

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW

*Filing Cabinet*

SUIT NO. C.L. P191/1992

**BETWEEN DELROY PARCHMENT PLAINTIFF**  
**AND SUPT. A. BROOKS 1<sup>ST</sup> DEFENDANT**  
**AND THE COMMISSIONER 2<sup>ND</sup> DEFENDANT**  
**OF POLICE**  
**AND DET. SGT. CAMPBELL 3<sup>RD</sup> DEFENDANT**  
**AND ATTORNEY GENERAL 4<sup>TH</sup> DEFENDANT**

Bert Samuels appears for Plaintiff instructed by Messrs. Knight, Pickersgill, Dowding and Samuels.

Miss C. Francis and Miss A. Lindsay appear for 4<sup>th</sup> defendant instructed by the Director of State Proceedings.

HEARD: October 1 – 5, 2001 & June 5, 2002.

**McCALLA J.**

Plaintiff Delroy Parchment is a 26 year old peddler who resides at Old Harbour Bay in St Catherine. On the 3<sup>rd</sup> December, 1992, he filed a writ of summons in which he claims against the first, second and third defendants jointly and severally for negligence. He alleges that between the months of January and February, 1992 the said defendants maliciously or without reasonable or probable cause failed to give or procure any treatment or

*10/1/92*

provide any medical attention for his decomposing leg while he was incarcerated at the Constant Spring Police Station in the parish of St. Andrew, causing the same to be subsequently amputated.

The Attorney General has been joined as a party to the action by virtue of the Crown Proceedings Act.

According to the statement of claim as amended, the first and third named defendants were at all material times members of the Jamaica Constabulary Force and as servants or agents of the Crown were employed at the Constant Spring Police Station.

It is averred that the second-named defendant was at all material times the person appointed by the Crown as head of the Jamaica Constabulary Force to provide officers and staff.

As the pleadings go, in or about the month of February 1992, the plaintiff was admitted to the Kingston Public Hospital where he was treated for multiple lacerations and a fracture to his right leg. In or about the month of February 1992 the plaintiff was removed from the said hospital by members of the Jamaica Constabulary Force, arrested and taken to the Constant Spring Police Station where he was held in custody.

Paragraph 7 of the further amended statement of claim is to this effect:

“From and about the month of February, 1992 the first and second defendants undertook to provide for the plaintiff general medical

treatment by way of taking the plaintiff to the Kingston Public Hospital or procure attendance and advice of a medical practitioner (under the Public Health Act) for and in respect of the said injuries at the Constant Spring lock-ups”.

It is pleaded further that in the month of February, 1992, the plaintiff was not treated, attended to or advised by a medical practitioner at the said police station or elsewhere in respect of the injuries despite his numerous requests for treatment of his leg which was decomposing.

Paragraph 9 states:

“The first and second-named defendants and the servant or agent or other persons engaged by the second defendant were each of them jointly and/or severally, guilty of negligence and or maliciously and without reasonable and probable cause failed to use reasonable care and diligence in and about the treatment or procurement of treatment, medical attendance and advice for and in respect of the plaintiff’s injuries and the consequences thereof”.

The particulars of negligence allege failure to provide the plaintiff with medical attendance, advice or treatment in order to detect that his leg was rotting or to take reasonable steps to investigate the plaintiff’s complaints. Having incarcerated him with a broken right leg with lacerations thereto, it is further alleged that there was failure to

treat the injury or to take any steps to have the injury attended to when the condition of the plaintiff did not improve, but deteriorated.

He particularized his injuries as ulcer on the right leg as well as amputation of that leg. As a result the plaintiff endured great pain and suffering and his said injury has been greatly aggravated by physical deterioration and consequently he has suffered loss and damage.

Special damages amounting to \$65,600 have been claimed as well as aggravated and exemplary damages, costs and attorney's costs. The fourth defendant has entered appearance and filed a defence.

Paragraph 5 of the amended defence of the fourth defendant states inter alia:

"...the Fourth Defendant received information ...after investigations the plaintiff was taken to Red Hills Police Station where he was arrested and charged for attempting housebreaking. The plaintiff was then transported to the Kingston Public Hospital where he was admitted. ...the plaintiff was released ... on the 8<sup>th</sup> day of February 1992 and taken to the Constant Spring Police Station where he was placed in custody. On 13<sup>th</sup> February 1992.... [he] was again taken to the Kingston Public Hospital by the police and since then the police tried to locate him but their efforts have been futile. A summons was prepared for service on the Plaintiff but same has not been

served on the plaintiff as the police cannot find him  
... the fourth defendant will contend that there was  
no duty of care owed to the plaintiff in circumstances  
where he absconded from hospital and cannot be found.

The fourth defendant denied the allegations of negligence, the particulars of special damages pleaded as well as any conduct alleged which would give rise to an award of exemplary or aggravated damages.

Delroy Parchment testified that on the 3<sup>rd</sup> February, 1992 he went to Sterling Castle in Red Hills to visit a friend. Whilst there he was accused of being a thief and beaten by some guys. After the beating, he observed that his leg was cut and broken. Policemen removed him from the spot where he was beaten and took him to the Red Hills Police Station where he was locked up.

On the following day the police took him to the Kingston Public Hospital where he received medical treatment. "Plaster Paris" was placed on his foot and hand. He remained at the Kingston Public Hospital for four days. Police officers Brooks and Campbell took him from the hospital to the Constant Spring Lock-up on a wheel chair with his right leg and left hand in casts. He was put in a cell, the size of which was about 10ft. x 10ft., along with 3 other men.

About a day after being placed in the cell he started feeling pains in his right foot. The inside of the cell was dirty and hot. His right foot became swollen. He started to feel pain and bawled out begging for medical attention. He told

police officers, and Det. Inspector Campbell in particular that he was in pain and wanted to go to the doctor. Mr. Campbell removed the three men from his cell but responded to his request by saying that he was a thief and should stay in the cell and suffer. He tried to relieve his pain by pushing his hand down the cast in order to scratch his foot. The prisoners who had been removed from his cell because of his foul odour also called out requesting that he be taken out of the cell for treatment. No one came to his assistance. Police officers came to the area but not to the section where he was. His cell was not cleaned for the duration of his stay. The doctor had made an opening in the cast and he tried to tear it off as he was in great pain and his foot was "spoiling" inside, rotting away.

He remained in the cell for 5 days and was then taken out in a wheelbarrow, put in a jeep and taken back to the Kingston Public Hospital where his leg was amputated the day after his arrival. On his return to the hospital he was hand-cuffed to a bed, put under police guard for six weeks after which officer Campbell removed his handcuffs and told him that he was on bail. He spent two months in hospital. Mr. Parchment also testified that he has never been charged or taken before any court.

On his release from hospital, with the assistance of his stepfather and the use of a crutch, he returned to Old Harbour Bay by bus and he has been living there since his return.

Mr. Parchment said that he has paid three hundred dollars (\$300.00) for the crutch and the same amount for the medical report which he had obtained. From his selling he used to make four thousand dollars (\$4,000.00) per week in profit. He can no longer do selling as his left foot gets tired when he stands for long periods of time. His mother now looks after him and he would like to get a prosthesis.

Under cross-examination Mr. Parchment disagreed with a suggestion that he had been taken to the Red Hills Police Station on the 4<sup>th</sup> of February. He denied that Mr. Campbell had told him why he was being arrested and also the suggestion that that officer was not the person who had removed three men from his cell.

On the first occasion when he was taken to hospital he had spent four days there up to the 8<sup>th</sup> of February. On that occasion the doctor had given tablets to the police but no tablets were ever given to him. Officers Brooks and Campbell had taken him from the hospital to Constant Spring Police Station. When he saw Dr. Collins on being taken to the Kingston Public Hospital on the second occasion, Dr. Collins looked and could have seen the condition of his foot. He never told the Doctor that his foot had been broken the month before.

Dr. Randall Collins gave evidence that he saw the plaintiff on the 13<sup>th</sup> of February, 1992 at the Kingston Public Hospital for the first time.

At that time he was in a dirty and dishevelled condition, confused and had superficial healing wounds all over his body. Mr. Parchment made a complaint to him and on an examination of his right foot he noted that the skin was peeling off, it was quite soggy and the pulse was not palpating. There was also a penetrating wound to the anterior aspect of the upper leg with the bone exposed. He had crepitus and was assessed at that time to have gas gangrene of the right leg which was malodorous and in a decomposed condition. Persons with a normal sense of smell would have been able to smell it on entering a room in which the patient was.

The incubation period for gas gangrene to set in is within a range of twenty-four hours to fourteen days if there is an exposed wound. Dirty and hot conditions could have an adverse effect and severe pain, almost unbearable, would be experienced by the patient even without a cast. At the onset of pain if urgent medical attention is rendered, especially when a cast is involved, there would be a greater chance of the limb being saved. Mr Parchment's condition and behaviour was quite consistent with a person afflicted with gas gangrene. After the operation was done he became subdued.



Dr. Collins further testified that whenever a cast is placed on a limb on which there is also a wound, an opening is usually made in the cast to facilitate inspection and dressing and antibiotics would usually be given. As a result of the amputation Mr. Parchment now has a significant permanent disability. He will need a prosthesis, which costs fifteen thousand dollars(\$15,000.00), to get around as without the use of one a great amount of weight bearing will be placed on the other leg, even with the use of crutches.

Dr. Collins also gave evidence that the amputation had been performed within two days of Mr.Parchment's admission, as gas gangrene is a life threatening condition and thereafter he spent two months in hospital.

Under cross-examination it was elicited that he had previously been admitted on the 4<sup>th</sup> February 1992 and discharged on the 7<sup>th</sup> February of the same year.

Mr. Parchment should have returned to the fracture clinic four weeks after he had been discharged on the first occasion and should have gone for dressings at the nearest health clinic. Dr.Collins had no personal knowledge of Mr. Parchment's previous admission to the hospital but he testified that hospital records indicate that he had been discharged with antibiotics.

Gas gangrene could have commenced while the cast was on but when he examined Mr. Parchment he did not have on a cast and Dr. Collins could not say

whether or not Mr. Parchment had been warned of the possibility of developing gas gangrene. Dirty conditions as well as a leg confined to a cast would predispose one to developing gas gangrene.

The Doctor was unable to say what was the cause of the plaintiff's infection and he opined that the taking off of the cast by the plaintiff could have aggravated his condition. It was normal behaviour for a patient to try to relieve himself of pain. The wound could have become infected as a result of the plaintiff pushing his hand down in the cast. The severe pain experienced by him could not have emanated from the wound nor from a cast that was too tight.

He further testified that pain would be experienced within twenty-four hours after gas gangrene had set in and could occur even if the cast was not too tight. If Mr. Parchment had taken the prescribed antibiotics it would not have affected the outcome in his case as gas gangrene responds to a certain type of antibiotic which had not been prescribed for him. The onset of gas gangrene could have been prevented or delayed if as a result of his complaint, the plaintiff had been taken without delay for medical observation. Directions could then have been given as a result of observation.

Amputation is not a necessity in every case of gas gangrene and even in the case of an open wound without a cast the condition could set in. Early surgical

intervention need not involve amputation; in the presence of infection one would not be able to see any signs of healing.

Sergeant Efferson Levene a witness for the fourth defendant, produced a station diary from the Constant Spring Police Station for the relevant period. Under cross examination he testified as to the existing system in relation to medical treatment for sick prisoners at the lock-ups.

He stated that when a prisoner is released from hospital with medication the police would collect and take the medication to the police station to be locked away and given to the prisoner as directed by the Doctor.

Complaints of illness by a prisoner should be recorded in the station diary and the prisoner would be escorted to the hospital along with the medical journal. There is a requirement for the medical journal to be examined by the police on a daily basis. There are consequences for failure to give prescribed medication to prisoners.

Deputy Commissioner of Police Sydney Brooks, the first defendant, testified that since the 5<sup>th</sup> January, 1992 he has been transferred to the Police Academy at Twickenham Park, he having on that day handed over command of St. Andrew North to another officer. He has not been present there since and has never ever been requested to be there for duty. Consequently, since that date he

has not been in charge of the Constant Spring Police Station and would not have had any duties or responsibilities there.

He has never seen Mr. Parchment before, was not aware of his physical condition and had never done anything in relation to him. He denied failing to do any act with regard to the plaintiff.

Under cross-examination he agreed that all police officers carry out their functions for and on behalf of the Commissioner of Police and in accordance with the laws of the land. Mr. Leonard Power took over duties from him at the Constant Spring Police Station. As divisional officer, Mr. Power had ultimate responsibility for the welfare of the prisoners at that lock-up. There are various instructions relating to prisoners being held and also in relation to visits to the cells by police officers.

He also testified as to the existence of a medical journal to record complaints by prisoners. When a complaint is of a serious nature the police would be expected to take the prisoner immediately for treatment. Where a prisoner is released from hospital with instructions for visits to a local clinic, it is expected that the divisional officer would take the prisoner for treatment. Medication given to the police for a prisoner on his release from hospital is to be strictly administered according to prescription.

If inspection of cell is done by an officer and a prisoner is found to be seriously ill, it would be the officer's responsibility to see that medical treatment is obtained. If the arresting officer sees that a prisoner is in need of medical attention he would also be responsible to assist in seeing that medical attention is rendered.

He agreed with defence counsel that a person in custody should be placed before the court at the earliest opportunity and if he is ill, it is even more important to do so. If he is detained or charged and placed under police guard at hospital his condition should be monitored so as to enable him to be placed before the court expeditiously.

Det. Inspector Barrington Campbell, the third defendant, gave evidence that in February, 1992 he was stationed at the Red Hills Police Station. On the 4<sup>th</sup> February, having received information via a police radio transmission he went to Rock View Terrace, Sterling Castle where on his arrival he saw the plaintiff lying on the ground on the roadway with his hands and feet bound together with binding wires. A large crowd was present and he made enquiries, spoke to Glenroy Smith who led him to a nearby building where he observed evidence of an attempted breaking.

As a result, he commenced investigations and returned to the area where he had seen the plaintiff, told him about the information he had received and arrested and charged him for attempted housebreaking.

He observed that the plaintiff was suffering from injuries and so he took him to the Kingston Public Hospital after he was processed at the Red Hills Police Station. Having delivered him to the hospital, he later made enquiries of guards but never went in person to visit the plaintiff at the hospital nor did he remove handcuffs from him. He never saw the plaintiff since, was never given any medication for him nor had he worked at or visited the Constant Spring Police Station until his assignment there in March of 1993.

Under cross-examination Det. Insp. Campbell stated that he was aware that plaintiff, who had given his address as Old Harbour Bay, had been discharged from hospital but he did not know of a specific date. He had made efforts to take him to court by preparing information but heard that he was again hospitalized. He had informed Constant Spring Police Station that the Plaintiff should be placed before the court.

He denied counsel's suggestion that he had prevented the plaintiff from receiving medical attention. He also denied that he visited the Constant Spring Police Station in February 1992 and removed prisoners from the plaintiff's cell. He never heard the plaintiff crying out for help and he denied the words attributed

to him by Mr.Parchment while he was in custody at the lock-up. He never told the plaintiff that he was on bail after having removed handcuffs from him at the Kingston Public Hospital.

After being discharged, he expected that Mr.Parchment would have been taken to the Constant Spring police station. He could not recall whether he had gone to that station between the 7<sup>th</sup> and 13<sup>th</sup> of February, 1992. He had not tried to locate Mr. Parchment when he first heard that he had lost his leg, nor could he recall having told anyone that the plaintiff had absconded from hospital.

In her submissions, Miss Francis agreed that the police officers had a duty to persons in custody to take reasonable care to prevent any foreseeable harm which could befall such persons by their failure to provide medical assistance. She also submitted that the court must determine whether the officers named breached the duty of care and if so, whether or not that breach resulted in the harm which the plaintiff alleges.

In urging the court to reject the plaintiff as a witness of truth, she alluded to inconsistencies in his evidence, in particular, the date on which he was taken to hospital, the date he began feeling pain in his right foot as well as the date on which he tore off the cast.

She argued that the court should have regard to the Doctor's evidence as to the incubation period for gas gangrene, his evidence that the medication

prescribed for the plaintiff would not, if given, have prevented the onset of that condition and his evidence that removal of the cast could have aggravated the wound and exposed it to infection.

Miss Francis submitted further that there is no evidence that had the Plaintiff received medical attention when he first complained, his leg was then at a stage where it could have been saved and no evidence was led to show that there was a danger or possibility of gas gangrene developing.

She maintained that on the evidence adduced a causal nexus between the injury suffered by the plaintiff and failure to act on the part of the police has not been established. The Plaintiff has failed to plead and prove the tortious acts as defined by law in order to make the Crown liable.

Mr. Samuels submitted that officers in the Jamaica Constabulary Force carry out their functions for and on behalf of the second defendant; the only exception being when they are on a frolic of their own.

In arguing that the plaintiff had proved his case on a balance of probabilities he referred to the evidence of Dr. Collins that if the plaintiff had been treated immediately after the pain set in, the chance of his foot being saved was high and he referred to the plaintiff's evidence that a day after he reached the Constant Spring Police Station he started to feel pain.



Mr. Samuels cited and relied on the case of Dorris Fuller(Administratrix Estate Agana Barrett Deceased) vs. The Attorney General SCCA 91 of 1995 as being relevant to the facts of this case and submitted further that the police had been put on notice that the plaintiff had been put in a cell with his leg in a cast which had an opening and a dressed wound.

The defendants had failed in their duty to show that they had complied with the provisions of the rules relating to the treatment of sick prisoners. Those rules related to the plaintiff, having regard to his condition while in police custody. Even if the plaintiff had not complained, regular inspection of the cells as required, would have alerted the police to his condition.

Mr. Samuels referred to paragraph 5 of the amended defence in alluding to the evidence given by Det. Inspector Campbell and submitted that he has been discredited as his evidence concerning the plaintiff's absconding and the injuries he observed on him, is not in accordance with those pleadings.

He maintained that the words and conduct attributed to Det. Insp. Campbell by the plaintiff ought to be believed and they constituted evidence of malice. On the question of causation, he argued that medical attention had not been rendered to the plaintiff on the onset of pains and the Doctor's evidence is that early medical intervention could have saved the plaintiff's leg.

Relying on the case of Ernest Reid vs. Caribbean Protective Services Ltd and Ors Suit No. CLR 249 of 1982, he asked the court to grant exemplary damages as such an award was warranted by the circumstances of this case.

The evidence of Assistant Commissioner Brooks reveals that at the material time he was not stationed at the Constant Spring Police Station and Mr. Samuels has conceded as regards the liability of that officer.

It is not disputed that police officers have a duty to take reasonable care of prisoners in their custody in order to avoid any foreseeable harm which might occur as a result of failure to render medical assistance. This court must now consider whether or not there was a breach of that duty of care which resulted in the loss of the Plaintiff's leg and make a determination as to the liability of the defendants.

Det. Inspector Campbell testified that on the 4<sup>th</sup> February 1992 when he saw plaintiff's condition he made arrangements to obtain the services of a police guard as he felt that there was a great likelihood that he would have been admitted to hospital. He has denied the assertions of the plaintiff as to any further personal involvement by him.

There is no evidence that in relation to the plaintiff, there was compliance with the provisions relating to the treatment of sick persons in the custody of the police.

I accept the plaintiff's evidence that on his arrival at the Constant Spring lock-up his right leg was in a cast with an opening and he had a dressed wound . He was placed in a cell and held in custody under the conditions to which he testified. One day after his arrival he started to feel pain and he cried out for help for several days. I also accept his evidence that his right leg emitted a foul smell and other prisoners requested to be and were removed from that cell by Det. Inspector Campbell who told him that he should remain in the cell and suffer.

Even if the plaintiff's condition had been brought on or aggravated by his removal of the cast, in the circumstances which existed I find that it was reasonable for him to have tried to alleviate his pain by such removal.

The evidence clearly establishes that despite his obvious need, Mr. Parchment was not afforded prompt medical attention as his cries for help went unheeded. I find that there was failure by Det.Insp. Campbell to place Mr.Parchment before the court at the earliest opportunity after his arrest. Had he done so, Mr. Parchment would have had another avenue to which he could have appealed for help.

I accept the evidence that six weeks after the plaintiff had been re-admitted to hospital Det. Insp. Campbell went to the hospital, removed his handcuffs and told him he was on bail.

Miss Francis submitted that there is no evidence that the Commissioner of Police was aware of the plaintiff's condition or even of his presence at the lock-up. I agree that there could be no finding of liability against him personally but the pleadings state that he was sued in his capacity as the person appointed by the Crown as head of the Jamaica Constabulary Force to provide officers and staff.

I find that police officers at Constant Spring Police Station must have been aware that the plaintiff's leg was in a cast and had a wound and they ignored his pleas for help for days until he was eventually taken out of his cell and taken to the Kingston Public Hospital. I accept the evidence of Dr. Collins as to the condition in which he saw the plaintiff on his arrival at hospital and as to the circumstances in which the plaintiff's leg was amputated.

Miss Francis contended that even if police officers had failed to respond to the plaintiff's pleas or to carry out their duties in accordance with the stipulated rules, those officers have not been named as required by the provisions of the Crown Proceedings Act. I find that although other police officers have not been named, Det. Insp. Campbell the named defendant, was certainly aware of the plaintiff's condition and deliberately refrained from assisting the plaintiff in obtaining medical attention. He failed to place him before the court after his discharge from hospital on the first occasion. According to him he had prepared an Information, written a statement and informed the station officer at Constant

Spring Police Station and he had no further obligation in placing him before the court.

Even after Mr. Parchment's discharge from hospital on the second occasion he made no effort to place him before the court. In response to a question from defence counsel, he stated that he had no reason to go in search of the plaintiff. It is hardly surprising that he carried out no investigation in respect of the plaintiff's injuries testifying that although plaintiff told him that he had been beaten, he had received no report from him which would have enabled him to carry out investigations. The evidence supports the view that he acted out of malice.

I accept the plaintiff's evidence that after his release from hospital he returned to his home in Old Harbour Bay. Further, there is no evidence to support the pleading that the plaintiff had absconded.

Det. Insp. Campbell gave evidence that he knew that the plaintiff had been released from hospital. He testified that in his capacity as arresting officer he had made enquiries continually as to Mr. Parchment's condition.

I reject his evidence that having arrested and charged the plaintiff he had no further contact with him and did not see or speak to him while he was in custody. I also reject his evidence that he did not remove prisoners from the plaintiff's cell and never removed his handcuffs at the Kingston Public Hospital telling him

that he was on bail. I find that police officers at the Constant Spring Police Station as well as Det. Insp. Campbell failed in their duty of care towards the plaintiff whilst he was in custody.

Even if, as argued by counsel for 4<sup>th</sup> defendant the plaintiff could have developed gas gangrene in any event, the unchallenged medical evidence adduced was that the presence of gas gangrene does not lead inevitably to amputation. I reject the submissions advanced by her on the question of liability. Entries in the station diary regarding dates were agreed. The inconsistencies referred to by Miss Francis do not affect the plaintiff's case in any material way. I find that the plaintiff has proved his case on a balance of probabilities and enter judgment for him.

In the unreported case of The Attorney General v. Gladstone Miller SCCA No.95 of 1997 at page 9 of the judgment, Bingham J.A. stated inter alia:

“The Crown Proceedings Act....made the crown liable for the tortious acts of its servants or agents done in the course of their employment.

In so doing, it extended the principle of vicarious liability...

Although claims in tort could still be brought against the Crown-servant alone, once it was established that he was acting within the course or the scope of his employment, the proper defendant

to be sued was the Attorney General, he being the official representative of the Crown by virtue of his office. A suit against the servant or employee alone therefore would be meaningless, as the Attorney General could enter an appearance and take over the defence of the suit. (emphasis supplied)

It is not disputed that police officers including Det. Inspector Campbell were acting in the course of their employment. Consequently, I find the fourth defendant liable.

On the issue of special damages I am in agreement with counsel for fourth defendant that the evidence adduced supports an award of thirty thousand four hundred dollars (\$30,400.00) only .

I deal now with the question of general damages. Miss Francis drew the court's attention to the case of Oswald Espeut v. K. Sons Transport Limited, Woolworth Miller, Matlaw Construction Limited, Dennis Lawson Limited and Amos Campbell Suit No.C.L. 1992 E 093 at page 39 Vol.4 of Recent Personal Injuries Awards in the Supreme Court compiled by Mrs. Ursula Khan. In that case the plaintiff sustained an amputation of his right leg above the knee with eighty percent partial permanent disability of that leg. He was awarded an amount which when converted at present rates amounts to two million and fifty-eight thousand dollars (\$2,058,000.00). She urged that if the court found for plaintiff on the

question of liability that amount should be discounted as the only area of similarity with the present case is the above the knee amputation.

I am in agreement with Mr. Samuels' submission that aggravated damages ought to be awarded having regard to the facts of this case and I accede to the request to do so. The plaintiff has lost his leg and I accept that in addition, the pain he suffered prior to the amputation was almost unbearable whilst being held in the conditions about which he testified. Accordingly, I award the plaintiff the sum of 2.2 million dollars for pain and suffering and loss of amenities.

No evidence was adduced of any attempt by plaintiff to resume his pursuit of vending or to obtain other employment. However, Dr. Collins testified that with the loss of his leg undue pressure would be placed on the remaining leg thereby restricting his movements. In the circumstances, I would make an award of one hundred thousand dollars (\$100,000.00) for handicap on the labour market.

I find also that this is a case in which exemplary damages ought to be awarded. The court must be vigilant in safeguarding the rights of citizens, moreso while such citizens are in the custody of the State and must be anxious to enforce the rule of law that every accused person is innocent until proven guilty in a court of law; that punishment is within the purview of the court and only after due process has been observed. In numerous decisions our courts have condemned



oppressive, arbitrary or unconstitutional actions by the servants of the State and consequently made awards of exemplary damages. I find that this case warrants an award of five hundred thousand dollars under this head.

In sum, the court makes the following awards:

Special Damages	\$	30,400.00
General Damages for pain and suffering and loss of amenities		2,200,000.00
Exemplary damages		500,000.00
Handicap on the labour market		100,000.00
Total	\$	2,830,400.00

Interest is granted on the sum of \$30,400.00 at the rate of 6 per cent per annum from 10th February 1992 until today and at the rate of 6 per cent per annum on the sum of 2.2 million dollars from the date of service of the writ of summons until today. Costs granted to the plaintiff to be agreed or taxed.