidence at trial. See: **In the estate of Slidie Basil Joseph Whitter** – Suit No. 2014 P00230, per Anderson J., esp. at paras. 23 – 26.

[14] There was only one question posed to the claimant during cross-examination and accordingly, there was only one answer given. They were as follows:

Q. Did you receive any payments from your employer towards your medical expenses?

A. No. I was told that a part of my medical expenses would have been taken care of by the government, so I am not aware if it was done, because I have not received any cheque or cash to substantiate that.

The Parties' Statements of Case

[15] The defendant was sued on the basis of the attorney-general being the Crown's representative for the purpose of any court claim made in respect of any tort committed by a servant or agent of the Crown. See: **Sections 3 and 13 of the Crown Proceedings Act**.

[16] In the claimant's particulars of claim, it was alleged that on January 19, 2002, the claimant was among a group of police personnel at the Wakefield Police Station, when David Walden attended the station and used a machete to chop the claimant, who was acting in the course of his employment, as a result of which the claimant suffered injury, loss and was put to expense.

[17] It was also alleged therein, that the said injury, loss and damage suffered by the claimant, was occasioned by reason of the negligence and breach of the employer's duty of care owed to its employees.

[18] Six (6) 'particulars of negligence,' have been alleged by the claimant. They are as follows:

> *'(1) Failing to provide employees with a safe place of work.*
>
> *(2) Failing to have proper security measures in place to ensure (sic.) the well being of police officers.*
>
> *(3) Failure to take such care as in all the circumstances reasonable to see that the premises is secure and that visitors do not carry weapon.*
>
> *(4) Failure to take any or any adequate measure to ensure that the premise is safe and to enable the claimant as an employee to be reasonably safe.*
>
> *(5) Exposing the client to a risk of damage or injury of which the employer of the claimant knew or ought to have known.*
>
> *(6) Permitting the visitor to walk into the premises without proper stop and search signs and system which the employer of the claimant knew or ought to have known that it was unsafe and dangerous to their employees.'*

[19] The defendant's case consisted of a denial of there having been any negligence or breach of employment duty, committed by the defendant and a denial that any injury, loss or damage which the claimant suffered was caused by any negligence on the part of the Ministry of National Security's or its employees or servants. The defence has alleged that at all material times, the Ministry of National Security's employees/servants took, 'all such,' reasonable steps to avoid any injury or loss to the claimant.

[20] In addition, it was alleged in the defence, that the attack on the claimant was not reasonably foreseeable.

[21] Furthermore, the defendant put the claimant to proof of his injuries, loss and/or damage.

[22] In this judgment, I will now proceed to examine the claimant's case more closely, as the claimant had the burden of proving his claim, if he expected judgment to be awarded in his favour. In order for judgment to be awarded in his favour, he had to prove his claim, on a balance of probabilities.

Res Ipsa Loquitur

[23] The claimant's counsel had, in his oral closing submissions, submitted that the evidentiary principle, sometimes described as a doctrine and commonly known amongst legal practitioners as, '*res ipsa loquitur,*' be applied by this court, in reaching its judgment on this claim.

[24] The claimant's statement of case has made no reference to *res ipsa loquitur*. It did not need to, since the same is an evidentiary principle, as distinct from particulars of any claim. See: **Bennett v Chemical Construction (GB) Ltd.** – [1971] 3 ALL ER 822.

[25] *Res ipsa loquitur*, when applicable, raises an inference of negligence which requires the defendant to provide a reasonable explanation of how the accident/incident could have occurred without his negligence. The application of *res ipsa loquitur* does not though, reverse the burden of proof. Thus, if the defendant provides an equally plausible explanation, that will redress the balance of probability, if it had titled against him, and the claimant will be back where he started, namely, of establishing his case by positive evidence, which he is unlikely to be able to do. See: Clerk and Lindsell on Torts, 20th ed. [2010], at para. 8 – 176 and **Ng Chun Pui v Lee Chuen Tat** – [1988] R.T.R 298 (P.C). On the other hand, the defendant cannot hope to redress the balance in this way, merely by putting up theoretical possibilities; his assertion must have some colour of probability about it. See: **Moore v R D Fox and Sons** – [1956] 1 Q.B. 596, at 607.

[26] *Res ipsa loquitur,* which stems from the judgment of Erle C.J in **Scott v London and St. Katherine Docks** – [1865] 3 H and C 596, at 601, applies where:

(i) The occurrence is such that it would not have happened without negligence; and

(ii) The thing that inflicted the damage was under the sole management and control of the defendant, or of someone for whom he is responsible, or whom he has a right to control; and

(iii) There must be no evidence as to why or how the occurrence took place.

[27] For examples of circumstances in which *res ipsa loquitur* will apply, see the cases: **Bennett v Chemical Construction (GB) Ltd**. – [1971] 1 WLR 1571; and **Cassidy v Ministry of Health** – [1952] 2 K.B. 343.

[28] In respect of the present claim, there exists no evidence as to how it was that the person who entered onto the police station compound and attacked the claimant with a machete which he (the attacker) then had in his possession, got onto that compound and either acquired that machete while there, or alternatively, that he entered the compound, with the machete then having been in his possession.

[29] There exists evidence of what happened to the claimant, but no evidence as to what caused same to happen. The parties have led before the trial court, no evidence whatsoever, as to what it was that caused the said incident to have occurred. Accordingly, the last mentioned of the three (3) conditions for the application of this principle of evidence, has been met.

[30] The second condition has also been met. There is no doubt that at any public property, conditions can be placed on entry to that property. Accordingly, it is this court's considered opinion that the Ministry of National Security, under which Ministry of Government, the portfolio responsibility for the Police Force of Jamaica falls, has the right to control the circumstances in which persons may be permitted to enter upon any police station compound. It is therefore, always open to that Ministry, to put in place, stop and search measures, at the entrance to any police station compound, or even to disallow entrance to that compound, by anyone who may reasonably be believed to be someone who poses a realistic

threat to anyone that may then be on that premises. In the context of this claim therefore, the Ministry of National Security had the right to control the circumstances in which the attacker could have gained entrance to the government's property, being the police station compound.

[31] The next condition to be met, if the evidentiary principle of *res ipsa loquitur* is to be applicable, is that the accident/incident could not have happened without negligence. This court does not accept that an incident of an attack upon a police officer at a police station, by someone who then had a machete in his possession, could not have happened without there having been any negligence on the defendant's part.

[32] An attack upon anyone at a police station may very well be, from a reasonable man's perspective, an unexpected risk. Even if that is not so though, the claimant was armed with a firearm at the material time and that was a police issued firearm which undoubtedly, he would have been carrying with him at the material time, for, amongst other things, the purpose of enabling him to adequately protect himself from the risk that he may be harmed by others. In the circumstances, this court is not satisfied that the injuries caused to the claimant by the attacker at the police station, could not have occurred without there having been negligence on the part of the Ministry of National Security's officials. This court therefore cannot and will not apply the principle of *res ipsa loquitur*, to this claim.

[33] The claimant therefore, has not led into evidence, in the view of this court, circumstances which raise a presumption of negligence. If he had done so, then *res ipsa loquitur* would have been applicable and the defence would have had to have led evidence raising it as being probable, that the incident occurred without any negligence on the defendant's part.

[34] The claimant's evidence has already been detailed and it is apparent, that it is very skimpy in nature. As such, the inapplicability of the *res ipsa loquitur*

principle has undoubtedly placed the claimant's case in a significantly weakened position.

[35] This court will state why this is so, further on in these reasons, but before doing so, will set out the law as regards negligence and employer's liability.

The law of Negligence and Employer's Liability

[36] The tort of employer's liability is a claim founded on a specie of the law of negligence. In that regard, see: **White v Chief Constable of South Yorkshire Police** – [1999] 2 AC 455, at 506, per Ld. Hoffman. An employer has a duty to protect his employee (s) from the occurrence of harm due to a known risk, which could likely occur to an employee while carrying out the work that he or she is employed to perform. See: **Rahman v Arearose Ltd.** – [2001] Q.B. 351; and **Charlton v Forrest Printing Ink Co. Ltd.** – [1980] I.R.L.R 331.

[37] The duty of an employer is often explained under four (4) heads: The provision of safe staff; safe equipment; safe place of work; and a safe system of work. In this claim, the claimant is contending that defendant was negligent in having failed to provide him with a safe place of work. The duty owed by an employer to provide an employee with a safe place of work though, is, just as are all the other duties owed by an employer to an employee, firstly, not confined to those heads and secondly, it is not a duty which is absolute in nature. To use the words of Ld. MacDermott in **Winter v Cardiff RDC** – [1950] 1 ALL ER 819, at 823, they (in reference to the duties owed, 'are not absolute in nature. They lie within, and exemplify, the broader duty of taking reasonable care for the safety of his workmen, which rests on every employer.' As stated in the text – Clerk and Lindsell on Torts (*op. cit.),* at para. 13-07 – '*So an employer cannot escape liability simply because it may be difficult to assign his conduct to one of the four (4) heads. The key question is whether it was in breach of the duty of care*.' This court will therefore, closely address its mind to answering that question, on the basis of the evidence presented by the claimant in support of his claim and which

was not only unchallenged by the defendant, but also, not countered by any evidence from the defence. Before doing so though, it would be useful at this juncture, to consider the law as regards proof of negligence.

[38] Suffice it to state at this stage though, that since employer's liability is a specie of the law of negligence, it must follow, that if the claimant succeeds in proof of his claim for damages for negligence, he must also succeed in proof of his claim for damages for employer's liability and likewise, that if he fails in proof of his claim for damages for negligence, he would also have failed to prove his claim for damages for employer's liability and vice versa.

[39] It should be noted also, that even if the claimant succeeds in proving his claim, he will only be entitled to recover as damages, a sum to be awarded to him, as compensation for the loss, injury and/or damage which he has suffered. He will not be entitled to recover double compensation, or in other words, compensation for each tort committed (if this court were to so conclude). Also, the measure of damages for each tort is the same. The damages award, if it is to be made by the court, will be an award of financial compensation designed to place the claimant, as far as it is possible to do so by means of an award of monetary compensation, in the same position that he would have been in, if the tort had not been committed.

[40] It is now accepted that the tort of negligence is comprised of four (4) elements –

(i) The existence of a duty of care owed by the defendant to the Complainant; and

(ii) The failure to attain that standard of care prescribed by the law, thereby committing a breach of some duty; and

(iii) Reasonably foreseeable damage/loss has been caused to the complainant, as a consequence of the breach of the duty; and

(iv) Such damage/loss is of a type which is recognized by the law as one for which compensation can properly be recovered through a court. See para. 8-04 of Clerk and Lindsell on Tort (*op. cit.)*

All of the aforementioned four (4) elements, must be duly proven, in order for a claimant to properly succeed in proof of a claim for damages for negligence.

[41] There is no doubt that the Crown owed the claimant a duty of care, insofar as the law of negligence is concerned, as the claimant was functioning as a Crown servant/government employee, when he was injured. Accordingly, the defendant properly named as defendant, since the Attorney General is the Crown's representative for the purposes of this claim, will be taken as having owed the claimant a duty of care.

[42] The primary hurdle to be overcome by the claimant in proving his claim though, is the hurdle of establishing that the Crown breached its duty of care to the claimant. If the claimant has not overcome that hurdle, then the claimant's claim must fail.

[43] That hurdle is the same one that needs to be overcome by the claimant in his claim for damages for negligence/employer's liability.

Breach of duty of care

[44] A defendant will be regarded as in breach of a duty of care if his conduct falls below the standard required by the law. The standard normally set is that of a reasonable and prudent man. In the often cited words of **Baron Alderson** – '*Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a reasonable and prudent man would not do.*' See: **Blyth v Birmingham Waterworks** – [1856] 11 Ex. 781, at 784 – '*The key notion of reasonableness provides the law with a flexible test, capable of being adapted to the circumstances of each case.... The behaviour of individuals and the circumstances giving rise to harm are so variable that a flexible test of this nature is essential. Consequently the courts resist attempts to crystallise the required standard into a series of more definite, discrete rules. Decisions in individual cases as to what amounts to reasonable or unreasonable conduct are*

regarded as useful guides but no more....' The House of Lords in **Qualcast (Wolverhampton) Ltd. v Haynes** – [1959] A.C. 743, esp. at 755, per Ld. Keith and 757 – 758, per Ld. Somervell, emphasized the undesirability of attempting to reduce to rules of law the question whether or not reasonable care has been taken' – Clerk and Lindsell on Torts, 20th ed. [2010], at para. 8 – 136, pp. 516 and 517.

[45] In the Clerk and Lindsell on Torts text (*op. cit.),* the learned authors, at para. 8 – 138, p. 518, have, to summarize, stated that the level of care that will be reasonably required in any particular circumstance is the product of three (3) sets of criteria each of which contains tensions and requires a balancing exercise. The first is that of objectivity. In principle, the standard of care expected of the reasonable person is objective and does not take into account the weaknesses or inexperience of the particular defendant. This though, may mean that an individual may be held liable for failing to live up to a standard which he cannot meet. Consequently, objectivity may be tempered by basing the standard on what may be expected objectively, from an 'inexperienced' group, or by accommodating the special circumstances of the case, for example, an emergency, within the objective test, or by varying the objective requirement in light of the special relationship between the parties.

[46] The second criterion involves a balancing of costs and benefits, asking whether it is reasonable for the defendant to bear the cost of particular form of precautionary conduct in the light of the level of protection that it will confer on the claimant and others. Courts have considerable discretion as to the weight to be given to different factors. This is a matter of, as was stated in the case – **Latimer v AEC Ltd.** – [1953] 2 ALL ER 449, measuring the risk against the measures necessary to eliminate that risk. That principle was echoed by Ld. Reid in **Overseas Tankship (U.K.) Ltd. v The Miller Steamship Co. Pty.** – [1967] 1 A.C. 617, at 642.

[47] The third criterion is that of common practice and expectations. Courts will be influenced by the evidence of common practice of those engaged in the activity in question, but this must sometimes be balanced against what are conceived to be the reasonable expectations of those who may be affected by the activity.

[48] According to the authors of the text – Clerk and Lindsell on Torts (*op. cit.),* a failure to adopt common practice in relation to a safety precaution is strong evidence of carelessness, for it suggests that the defendant did not do what others in the community considered to be reasonable. The failure to conform to a common practice, is however, not necessarily, conclusive of negligence. See: **Brown v Rolls Royce Ltd.** – [1960] 1 WLR 210, at 214, per Ld. Denning. Conversely, conformity with common practice is *prima facie* evidence that the proper standard of care is being taken. See: **Paris v Stepney NC** – [1951] AC 367, at 382, per Ld. Normand; and **Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd.** – [1968] 1 WLR 1776, at 1783.

[49] It is important to recognize though, that in exceptional situations, the court may still properly be able to and in fact conclude, that a person who has conformed to a common practice, has nonetheless, acted carelessly, because that practice had given rise to unreasonable risks. See: **Lloyds Bank Ltd. v Savory and Co.** – [1933] AC 201; and **Cavanagh v Ulster Weaving Co. Ltd**. – [1960] A.C 145.

[50] In connection with an employer's duty to his servant, Ld. Dunedin, in a passage, often quoted, said:

> *'Where the negligence of the employer consists of what I may call a fault of omission, I think it is absolutely necessary that the proof of that fault of omission should be one of two (2) kinds, either to show that the thing which he did not do was a thing which was commonly done by other persons in like circumstances, or to show that it was a thing which was so obviously wanted that it would be folly in anyone to neglect to provide it.'*

See: **Morton v William Dixon Ltd.** – [1909] S.C 807, at 809.

[51] Lord Dunedin's test, must be read with Ld. Normand's gloss, in **Paris v Stepney B.C.** (*op. cit.),* at 382, where it has been recorded that he stated –

> *'If there is proof that a precaution is usually observed by other persons, a reasonable and prudent man will follow the usual practice in the like circumstances. Failing such proof the test is whether the precaution is one which the reasonable and prudent man would think so obvious, that it was folly to omit it.'*

Proof of carelessness

[52] The onus of proof that the defendant has been careless, falls upon the claimant and the claimant, if expecting to be successful in proof of his claim under the law of negligence, or what is common termed as, 'employer's liability,' must prove his claim against the defendant. See: **Brown v Rolls – Royce Ltd.** (*op. cit.),* at 215 – 216. Thus, in **Brett v University of Reading** [2007] EWCA Civ. 88, England's Court of Appeal stressed that it was for the claimant to establish that the employer had failed to take care, rather than for the employer to establish that it had taken any necessary precautions.

[53] Accordingly, if the claimant's evidence is equally consistent with the presence or absence of negligence in the defendant, his claim will fail. See: **Jones v Great Western Ry.** – [1930] 47 T.L.R 39, at 45; and **Wright v Callwood** – [1950] 2 K.B 515.

Application of the aforementioned law to the claimant's evidence in this case

[54] In the case at hand, the evidence led by the claimant in proof of his claim, was woefully lacking in sufficiency. Whilst it is worthwhile to remember that the defence led before this court, at trial, no evidence whatsoever, that failure on their part, to lead evidence, has not at all, served to negate the legal onus which rests solely on the claimant, if he wishes to be successful in proof of his claim, to prove his claim on a balance of probabilities.

[55] In his efforts to prove his claim, the claimant has led evidence sufficient to have satisfied this court, on a balance of probabilities, that he was attacked by a person who wielded a machete, while he (the claimant) was on duty as a police officer, at the police station where he was attacked, by someone who had then been at that station as someone who had visited there and thereafter, attacked the claimant, with a machete, while he (the visitor) was visiting there.

[56] The claimant's own evidence has clearly established also, to this court's satisfaction, that at the time when he was attacked, the police officer was armed with a fully functional police service revolver, which in fact he used to good measure, to defend himself from what it seems to this court, was a wholly unwarranted and unexpected attack.

[57] What the claimant's evidence was lacking in though, was the following:

(i) Evidence as to what, if any, security measures were in place at the police station compound where he (the claimant) was attacked.

(ii) Evidence as to whether any attacks upon police and civilian employee personnel at that police station (the one where he was attacked), had ever previously occurred and if so, when had such attack incidents taken place and what was the nature of any such attack incident.

(iii) Evidence as to whether any attacks upon police and civilian employee personnel at any other police station in Jamaica, had ever occurred and if so, when and where did any such attack taken place and what was the nature of any such attack.

(iv) Evidence as to when was the police station where the claimant was attacked, opened to access by members of the general public.

(v) Evidence as to what are the current security practices in place (if any), from a general perspective, at police station compounds in Jamaica.

(vi) Evidence as to what training, if any, is given to police officers, after recruitment, to train them to competently assess and react to potentially dangerous situations and to properly be able to defend themselves, if the need arises, so to do.

(vii) Evidence as to what the approximate cost would be, to put in place metal detector apparatus and also, x-ray machines (for electronic search purposes) at a police station compound such as the one that the claimant was attacked at.

[58] The claimant's failure to lead evidence on any of the aforementioned matters, has ultimately led to the claimant having failed to prove his claim for damages for negligence and employer's liability.

[59] Whilst this court is satisfied that it may very well be, that had better security measures been in effect at the police station compound where the complainant/claimant was attacked, as at the time when he was attacked, then it is likely that the attack upon him, which took place, may have been prevented, that conclusion of this court does not and cannot properly lead this court to the conclusion that the defendant breached its duty of care to the claimant, since that duty of care is by no means, an absolute one. This is not a matter of strict liability.

[60] The claimant was provided with that which, at least, 'on the face of it,' appears to have been an adequate means of protecting himself from an attack, that being that he was provided with a functional service revolver which had bullets in it. The claimant needed to have proven, on a balance of probabilities, that the provision of same to him, was, in the circumstances, inadequate and thus, careless in respect of his general safety and well-being, considering the circumstances in which he utilized the police station compound for the purposes of his work.

[61] The trial court having been provided with no evidence that could properly enable it to reach that conclusion, has been forced to conclude that the claimant has failed to prove his claims for damages for negligence and employer liability.

[62] The claimant, it should be noted, could have obtained the information that he needed to prove his claim, with respect to items (i) to (vi) above, by means of a request for information, which the defendant would then have been obliged to have responded to. Information thus provided, whether voluntarily, or pursuant to a court order, would be taken by a court, as constituting part and parcel of the statement of case of the party who/which has provided that information. In that regard, see the definition of the term – 'statement of case' as set out in **rule 2.4 of the Civil Procedure Rules (CPR)**.

[63] The claimant also, could himself have provided evidence of those matters, to the court, to the extent that he would have been personally aware of same. It seems to this court, that it would have been quite likely that he would have been personally aware of at least some, if not all of those matters on which evidence should have been given either by him, or by someone else/other persons, in support of his case. The lack of such evidence was, in the final analysis, fatal to his claim.

[64] Additionally, the claimant could and should have led expert evidence to establish the evidence as referred to by this court in item no. (vii) above. The claimant did not lead any such evidence.

Order

[65] This court's order, will therefore be as follows:

(i) Judgment is entered for the defendant, on this claim.

(ii) The costs of this claim are awarded in favour of the defendant.

(iii) The defendant shall file and serve this order.

.....

Hon. K. Anderson, J.