



[2013] JMSC Civ 116

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009HCV05532

BETWEEN ODANE EDWARDS CLAIMANT
A N D THE ATTORNEY GENERAL DEFENDANT

Mr. Dale Staple instructed by Kinghorn & Kinghorn for the Claimant

Mr. Nigel Gayle instructed by The Director of State Proceedings for the Defendant

June 10, 2011 and August 23, 2013

**Assessment of Damages – Claimant unlawfully shot and detained by police
– Bullet fragments lodged in claimant’s head – Whether in addition to
damages for assault and battery claimant entitled to aggravated, exemplary
and vindictory damages**

FRASER J

THE CLAIM

[1] On October 23, 2009 the claimant Odane Edwards filed a Claim Form and Particulars of Claim in this matter seeking damages for assault and battery arising from an incident that occurred on May 20, 2009. The Acknowledgment of Service filed on November 17, 2009 by the defendant, disclosed that service of the Claim Form and Particulars of Claim was effected on November 11, 2009.

[2] On March 5, 2010 the defendant filed a Defence admitting liability for injuring the claimant. However, the claimant was put to strict proof of the relief claimed. That relief to be assessed by the court was fivefold: i) Damages; ii) Special Damages iii) Aggravated Damages; iv) Exemplary Damages; and v) Vindictory Damages. Additionally the claimant sought

interest pursuant to the Law Reform (Miscellaneous Provisions) Act and Costs. Judgment on Admission for the claimant to recover damages to be assessed and costs to be taxed, was filed on April 6, 2010 and entered at Volume 749 Folio 456 of the Judgment Book.

THE INCIDENT

- [3] The claimant's witness statement dated and filed May 9, 2011 was received as his evidence in chief at the hearing. He was cross examined by counsel for the defendant. The claimant's evidence is that on May 20, 2009 he was on his way to school, in a car being driven by his in-law Andrew Bonnick. Upon reaching the square at Mango Valley in the parish of St. Mary, he saw his grand uncle Mr. Winston Jackson. They pulled over to talk to him. The claimant was in the front passenger seat and Mr. Jackson was at the front passenger door. In his statement the claimant said this was about 8:30 p.m., but under cross examination he indicated this was an error and the time was actually 8:30-9:00 a.m. The unchallenged fact that some subsequent events, to be recounted later, occurred, make it clear that the incident unfolded in the morning rather than the evening.
- [4] The claimant's narrative continued with him indicating that as he was talking to Mr. Jackson, Mr. Jackson touched him on his left shoulder and looked towards the back of the vehicle. This caused the claimant to look over his right shoulder towards the back of the vehicle. He saw the figure of a gun being held by someone who was at the back of the car, but not close enough to touch the car. In his statement he said he saw the face of the individual with the gun but in cross-examination he said that was a mistake. He saw the hand holding the gun, but not the face of the person who held it.
- [5] He then looked at Andrew, he felt the car rock a bit and then he heard the first explosion which came through the left side of the back window. The

force of it pushed him to the dash board of the car. He then told Andrew to drive him to his mother's house which was a few blocks away. When they drove off he heard a second explosion which was directly between the door jamb which pushed him against the dashboard. In his statement he indicated that he felt a bump come up on his head and he realized he was bleeding after the first shot. However in cross examination he said he felt the bump after the second shot. Nothing of moment however turns on that inconsistency.

- [6] There was then a third explosion which went into the gas tank. They drove to his mother's house in Bamboo Walk at which point he realised there was a police van that came and stopped behind their car. Two men in police vests came out of the vehicle along with one without a vest and were asking them where they threw the gun. While they made this query they were handcuffing Andrew and searching the vehicle.
- [7] The claimant was there holding his head, crying and telling them that something was in his head. The police were saying that it was the splinter from the glass. The claimant was begging them to take him to the hospital.
- [8] The police told the claimant to sit on the railing of the verandah. He remained standing and was making a lot of noise. They then handcuffed him. One police was left with him and Andrew and the other two went to search the bushes of the drive way of the house. The other two then returned from searching the bushes. One Mrs. Powell came out of the house and told the police she knew them and that they lived there. Mrs. Powell called the claimant's mother and other neighbours started to gather and make a lot of noise.
- [9] The police then sent Andrew and the claimant to sit in the vehicle, instructing the claimant to use his hand to break out the already shattered glass to open the car door. The claimant was in the car for about 20 minutes then he was driven with Andrew to the Retreat Police Station in

the parish of St. Mary where they were put to sit on a bench and handcuffed to a railing. Andrew was taken into a room to be questioned and then he was similarly taken in and questioned. They were then both placed back on the bench to sit down. The police called his mother and he started to cry saying that he was feeling pain. They came and pulled the handcuff off the railing, handcuffed both his hands and took him to the nearby clinic.

[10] There the police told the nurse it was just splinters in the claimant's head and that the wound should just be cleaned and dressed. The claimant was still handcuffed at this time.

[11] The claimant was then taken back to the station. He, his mother and Andrew were in one section. The police were still trying to get some information on the car to see if it was stolen. The claimant continued at paragraph 19 of his statement, *"They were talking about how they could put something on us like seen on television. They also offered us money for us to forget about the case. They were trying to be friendly to us after they realized that they did not find anything to charge us for."*

[12] The claimant further indicated in his statement that there was a police officer who his father knew, who came and took him to Dr. Wright in Ocho Rios. Dr. Wright gave him some medication and sent him to do an X-ray and then to the St. Ann's Bay Hospital with the X-ray and letter.

[13] The claimant received treatment at the St. Ann's Bay Hospital and then subsequently from Doctors Micas Campbell, Terrence Bernard, Carl Bruce, Lodian Wright and Denton Barnes.

THE SPECIAL DAMAGES

[14] The claimant and the defendant agreed Special Damages in the sum of \$139,060.90. The court will therefore make the award under this head in the agreed sum.

THE GENERAL DAMAGES (Pain and Suffering and Loss of Amenities)

[15] On the date of hearing the claimant was granted an amendment to the particulars of injury outlined in the Particulars of Claim. With the amendments highlighted by underlining, those particulars now read:

- (a) Headache;
- (b) ringing in both ears;
- (c) pain in the right ear;
- (d) Bullet fragments noted in the soft tissue adjacent to right parietal bone;
- (e) Gunshot wound to the head;
- (f) Retained foreign body to the skull;
- (g) Facial nerve damage;
- (h) Moderately severe post traumatic stress disorder; and
- (i) Post concussion syndrome with associated psychiatric stress disorder.

[16] Counsel for the defendant submitted that as liability was admitted months before the claimant was allowed to amend his particulars of injuries, no award should be made for any uncorroborated evidence of injuries and their impact on the claimant. In keeping with established principles concerning the application of the burden and standard of proof the court will assess the evidence adduced and accordingly make the appropriate award.

The Statement of the Claimant (Pain and Suffering Alleged)

[17] In his statement the claimant indicated that he was still feeling pain in his head especially when the time was cold. He further said that there were times when the right side of his body was numb and he could not feel anything. He continued that sometimes the pain would move to a different section of his head. Further, that when he was reading at night he would feel pain in his head and have to be straining his eyes. He also stated that since the incident he had become very aggressive and he was not like that before.

The Medical Reports

[18] The following medical reports and radiology report were received in evidence as exhibits. The reports of:

- (a) Dr. Lodian P. Wright (*exhibit 1*)
- (b) Dr. Micas Campbell dated December 7, 2009 (*exhibit 2a*)
- (c) Dr. Micas Campbell dated March 23, 2010 (*exhibit 2b*)
- (d) Dr. Carl Bruce dated May 17, 2010 (*exhibit 3*)
- (e) Dr. Terrence Bernard (*exhibit 4*)
- (f) Dr. Denton Barnes dated January, 24, 2011 (*exhibit 5*)
- (g) Dr. Wesley Sinclair dated May 21, 2009 (radiology report) (*exhibit 6*)

The Report of Dr. Wright

[19] He was the first to see the claimant on May 20, 2009 the day of the incident and noted that the claimant complained of having a headache, pain from a wound, ringing in both ears and being nervous and having palpitations. On examination the claimant was not found to have any apparent painful distress. A small puncture wound to the right temporal area was noted. Medication was prescribed and an X-Ray recommended.

The Reports of Dr. Campbell

- [20] In his first (interim) report Dr. Campbell noted that on presentation on June 24, 2009 the claimant complained of severe anxiety problems and difficulty sleeping and thinking, due to constant flashbacks. He also complained of pain and discomfort at the wound site where the bullet fragments were still lodged.
- [21] On examination he was noted to be clinging to his mother ambulating very slowly but with no painful distress; though with a look of anxiety on his face. There were scattered raised hard areas on the right parietal side of his head corresponding to the bullet fragments in the X-rays. The reflexes of his right eye were normal but his vision was 10/20 decreased. His pupils were equal and reactive to light. There was a decreased tone and lack of sensation in the upper half of the right side of the face. He was diagnosed as having: i) Gunshot wound to the head; ii) Post Traumatic Stress Disorder (Severe); iii) Retained Foreign Body to the skull; and iv) Facial Nerve Damage.
- [22] In his second (final) report Dr. Campbell noted that on presentation the claimant complained of inability to sleep, headaches (sometimes severe and disabling), recurrent flashbacks, blurred vision, numbing and tingling sensation to the face, tinnitus and anorexia with associated weight loss as well as difficulty combing and washing his hair. On examination, Dr. Campbell again noted the presence of the bullet fragments and decreased visual acuity to the right eye, though reflexes were intact and pupils equal and reactive to light. The decreased sensation to the right side of the face and cheek was described as mild.
- [23] Dr. Campbell indicated that given the complex nature of his injuries and persistent symptoms, the claimant's management had to take on a multidisciplinary approach with him seeing an ophthalmologist for his decreased vision, a neurosurgeon for the gunshot wound to the head and

associated symptoms as well as a psychiatrist to address his fragile mental state.

The Report of Dr. Bruce (Neurosurgeon)

[24] The claimant was seen by Dr. Bruce on October 9, 2009 and complained of headaches, dizziness, “flashbacks” and that he felt like his eyes were popping out. He also indicated he had tenderness in the right scalp, headaches when combing his hair and that cold weather caused the bullet fragments to hurt. On examination it was noted he was alert and oriented with intact cranial nerves. The tenderness to his right parietal scalp caused by the bullet fragment was observed.

[25] Examination of the claimant’s skull radiographs showed bullet fragments in the soft tissue over the right parietal bone. This was confirmed by a CT scan done on October 22, 2009 which showed two fragments the larger of which was 4.8mm. A hypodense lesion was seen on the right parietal area that could represent an injury to the brain at the time of the incident.

[26] The claimant was assessed as having post concussion syndrome with associated psychiatric stress disorder. It was indicated that he would need at least two years post injury to gain maximum medical improvement. He was estimated as having at that time ten percent (10%) whole person impairment.

The Report of Dr. Terrence Bernard (Consultant Psychiatrist)

[27] The claimant was seen by Dr. Bernard in 2009 on July 15 and 26, August 26, September 23, and December 16 and on March 24, 2010. The claimant reported headaches especially when trying to study, being afraid to go on the road alone and poor sleep. The claimant also did not socialize as much as he used to.

[28] He was diagnosed with moderately severe Post Traumatic Stress Disorder (PTSD) and treated with a combination of psychotherapy and medication. His prognosis showed that he improved gradually with treatment until he was almost symptom free. However it was noted that his condition was a bit fragile as his symptoms could easily be triggered off by stressful experiences. It was recommended that he continue follow up for at least three years to help him navigate stressful experiences that may lead to a resurgence of symptoms.

The Report of Dr. Denton Barnes (Orthopaedic Resident)

[29] The claimant was treated at the St. Ann's Bay Hospital on May 21, 2009 where he presented with an injury caused the day before by a glancing blow by a bullet to the right side of his head. He complained of drowsiness, palpitations and poor sleep since the incident. On examination among the significant findings it was noted that there was a small laceration to the right parietal region of the scalp and mild surrounding tenderness. He was referred to the psychiatrist for evaluation as he was displaying evidence of PTSD.

[30] On June 10, 2009 when he was seen for review he complained of global headache, but had no other associated symptoms. He was advised to continue psychiatric follow up.

[31] On December 21, 2010 when he was reviewed for medical reporting the claimant reported no difficulty with the fragment but complained of constant headache, occasional blurred vision, and difficulty driving, concentrating and with grooming his hair due to the scar in his scalp.

[32] Repeat examination revealed a foreign body palpable over the right parietal region of the scalp that was mobile and not attached to the bone or skin. There was full range of movement of the eyes while the central nervous system was grossly normal while his motor systemic examination

was normal. He was advised to continue psychiatric medication and that he didn't need to remove the foreign body unless he was concerned about its presence. He was then discharged from care.

- [33] In Dr. Barnes' opinion the claimant had no impairment from the physical aspect of the injury but indicated the psychiatrist would have to speak to any psychiatric impairment.

The Summary Submissions of Counsel

Counsel for the Claimant

- [34] Based on the above evidence counsel for the claimant pointed out the physical injuries noted and the effects of these injuries complained of. He highlighted the pain the claimant said he was in after being shot and the period of 6 hours before he was taken to the clinic by the police. Also highlighted was the subsequent suffering noted in the claimant's statement and testified to at the time of the hearing. In particular the PTSD was highlighted as increasing the level of physical suffering of the claimant. However, the submission also made that there was a recommendation from the doctors that the bullet fragments be removed, was not correct. What Dr. Denton Barnes did indicate was that, *"He should have no long term sequeale [sic] with him having the foreign body in his head however he will need removal of this foreign body at some point in the future if and when he so desires."*

- [35] Counsel also pointed out that Dr. Bruce noted a hypodense lesion on the right parietal area that could represent an injury to the brain even while he recognised that Dr. Barnes noted that there was no impairment from the physical aspects of the injury. Counsel focused on the psychiatric impairment suggesting that it was the most significant consequence of the injury suffered by the claimant. He referred to the opinions of Dr Bruce that the claimant would have needed at least 2 years for maximum medical

improvement and Dr. Bernard who estimated the claimant would need follow up treatment for at least 3 years to help the claimant to navigate stressful experiences.

[36] The court was also asked to bear in mind what counsel termed “attendant aggravating factors” that contributed to his psychiatric trauma. The severe questioning of the police before taking him to seek medical attention; the humiliation and embarrassment of being taken to the clinic in handcuffs in full view of everyone at the clinic; and the fact that he was kept in the police station for over 5 hours before receiving any sort of medical attention.

[37] Counsel relied on the following cases for comparison:

(a) ***Joan Morgan and Cecil Lawrence v Ministry of Health et al*** Khan Vol. 6 p. 220, where the 1st claimant was awarded the sum of \$3,500,000.00 for what was purely a psychiatric injury flowing from the claimant being misdiagnosed with having HIV after giving blood at the UHWI. She suffered serious psychological trauma and her relationship with her spouse the 2nd Claimant, suffered tremendously because of it. The sum awarded updates to \$5,085,188.40 (April 2011) and \$5,990,154.10 (June 2013).

(b) ***Neil Colman v Air Jamaica Limited*** Khan Vol. 6 p. 224. The claimant in this case was falsely imprisoned in a crude cell for 18 hours and suffered disgrace and humiliation by being manacled and shackled and marched through public areas as well as verbally insulted, while overseas on duty for Air Jamaica. The award was increased to \$2,500,000.00 on appeal which updates to \$4,405,503.60 (April 2011) and \$5,189,511.90 (June 2013).

(c) ***Maxwell Russell v The Attorney General et al*** Khan Vol. 6 p. 204. The claimant was shot in the back by a policeman. He was

hospitalized for 10 days. He was awarded the sum of \$500,000.00 for the assault and battery being the gunshot wound. That sum updates to \$710,636.52 (April 2011) and \$837,102.17 (June 2013).

(d) ***Donovan Clarke v D.C. Clive Scott and The Attorney General Khan*** Vol. 5. 129. In that case, the claimant suffered a gunshot wound to the right elbow joint with no *sequelae*. He was awarded \$210,000.00 in February 2000 for general damages. That sum updates to \$672,904.08 (April 2011) and \$792,654.84 (June 2013).

[38] He submitted that in all the circumstances the claimant ought to receive an award of \$7,000,000.00 for his pain and suffering and loss of amenities. That sum updates to \$8,245,727.80 (June 2013).

Counsel for the Defendant

[39] On the other hand counsel for the defendant submitted that the award sought was hyper-inflated in light of the actual injury and the results that flowed from it. In his words the amount claimed represented a “gross exaggeration of a reasonable quantum of general damages”. He pointed out that the claimant “was not actually shot” but only suffered a glancing blow by a bullet at the right side of his head which resulted in bullet fragments being lodged in his soft tissues adjacent to the right parietal bone. He also highlighted that there was no evidence of malice on the part of the police.

[40] He noted that in the most recent medical report Dr. Denton Barnes, indicated that the Claimant had no physical impairment nor long term sequelae from the injury. Further, the medical evidence revealed that there was no need to remove the bullet fragments unless the claimant so desired. Counsel further argued that there was no supporting medical evidence that the claimant was suffering from headaches or sleeping disorders and therefore those claims should not be countenanced.

[41] He specifically noted that the two most detailed medical reports exhibited, indicated that the claimant did not suffer any injury or impact to his eyes. Additionally, though Dr. Bruce mentioned the hypodense lesion and indicated that it could represent an injury to the brain, this was not confirmed by him nor corroborated by any of the subsequent medical reports of senior consultant specialists.

[42] In arguing for a much lower award than sought by the claimant, counsel relied on the following cases:

(a) ***Maxwell Russell v The Attorney General et al.*** While this case was mentioned more in passing by counsel for the claimant, counsel for the defendant placed significant reliance on it. He indicated that it was more serious than the instant case in that the claimant was chased, shot in the back and then spent 10 days in hospital handcuffed and under police guard, in full view of other patients. After discharge he was locked up while his wound was still painful and he suffered beatings by inmates. He also suffered depression from the shooting. The sum of \$500,000 which updated to \$710,636.52 (April 2011) counsel submitted should be reduced to \$600,000 based on his submission that the ***Russell*** case was more serious than the instant case. As previously indicated the sum of \$500,000 updates to \$837,102.17 (June 2013). The sum of \$600,000 suggested by counsel updates to \$706,776.66 (June 2013).

(b) ***Desmond Prescott v The Attorney General*** Claim No. 2006HCV 00008 (April 18, 2008). The claimant in this case, a former policeman, which was a fact he disclosed, was detained at the Norman Manley International Airport while waiting to board a flight on suspicion of being a drug trafficker. After being searched and questioned in a guard room, he was handcuffed, led through a

public area, locked in a cage at the airport and then taken to the hospital to be X-rayed. He was later returned to the airport and released. He was deprived of his liberty for approximately 5 hours and was awarded \$100,000 for injury to feelings. He was awarded \$250,000 for the assault constituted by the placing of the handcuffs which updates to \$339,943.91 (April 2011) and \$400,440.71 (June 2013).

(c) ***Donovan Clarke v D.C. Clive Scott and The Attorney General.***

While this case was also relied on by counsel for the claimant, counsel for the defendant highlighted that Clarke was incapacitated for 4 weeks. Therefore the award of \$210,000 which updated to \$672,904.08 (April 2011) counsel submitted should be reduced to \$500,000 as he argued the Clarke case was more serious than the instant one. That sum of \$500,000 updates to \$837,102.17 (June 2013).

(d) ***Clandeth Deer v The Attorney General and District Constable Lyndale Evans*** Khan Vol. 5 p.131. The claimant a household helper was shot to the right upper arm by the police. She suffered pain and swelling and was unable to perform her occupation for 28 days. She did not have any permanent partial disability. She was awarded \$180,000 which updates to \$608,728.58 (April 2011) and \$717,058.59 (June 2013). Taking into consideration what counsel submitted was the more severe nature of the injury received by Miss Deer, the award he argued should be reduced to \$550,000.00, when applied to the instant case. That sum updates to \$647,878.61 (June 2013).

(e) ***Sharon Greenwood-Henry v the Attorney General of Jamaica***

Claim No 1999CLG116 (October 26, 2005). In that case, the claimant was pulled from a departure line at the Normal Manley

Airport and searched. She was also subjected to a cavity search of her vagina by a female police officer. She was X-rayed and laxatised and then released the following day after being detained for 15 hours, when no drugs were found in her. The incident led to her suffering severe Post Traumatic Stress Disorder (PTSD). She had to see the psychiatrist for insomnia, appetite disturbance and public avoidance behaviours specific to the incident. She also suffered from severe depression, severe anxiety, severe phobic responses relating to travel and sexual activity, loss of libido and psychological bowel and bladder disturbance. She was awarded \$1,100,000 for assault and battery, \$500,000 of which was for PTSD. That sum of \$500,000 updates to \$899,787.91 (April 2011) and \$1,059,915.20 (June 2013). Based on the fact that the PTSD in the instant case was nowhere as severe as in **Sharon Greenwood-Henry** counsel submitted an appropriate sum for PTSD would be \$150,000 which updates to \$176,694.17 (June 2013).

- [43] In light of the cases cited counsel submitted that a reasonable quantum of general damages for pain and suffering, loss of amenities and post traumatic syndrome disorder was \$700,000.00; with \$150,000.00 of that amount being awarded for PTSD. Those sums update to \$824,572.78 and \$176,694.17 respectively (June 2013).

The Analysis

- [44] Counsel for the defendant sought to make a distinction between the claimant being “shot” and having been struck by bullet fragments. The critical issue however is not whether or not the claimant was struck directly by a bullet. What is important is the effect of the injury sustained by the claimant as a result of the tortious actions of the police, in unlawfully shooting at the car in which the claimant was a passenger.

- [45] The evidence of the claimant and his complaints to doctors recounted in various medical reports (see paragraphs 17-33) disclose that the claimant suffered a complex range of symptoms, as a result of the injury he received from the bullet fragments. Apart from general practitioners, the claimant received treatment from a consultant neurosurgeon, orthopaedic resident, and consultant psychiatrist. He also utilised the services of a radiographer.
- [46] The medical evidence however also indicates that when seen by Dr. Barnes December 21, 2010, approximately one year and seven months after the incident, he had no impairment from the physical aspect of the injury. Significantly though, the medical opinion was that the psychiatric effects were more persistent. In his report dated May 17, 2010 Dr. Bruce, consultant neurosurgeon, assessed the claimant as having post concussion syndrome with associated psychiatric stress disorder. He indicated the claimant would need at least two years post injury to gain maximum medical improvement. At that time he assessed the claimant as having 10% whole person impairment. I will however only take that into account in assessing pain and suffering up to that point, as there is no evidence of any final subsisting whole person impairment. The lingering physical effects of the injury indicated by the claimant in paragraph 17 were not corroborated by the medical reports and I will not take them into account.
- [47] Dr Bernard consultant psychiatrist saw the claimant six times between July 15, 2009 and March 24, 2010 both dates inclusive. He diagnosed him with moderately severe PTSD. While indicating that the claimant gradually improved with treatment until he was almost symptom free Dr. Bernard noted that his condition was a bit fragile and his symptoms could be easily triggered by stressful experiences. His opinion was that the claimant may need to continue follow up for at least three years to help him navigate stressful experiences which may lead to resurgence of symptoms.

[48] I have carefully reviewed the submissions and the cases cited in support. I find that the cases of ***Joan Morgan and Cecil Lawrence v Ministry of Health et al*** and ***Neil Colman v Air Jamaica Limited*** are unhelpful in that their facts are too dissimilar from those in the instant case. The cases of ***Maxwell Russell v The Attorney General et al*** and ***Donovan Clarke v D.C. Clive Scott and The Attorney General*** relied on by both counsel I found most useful as well as the cases of ***Desmond Prescott v The Attorney General, Clandeth Deer v The Attorney General and District Constable Lyndale Evans***, and ***Sharon Greenwood-Henry v the Attorney General of Jamaica*** relied on by counsel for the defendant.

[49] While in ***Maxwell Russell v The Attorney General et al*** the claimant was hospitalized for 10 days and there was no hospitalization in the instant case, it has to be borne in mind that the claimant in the instant case received an injury to his head, a very delicate part of the body. Although the injury did not required hospitalization there is evidence of physical symptoms including impaired vision, headaches, difficulty sleeping and facial nerve damage, which persisted for some time after the injury was sustained. Though the exact duration of these symptoms cannot be determined from the medical reports it is noted that it was when seen on October 9, 2009 by the neurosurgeon, almost five months after the injury, he was diagnosed with “post concussion syndrome with associated psychiatric stress disorder”. Therefore though it appears that the case of ***Maxwell Russell*** was more serious, there should not be significant discounting of the sum awarded in that case.

[50] On the other hand I find that the instant case is more serious than the cases of ***Donovan Clarke v D.C. Clive Scott and The Attorney General*** and ***Clandeth Deer v The Attorney General and District Constable Lyndale Evans***. In both of the cited cases the claimants were shot in the right arm and were incapacitated for 4 weeks, but with no reported permanent disability. I find the injuries in the instant case more serious

than both those cases as the claimant in the instant case suffered ill effects for at least months after the incident. The award in the instant case should therefore be greater than those made in the cited cases. The assault in the instant case is clearly more serious than that in ***Desmond Prescott v The Attorney General*** where the claimant did not suffer any injury but was handcuffed more than once for some time. The award in the instant case should be greater than that made to Mr. Prescott.

[51] The award for PTSD is more difficult to assess. Only two cases were cited which deal specifically with psychiatric harm, one of which ***Joan Morgan and Cecil Lawrence v Ministry of Health et al*** I have already indicated I find unhelpful. The only case that remains on the issue of PTSD is therefore ***Sharon Greenwood-Henry v the Attorney General of Jamaica*** where the claimant's PTSD was diagnosed as severe while in the instant case the diagnosis was moderately severe. The award for PTSD will therefore need to be lower than that made in ***Sharon Greenwood-Henry's*** case.

[52] Having considered and assessed all the relevant facts, submissions and cases I find that the appropriate award for the assault and battery suffered by the claimant is **\$1,500,000** of which the sum of **\$500,000** represents the sum awarded for PTSD.

THE CLAIM FOR AGGRAVATED, EXEMPLARY AND VINDICATORY DAMAGES

[53] Counsel for the defendant submitted that the particulars supporting the claim for aggravated damages were inadequately pleaded. Further, that the claimant should not be permitted to rely on facts outlined in his witness statement that were not included in the particulars of claim, as the defendant had been at a significant disadvantage, not knowing the case that he would have had to meet and being unable to call any evidence in opposition. Counsel relied on **rule 8.9A of the Supreme Court of Jamaica Civil Procedure Rules, 2002 (CPR)** which states: "*The*

Claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set there, unless the court gives permission.”

- [54] The requirements of adequate pleadings were recently revisited by the Court of Appeal in the consolidated appeals of ***Capital and Merchant Bank Limited v The Real Estate Board; The Real Estate Board v Jennifer Messado & Co.*** [2013] JMCA Civ 29. Morrison JA at paragraph 142 of his judgment written by on behalf of the court, after reviewing a number of authorities on the question of the adequacy of pleadings in matters commenced by claim form, had this to say:

I would accept these statements as being equally applicable to a case commenced by fixed date claim form supported by affidavits. In my view, firstly, the pleader is required to set out a short statement of the material facts relied on in support of the remedy sought, sufficient to reveal the legal basis for the claim, but not the legal consequence which may flow from those facts. Secondly, once the claim form itself is generally in compliance with the rules, full details of the claim may be supplied by the affidavit or affidavits filed in support of it (together with any accompanying documents upon which the claimant relies), provided that the documentation, taken all together, is sufficient to enable the defendant to appreciate the nature of the case against him, and the court to identify the issues to be decided.

- [55] The main complaint of counsel for the defendant is that liability having been admitted on the basis of the pleadings alone, the defendant did not have the benefit of the detail contained in the statement of the claimant which was only available subsequent to the admission of liability. In the situation where a case goes to trial, the parties would have the benefit of the statements to supplement the pleadings prior to the determination of the issue of liability. This benefit the defendant did not have in this case, as the claimant’s witness statement was only available subsequent to the admission of liability and in support of the issue of the type and quantum of damages being sought.

[56] In addressing the contention of counsel for the defendant, it is necessary to set out in some detail the particulars of claim filed on October 23, 2009. At paragraphs 3, 4, 5 - 8 it reads:

3. On or about the 20th day of May 2009...members of the Jamaica Constabulary Force and/or Island Special Constabulary Force acting or purporting to act in the execution of their duties as servants and/or agents of the Crown unlawfully, maliciously and/or without reasonable and/or probable cause assaulted the Claimant by shooting the Claimant.
4. The said members of the Jamaica Constabulary Force and Island Special Constabulary Force who were attired in the uniform of Policemen...arrested the Claimant and took the Claimant to the Retreat Police Station, in the parish of St. Mary whereby the said Policemen questioned the Claimant. The said Policemen questioned the Claimant about the whereabouts of illegal guns and accused the Claimant of being in possession of an illegal firearm.
5. As a consequence of the said incident the Claimant has sustained serious personal injury and has suffered loss and damage...
6. The Claimant claims aggravated damages on the grounds that the actions of the members of the Jamaica Constabulary Force and Island Special Constabulary Force caused the Claimant great embarrassment, distress and humiliation.
7. The Claimant claims Exemplary Damages on the ground that the action of the members of the Jamaica Constabulary Force and Island Special Constabulary Force in shooting the Claimant's (sic) was oppressive arbitrary and/or unconstitutional. Further, the said members of the Jamaica Constabulary Force and Island Special Constabulary having shot the Claimant took the Claimant to the Retreat Police Station, Retreat in the parish of St. Mary where the said Policemen vigorously questioned and accused the Claimant in relation to possessing an illegal firearm.

8. The Claimant claims Vindictory Damages on the ground that by the actions of the members of the Jamaica Constabulary Force and/or Island Special Constabulary Force, the Claimant was deprived of the right to carry on his life in Jamaica free from unjustified executive interference, mistreatment or oppression.

[57] It should be stated at this juncture that it is significant that in his challenge to the adequacy of pleadings, counsel for the defendant only took issue with the pleadings in support of the claim for aggravated and vindictory damages. He did not seek to impugn the adequacy of those in relation to the claim for exemplary damages. One of the cases cited by Morrison JA in the *Capital and Merchant Bank Limited* case was *Karsales (Harrow) Ltd v Wallis* [1956] 1 WLR 936, in which Denning LJ (as he then was) said this at page 941:

The only real difficulty that I have felt in the case is whether [the] point is put with sufficient clarity in the pleadings. It is not put as clearly as one could wish. **Nevertheless, I have always understood in modern times that it is sufficient for a pleader to plead the material facts. He need not plead the legal consequences which flow from them. Even although he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise on the facts pleaded.** (Emphasis added).

[58] Applying that reasoning to this case, the particulars taken as a whole have to be looked at to see if they disclose sufficient in the pleadings to sustain claims not only for exemplary but also for aggravated and vindictory damages. Even before that examination is done, it would seem logical that on the facts of this case, a claim for exemplary damages could not be sustained unless there was some pleading sufficient to support a claim for aggravated damages. If therefore, there is sufficient pleaded to support a claim for exemplary damages, *a fortiori*, it would mean there was sufficient pleaded to support a claim for aggravated damages. This analysis holds even if the relevant particulars are not set out in the paragraph where aggravated damages are claimed.

[59] When examined it is clear the pleadings allege that the claimant was unlawfully shot, taken to the Retreat Police Station, vigorously questioned about an illegal firearm and accused of being in possession of an illegal firearm. Those allegations I find were sufficient for the defendant to know the case that he had to meet and that that case alleged aggravating factors. Those aggravating factors are also relied on by the claimant as grounding the claims for exemplary and vindictory damages. The details of the encounter were supplied in the statement of the claimant filed on May 09, 2011.

[60] Counsel for the defendant has sought to rely on **CPR r 8.9A** to maintain that there were facts that should have been pleaded which were not and hence the court should not allow the claimant to rely on them. Having found that the general nature of the allegations pleaded were sufficient, I consider that in the present circumstances **CPR r 8.9A** does not apply. Further the submission by the defendant that facts not included in the pleadings but disclosed in the statement should be disregarded by the court, as the defendant has been disadvantaged by the timing of their inclusion, is not well founded. Judgment was entered on admission not in default. Counsel could have sought leave of the court to adduce statements or other evidence touching and concerning the conduct of the police relevant to the quantum of damages. Counsel also had the option of objecting to certain parts of the statement at the time the request was made for the statement to stand as the claimant's evidence in chief. Neither of those options was pursued. Additionally, counsel cross-examined the claimant about some aspects of his evidence but chose not to challenge others. In those circumstances it would not be just for the court, based on the closing submissions of counsel for the defendant, which the claimant has not had an opportunity to challenge, to hold that evidence contained in the statement of the claimant that was not directly prefigured by the pleadings, should not be considered. I find therefore that not only were the pleadings adequate, but that the claimant can rely on all

the details included in the statement concerning the conduct of the police, that would affect the issues of the nature and quantum of damages to be awarded.

- [61] It always needs to be remembered however, that adequate pleading is only the first hurdle the claimant needs to clear. That which is adequately pleaded also needs to be proved. In assessing what has been pleaded and proved the court also has to be careful to avoid “double counting” and hence only those types of awards necessary to do justice in a particular case should be awarded. Therefore the guiding principle is that if the “basic” award of damages has been adjusted to take account of aggravating factors, no separate award of aggravated damages should be made. Similarly if the award of aggravated damages is sufficiently high to include a punitive aspect, the need for a separate award of exemplary damages might be extinguished. The aggravated and or exemplary damages awarded might also obviate the need for vindicatory damages.

AGGRAVATED DAMAGES

- [62] In the seminal case of *Rookes v Barnard* [1964] AC 1129, cited by both counsel, in outlining the nature of aggravated damages, Lord Devlin had this to say at page 1221ff:

[I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation. Indeed, when one examines the cases in which large damages have been awarded for conduct of this sort, it is not at all easy to say whether the idea of compensation or the idea of punishment has prevailed.

[63] In ***Thompson v Commissioner of Police of the Metropolis*** [1997] 2 All ER 762, cited by counsel for the defendant, Lord Woolf MR at page 775 explained that aggravating features can include:

[H]umiliating 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. Aggravating features can also include the way the litigation and trial are conducted.

[64] Lord Woolf also noted that aggravated damages may include an element of punishment. His statements in that regard will be further explored when the issue of exemplary damages is addressed.

[65] Notably, however counsel for the claimant also cited the case of ***Richardson v Howie*** [2004] All ER (D) 74 in which Thomas LJ conducted a review and analysis of the way the law concerning aggravated damages had developed in the cases of ***Rookes v Barnard***, ***Westward Hardy*** [1964] CLY 994, ***W v Meah*** [1986] 1 All E.R 935 and ***Appleton and others v Garrett*** [1996] P.I.Q.R P1. Thomas LJ then held that:

A court should not characterise the award of damages for injury to feelings, including any indignity, mental suffering, distress, humiliation or anger and indignation that might be caused by such an attack, as aggravated damages; a court should bring that element of compensatory damages for injured feelings into account as part of the general damages awarded. It was no longer appropriate to characterise the award for the damages for injury to feelings as aggravated damages, except possibly in a wholly exceptional case. Where there was an assault, the victim would be entitled to be compensated for any injury to his or her feelings, including the anger and indignation aroused. Those feelings might also be affected by the malicious or spiteful nature of the attack or motive of the attacker; if so, then the victim had to be properly compensated. Damages which provided such compensation should be characterised and awarded therefore as ordinary general damages which they truly were.

- [66] Counsel for the claimant submitted that the instant case fell within the category of a “wholly exceptional case” as while in *Richardson’s* case the claimant was injured in a domestic dispute, in the instant case the claimant was injured through the unlawful actions of police officers who were servants or agents of the state.
- [67] In this case I accept the evidence of the claimant that three shots were fired at the car in which he was a passenger, without warning or notification that the police were present or about to open fire. There is no evidence of threat to the police or of the presence of a firearm.
- [68] The car in which the claimant was travelling was pursued into the yard of the claimant’s mother. Though the claimant was obviously injured, instead of getting him medical attention the police told him he was injured by glass splinters. They then proceeded to search the car, Andrew, and the surrounding bushes for a gun. No gun was ever found.
- [69] The police put the claimant in handcuffs and told him to use his hand to break out the shattered glass to open the car door. There is however no evidence that he suffered any injury from having done so. The claimant was placed in the police vehicle in the presence of his mother and neighbours. The claimant was taken by the police to the police station and made to sit in handcuffs from 9 a.m. to 2 p.m. While at the station the claimant was questioned before they took him, still in handcuffs, to get medical attention. At the clinic the police told the nurse it was glass splinters in the claimant’s head.
- [70] The police then took the claimant back to the station and placed him in a section with his mother and Andrew while they were trying to get information on the vehicle to see if it was stolen. Then the police started speaking about putting something on the claimant and Andrew and also offered them money to forget about the case.

- [71] Those facts I find contain aggravating features which constitute exceptional circumstances justifying the award of aggravated damages. Counsel for the claimant submitted that a sum on \$4,000,000.00 would be appropriate for the award of aggravated damages. No cases were however cited to justify that quantum. On the other hand, a number of cases were cited by counsel for the defendant on the question of the appropriate quantum, if such damages were to be awarded.
- [72] The *Maxwell Russell* case reviewed in detail at paragraph 42 (a) was said to be more serious than the instant case. The sum of \$200,000 awarded for aggravated damages updated to \$284,254.61(April 2011) and \$334,840.87 (June 2013). Counsel submitted that the appropriate award in this case should be \$100,000 which updates to \$117,796.11 (June 2013). Counsel also submitted that the *Desmond Prescott* case, reviewed at paragraph 42 (b), had more serious aggravating features than the instant case. The sum of \$150,000 was awarded for aggravated damages which updates to \$203,966.35 (April 2011) and \$240,264.42 (June 2013). This case counsel also submitted pointed to the sum of \$100,000 (which updated at June 2013 is \$117,796.11), being awarded for aggravated damages.
- [73] Though it does not appear that the *Richardson v Howie* case was cited in the *Maxwell Russell* and *Desmond Prescott* cases, I am satisfied their facts would satisfy the test outlined in that case. In any event *Richardson v Howie* is merely persuasive not binding authority.
- [74] Having considered the submissions I find that the aggravating factors in the *Maxwell Russell* were greater than those in *Desmond Prescott* and that the aggravating factors in both those cases were somewhat more serious than those in the instant case. The aggravating factors were however of some significance in the instant case and accordingly an award of **\$225,000** for aggravated damages I consider appropriate.

EXEMPLARY DAMAGES

[75] In ***Thompson v Commissioner of Police of the Metropolis*** at page 775-776 Lord Woolf MR in outlining the guidance that should be given to juries said that:

[T]he jury should be told in a case where exemplary damages are claimed and the judge considers that there is evidence to support such a claim, that though it is not normally possible to award damages with the *object* of punishing the defendant, exceptionally this is possible where there has been conduct, including oppressive or arbitrary behaviour, by police officers which deserves the exceptional remedy of exemplary damages. It should be explained to the jury: (a) that if the jury are awarding aggravated damages these damages will have already provided compensation for the injury suffered by the plaintiff as a result of the oppressive and insulting behaviour of the police officer and, inevitably, a measure of punishment from the defendant's point of view; (b) that exemplary damages should be awarded if, but only if, they consider that the compensation awarded by way of basic and aggravated damages is in the circumstances an inadequate punishment for the defendants; (c) that an award of exemplary damages is in effect a windfall for the plaintiff and, where damages will be payable out of police funds, the sum awarded may not be available to be expended by the police in a way which would benefit the public (this guidance would not be appropriate if the claim were to be met by insurers); and (d) that the sum awarded by way of exemplary damages should be sufficient to mark the jury's disapproval of the oppressive or arbitrary behaviour but should be no more than is required for this purpose.

[76] In ***Keith Bent et al v The Attorney General of Jamaica*** Suit No. 1998B330 (December 19, 2006) Brooks J considered that the unlawful pointing of a gun by the police at the head of the claimant was “outrageous, arrogant and cynical conduct” which merited an award for exemplary damages (see page 14). The sum awarded was \$100,000.

[77] In ***Maxwell Russell*** Mangatal J at paragraph 26 referred to ***Keith Bent***, then at paragraph 27 noted that “*It seems tolerably clear that shooting a*

man in the back should be regarded as even more outrageous conduct than simply pointing a firearm at his head". The learned judge then awarded \$400,000 for exemplary damages.

[78] In the earlier case of **Attorney General v Maurice Francis** SCCA 13/95 (March 26, 1999), an extract of which is included at **Khan** Vol 5 p. 300, the sum of \$100,000 for exemplary damages was awarded on appeal, a reduction from \$3,500,000 awarded by the trial judge. In that case the respondent was shot and seriously injured in the back by the police while walking through a shortcut.

[79] Counsel for the defendant submitted that exemplary damages should not be awarded as the conduct of the police was not malicious and there was no evidence that they knew the claimant before or that he was in the vehicle. Further, counsel for the defendant cited three cases which highlight that the goal of exemplary damages being punishment, that purpose is not achieved where, through vicarious liability, the actual tortfeasor is not the one who is responsible to satisfy the award. See **Kuddus v Chief of Constable of Leicestershire** [2002] 2 AC 122 at paragraph 13; **S v the Attorney General** [2003] NZCA 149 at paragraphs 88, 123 and 124; and **Joseph Peeters v Canada** [1993] 108 DLR 4th 471.

[80] In keeping with dicta of Lord Woolf MR on this same point in **Thompson's** case, in the passage cited above from pages 775-776, and also similar observations made by Sykes J in **Sharon Greenwood-Henry** (paragraph 24), Mangatal J in **Maxwell Russell** at paragraph 30 acknowledged the difficulty in justifying an award for exemplary damages where, *"the person responsible for meeting any award is not the wrongdoer, but his employer"*. To address that difficulty Mangatal J noted at paragraph 31:

I am aware that there exist Force Orders for the Jamaica Constabulary Force pursuant to which the Attorney General's Department, after looking at the means of the offending police officer, may make a recommendation that the officer pay or

contribute to the satisfaction of the Judgment. Assuming that the Second Defendant...is still a police officer, were such a recommendation to be made by the Attorney General's Department, it would go a long way in fulfilling the purpose of the Court's award of exemplary damages.

[81] I would make a similar recommendation in this case having determined that this is an appropriate case for an award of exemplary damages. The award of compensatory damages, including aggravated damages does not adequately punish the police men involved for their outrageous conduct. In broad day light with no indication of the police being under threat, they open fire on a private vehicle in which the claimant was a passenger. The claimant was injured, but thankfully not fatally. The result could have been much worse. Such behaviour should be deterred. By way of the Force Orders, if the relevant officers are still members of the Jamaica Constabulary Force and the Office of the Attorney General sees it fit to make the necessary recommendation after assessing all the circumstances, the deterrent effect can be achieved.

[82] Awards of exemplary damages by their very nature are not upgradable. However, bearing in mind the sums awarded relative to the facts in the various cases reviewed I find the appropriate award for exemplary damages should be **\$300,000**.

VINDICATORY DAMAGES

[83] The claimant alleges that he was detained by the police without them having any reasonable and/or probable cause, in direct violation of section 16(1) of Part 3 of the Constitution of Jamaica. Further, that the police's conduct also amounted to inhuman and degrading treatment and punishment, contrary to section 17 of Part 3 of the Constitution of Jamaica.

[84] Counsel for the defendant countered that there was no evidence before the court of any constitutional breach, that the claimant was subjected to

“degrading treatment” or that the claimant was “*deprived of his right to carry on his life free from executive interference, mistreatment and oppression*”.

[85] Counsel further relied on the proviso to section 25(2)¹ of the Constitution which precludes the Court from exercising its jurisdiction, if it is satisfied that adequate means of redress for the contravention alleged are available to the claimant.

[86] In Jamaica, the ability of the court to make an award for vindictory damages was first recognized in ***Sharon Greenwood Henry***. Sykes J indicated that there were ample facts to support such an award as the claimant was denied sleep and meals, was given a laxative without her consent and was subject to an unlawful body cavity search. The learned judge indicated that those acts were contrary to section 17(1) of the Constitution of Jamaica and noted critically that, “*None of these acts properly falls under the torts of false imprisonment, assault and battery, except possibly the unlawful search.*” No such damages were however awarded as a claim for vindictory damages had not been pleaded.

[87] In ***Fuller v The Attorney General*** SCCA 91/95 (October 16, 1998) the Court of Appeal awarded damages for constitutional redress in a context where Mr. Agana Barrett lost his life due to the inhuman conditions in which he and others were held in detention.

[88] In ***Nicole-Ann Fullerton v The Attorney General*** 2010HCV1556 (March 25, 2011) the claimant was unlawfully detained at the airport in full humiliating view of the public, prevented from leaving the island, taken to a police station and detained overnight. She was placed in a small dark cold cell where she had to sleep on newspaper and use a stick to operate

¹ The facts of this case occurred before the amendment to the Constitution to include the new Charter of Rights. Under the new Charter section 19(4) which replaced the proviso to section 25(2) is more permissive allowing the court to award damages for constitutional breaches even if there are other adequate means of redress.

the filthy bathroom that was available. She was taken to court the following day and then released. Subsequently her conviction was overturned but she was still unlawfully detained for 2 hours after the Court of Appeal quashed her conviction. In her analysis P. Williams J cited two cases from the Judicial Committee of the Privy Council. ***Siewchand Ramanoop v The Attorney General of Trinidad and Tobago*** (2005) 66 WIR 334 and ***Tamara Merson v Drexel Cartwright and the Attorney General*** (2005) 67 WIR 17.

[89] In ***Siewchand Ramanoop*** the claimant was accosted at his home by a policeman and severely beaten and cursed while he was dressed only in his underwear. He was then allowed to dress, though not properly handcuffed and taken to the police station suffering further beating en route. At the station while still handcuffed his head was hit into a wall which caused blood to gush from it immediately. He was then handcuffed to an iron bar and then rum was poured over the wound causing it to burn and blood and rum to run into his eyes. He was taken to the shower and soaked and spun around by the said police officer until he was dizzy. He was later forced to sign a document, as if he did not, he was told he would not have been allowed to leave the station and he feared suffering further beating. In these circumstances the Board indicated that the case should be remitted for a judge to determine whether damages for constitutional redress were appropriate.

[90] In ***Tamara Merson*** the Board adopted the finding of the courts below that the “*police had behaved in a callous, unfeeling, high-handed, insulting and malicious and oppressive manner both with respect to the arrest and false imprisonment as well as the malicious prosecution...*”. The malicious prosecution was on the basis that the police falsely alleged offences against her to justify her arrest, the sole reason for which was to force her father who had been named in the search warrant to return to the Bahamas. Such conduct the learned trial judge described as a “Gestapo-

type tactic". Among the indignities to which Ms. Merson was subject which would not have constituted any of the nominate torts were a) the refusal by the police to allow her to change her clothes (b) the threat that if she were not out of the bathroom in two minutes they would kick down the door (c) restrictions on her ability to use the bathroom at the police station and (d) refusal to allow her to take her medication.

[91] In ***Tamara Merson*** at paragraph 18, relying on dicta in paragraph 25 of the judgment in ***Siewchand Ramanoop***, it was noted that constitutional redress should only be claimed where the facts make that course appropriate. Where constitutional redress was appropriate the Board highlighted that:

[T]he nature of the damages awarded may be compensatory but should always be vindicatory and accordingly the damages may, in an appropriate case exceed a purely compensatory amount.

[92] Regarding ***Tamara Merson*** Williams J in ***Nicole-Ann Fullerton*** noted that despite the fact that many of the things done to Ms. Merson were ingredients of particular torts, (though there was not a complete overlap), that did not prevent an award for constitutional redress. At paragraph 20 the Board said, "*There can be no objection, on the facts of this case, to an award to Ms. Merson both of damages for nominate torts and of vindicatory damages for the infringement of her constitutional right.*"

[93] In determining the amount to be awarded Williams J indicated guidance was accepted from the comments at paragraph 18 where the Board continued from the end of the earlier quotation to say:

The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference mistreatment or oppression. The sum appropriate to achieve this purpose will depend upon the nature of

the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial Judge.

[94] In the circumstances of the **Fullerton** case Williams J awarded \$1,000,000. Of great significance however, was the fact that the learned judge did not consider it appropriate to make any separate award for either aggravated or exemplary damages.

[95] On the other hand in **Desmond Prescott** Cambell J while making an award for aggravated damages declined to make any award for breach of the claimant's constitutional rights.

[96] From the above review it is clear that, whether or not the conduct complained of constitutes ingredients of nominate torts for which the claimant has received separate compensation, vindicatory damages may be awarded, if pleaded. However, having carefully examined the cases cited and the circumstances of the instant case I am of the considered view that the awards for basic, aggravated and exemplary damages, adequately compensate the claimant for the impugned conduct of the police officers. Accordingly, an award for vindicatory damages is not required. I therefore decline to make any award under this head of damages.

DISPOSITION

[97] I therefore make the following order:

ORDER

- | | | |
|-----|-------------------------|----------------|
| (a) | Special Damages | \$139,060.90 |
| (b) | General Damages: | |
| | (1) Assault and Battery | \$1,000,000.00 |
| | (2) PTSD | \$500,000.00 |

(3) Aggravated Damages \$225,000.00

(4) Exemplary Damages \$300,000.00

Total General Damages \$2,025,000.00

- (c) **Interest** is awarded on Special Damages in the sum of \$139,060.90 at the rate of 3% per annum from May 20, 2009 to August 23, 2013.
- (d) **Interest** is awarded on the sum of \$1,725,000.00, (being General Damages less the sum awarded for Exemplary Damages), at the rate of 3% per annum from November 11, 2009 to August 23, 2013.
- (e) **Costs** to the claimant in the sum of \$150,000.00.