[2022] JMSC Civ164

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2011 HCV 01648

BETWEEN	**RUPERT CAMPBELL**	**CLAIMANT**
A N D	**THE ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

IN OPEN COURT

Mr. Ian Davis instructed by Davis, Robb & Co for the Claimant

Mr. Matthew Gabbidon and Ms. Karessiann Gray instructed by the Director of State Proceedings for the Defendant

September 19-21, 2022

Negligence – Duty of Care of Prison Authorities Towards Prisoners - Failure to Care for Prisoners in Custody – Whether Prison Authorities Failed to Ensure that the Claimant Received Proper Medical Attention Within a Reasonable Time When Notified of Injury – Whether Failure of Authorities Caused the Injury to the Claimant.

DALE STAPLE, J (Ag)

BACKGROUND

[1] This case is an illustration of the principle that delay leads to hardship. The Claimant was, at the time of this incident, a 37 year old man who was a guest of then Her Majesty at the St. Catherine Adult Correctional Facility in Spanish Town, St. Catherine.

[2] According to the Claimant in his Amended Pleadings filed on the 12th July 2018, on the 21st February 2006, whilst he was serving time for an offence at the said

facility, he suffered a seizure and was given medication by prison authorities to treat with his epilepsy, from which he had been suffering for some time, as well as other medication.

[3] He alleges that as a result of being given this medication, he developed priapism, a prolonged sustained erection of the penis in the absence of sexual stimulation or interest that lasts more than four hours. According to him, the condition became serious and he notified prison authorities, however, they failed to take him to get medical attention until some five days later on the 26th February 2006. He received emergency treatment at the Kingston Public Hospital, but he claims that he became impotent as a result of the delay in getting him treated.

[4] He therefore sued the Crown for negligence for two things:

(a) The giving to him of medication that caused him to develop priapism in the first place; and

(b) the failure of the prison authorities to get him appropriate medical treatment within a reasonable time to prevent him becoming impotent.

[5] For their part, the Crown denied any liability at all and instead said that their servants and/or agents did not administer any medication to the Claimant that caused him to develop priapism and that it was the Claimant who delayed in bringing his plight to their attention and they brought him to the hospital as soon as they were made aware of the Claimant's injury.

[6] The Court is grateful to the Crown for the preparation of the bundles and their skeleton submissions as well as to counsel for the Claimant for his arguments and for ensuring the smooth progress of the trial as best as possible.

ISSUES

[7] The Court considers that this case comes down to three essential questions;

(a) did the Claimant communicate his injury to the prison authorities before the 26th February 2006 or no?

(b) If he did, did the prison authorities fail to take reasonable steps to ensure he received the appropriate medical attention within a reasonable time; and

(c) Even if the prison authorities did not provide him with appropriate medical attention within a reasonable time, did the failure cause the injury i.e the ED/Impotence.

Liability of the Crown for the Medical Care and Treatment of Prisoners in His Majesty's Prisons

[8] The Crown has conceded that the Crown's servants and/or agents owed the Claimant a duty of care. This they did at paragraph 19 of their written skeleton submissions.

[9] I remind myself that it is the Claimant that has the burden of proof. It is the Claimant that must establish that it is more likely than not that the servants and/or agents of the Crown owed a duty, they breached that duty, and there was consequential damage that was foreseeable as a result of the breach. These are the fundamental tenets of all claims in negligence. It has not changed.

[10] The rules for the administration of Adult Correctional Centres provides us with best starting point in determining the scope of the liability of the Crown for the medical care and treatment of prisoners in adult correctional centres. These rules are the **Correctional Institution (Adult Correctional Centre) Rules 1991** (hereinafter the Prison Rules).

[11] Rule 7 places a duty on the Superintendent of the Prison to ensure that every inmate who has a complaint to make or a request to prefer shall have ample facilities for so doing and the Superintendent shall redress any grievance or take such steps as may be necessary in each case. So the Superintendent of the Prison has the ultimate responsibility and duty of care to ensure that all complaints by inmates are redressed or such steps taken as are necessary.

[12] Rule 10 provides that the Superintendent shall, unless prevented by some extraordinary circumstance, (which he shall record in his journal) cause once in each day every ward and cell in the adult correctional centre to be inspected and **each inmate to be seen either by himself or the Assistant Superintendent** (emphasis mine) ...

[13] Under r. 19, the Superintendent of the Prison has a duty to take steps to ensure that **no case of mental or physical sickness or accident is left without proper medical attention** (emphasis mine) and that the directions of the medical officer are at all times strictly and carefully carried out.

[14] Rule 31 of the aforesaid rules provides that the medical officer shall have the general care of the health of the inmates and shall make known to the Superintendent, for the information of the Commissioner, any circumstances connected with the adult correctional centre or the treatment of the inmates which appear to him to require consideration on medical grounds.

[15] Rule 46 further provides that the medical officer shall be responsible for instructing the dispenser in regard to his duties.

[16] Indeed, the duty to treat inmates humanely and to look after their welfare is imposed upon all members of staff of the adult correctional centre. Rule 87 provides as follows:

> *"Every member of staff shall treat inmates with kindness and humanity and **shall listen patiently to and report their complaints and grievances** (emphasis mine) at the same time being firm in maintaining order and discipline and enforcing observance of these Rules."*

[17] Initially, the courts indicated that the duty of care owed by prison authorities would be more limited than in other contexts. In ***Knight v. Home Office***[1]*,* Pill J held that the law did not require the same **standard of care** for a mentally ill **prisoner** detained in a prison hospital as required in a psychiatric hospital outside prison.

[18] The decision in ***Knight*** was qualified in the later case of ***Brooks v. Home Office***[2] in which it was held that the **prisoner** was entitled to expect the same standard of obstetric **care** in prison as women would expect in outside hospitals.

Did the Claimant Communicate His Injury to the Prison Authorities Before the 26th February 2006 or Not?

[19] So the Court now asks itself, when did the relevant prison authorities become aware of the Claimant's plight with the erection? I find they became aware of his condition at some time on the 22nd February 2006 when the Claimant made a complaint to the medical orderly.

[20] The Claimant's pleadings said that he had experienced a seizure on the 21st February 2006. But that is not recorded in the medical records. The medical records show that when he was seen on the 1st February 2006, he had a fit on the 26th January 2006. There is no other evidence of him having a seizure after this. In fact, the Claimant has backed off that position. So this aspect of his pleading has not been established and is rejected.

[21] On the Claimant's case, the first person who became aware of the Claimant's condition was the medical orderly on duty on the 22nd February 2006. Though the Claimant began experiencing some symptoms from the 21st February 2006, the

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[1] [1990] 3 All ER 237
[2] [1999] 2 FLR 33

evidence in chief confirms that he made no complaint of same until the 22nd February 2006. This he confirmed in cross-examination.

[22] In oral arguments, Mr. Davis sought to argue that the Claimant would have complained to the orderly at some time in the morning of the 22nd February 2006. This was based on an argument that the Claimant gets medication 3 times daily for his epilepsy. That's fair, however, there is no exact time given as to when he made this complaint.

[23] The medical evidence from the Claimant is interesting. The Claimant is an epileptic. The evidence from Mr. Winston Pinnock, the Defendant's witness, corroborates this. Mr. Pinnock was a medical orderly stationed at the St. Catherine District Adult Correctional Facility at the time. He is now in pre-retirement. I must say that I was impressed with Mr. Pinnock as a witness. He spoke intelligently, calmly and displayed a firm grasp of the practices and procedures surrounding his task as a medical orderly.

[24] According to Mr. Pinnock, the Claimant was receiving two medications for his epilepsy; dilantin 100mg three times daily and phenobarbitone. No dosage was given for this latter medication. I accepted this evidence as being the truth.

[25] It is important to note that concerning the medical records of the Claimant, Mr. Pinnock testified, and I accepted as being true, that there were three sets of records kept concerning the medical information for inmates. One was the *daily occurrence book*. This recorded the daily incidents, complaints etc presented by inmates at either the prison hospital or the medical area on the prison itself. The orderly on duty at either the hospital or the medical area would record in this book. Next, there was the Medical Log Book. In this book, only the doctor on duty at the prison would make the entries. This book would record the medical complaint, treatment and examination of the inmate. Finally, there was what I would call the daily medication dispensing book. The orderly would log the daily account of

medication dispensed to the inmates and the inmate would also sign to acknowledge receipt.

[26] Another important bit of evidence, which I also accepted, was that the record keeping at the prison at the time was very bad due to a staff shortage. Indeed, Mr. Pinnock testified that he was transferred to St. Catherine Adult Correctional Facility at the time to help them improve their record keeping due to the poor state of things.

[27] The only records before the Court from the St. Catherine Adult Correctional Facility was what would be the extract from the medical log book. There was no information from the other two books. Nor was there any evidence from the Superintendent's journal at the time.

[28] This becomes important as the Claimant testified to making daily complaints about his erection from the 22nd February 2006 up to and including the 26th February 2006. He said he received no proper medical attention until the 26th February 2006. Counsel for the Crown, Mr. Gabbidon, made heavy weather of the absence of any notation in the records of any complaints being made by the Claimant. However, the evidence from Mr. Pinnock reveals that the absence of the complaints from the medical log records, would not be surprising as those complaints would have been made to the orderly and would have been comprised in another set of records that are not before the Court. This removes much of the sting from Mr. Gabbidon's cross-examination in this regard.

[29] The Claimant gave evidence of complaining to the orderly on duty on the 22nd and 23rd February. On the 22nd, he said the orderly gave him 2 yellow tablets and that the orderly said it would clear up the bladder infection.

[30] I do accept the evidence of the Claimant that he went and complained to the orderly on the 22nd February 2006 about his condition and the pain he was experiencing. Mr. Pinnock testified that the Claimant was a very chatty person and would often speak to him about many things. The Claimant, in the witness box, did not strike

me as a person who would suffer in silence. Neither was any reason suggested to the Claimant as to why he would have delayed seeking treatment for what I accepted to have been a very very painful situation. So I find it likely that he would have made such a complaint. I also accept that the likely reason for the absence of the complaint to the orderly from the records presented is that such complaints would not be present in the records presently before the Court.

[31] The Claimant then says he went back to the medical orderly on the 23rd complaining that the medication was not working. He was given more of the yellow tablets, his regular epilepsy medication and the brown tablets. He said he took the epilepsy medication and the yellow tablets, but did not take the brown tablets. I accept this as true.

[32] No ease was found and so on the 24th, according to him, he returned to the dispensary and asked to see the doctor. He was told to speak to the Superintendent. This he did and he said he spoke to Superintendent O'Brian Lindo. He said Lindo sent him back to the dispensary but there was a back and forth between the orderly and Lindo with the result being that the Claimant did not see the doctor on that day. Again, the journals from the Superintendents were not before the Court. These journals should have been part of the Crown's standard disclosure or requested by the Claimant in specific disclosure. But neither side appeared to even be aware that such things existed. However, I do believe the Claimant that he made these complaints to Superintendent Lindo for the reasons stated above.

[33] The next day the Claimant says he spoke to Acting Superintendent Shepherd who told him that he could not see the doctor until the following day. Eventually, on the 26th, the Claimant saw Dr. Sewell, a psychiatrist, and was immediately taken to the Spanish Town Hospital on the recommendation of the psychiatrist, Dr. Sewell.

[34] Mr. Pinnock confirmed that on his return on the 26th February 2006, which evidence I accepted despite some curious cross-examining from Mr. Davis on the point, the Claimant spoke to him and told him about the erection he had been having for a week and that he had come to the dispensary before the 26th to complain that the medication he had received for it was not working. This suggests, and I find, that the Claimant had brought the condition about the erection to the attention of the authorities before the 26th February 2006.

[35] The Crown's case, however, is that the Claimant did not report his condition to them until the 26th February 2006. Their case is that he was sent to the Spanish Town Hospital on the very day of his complaint and that he was then transferred to the Kingston Public Hospital for further management and care. I reject that the Claimant did not report his condition until the 26th February 2006. I find that it was more likely than not that he made complaints from the 22nd up to the 26th February 2006.

Did the Prison Authorities Wait Too Long to Give the Claimant Appropriate Medical Attention?

[36] Having appreciated the complaint from the Claimant since at least the 22nd February 2006, what did the prison authorities do about it? I find that the Prison Authorities did not provide the Claimant with appropriate medical attention upon realising his medical condition on the 22nd February 2006.

[37] The evidence, which I accept, is that the Claimant had been experiencing an erection since at least February 21, 2006, his symptoms persisted and progressively got worse up until the 26th February 2006 when he was finally taken to the hospital for treatment. The only person he saw between the 22nd February and the 26th was a medical orderly. No medical doctor saw the Claimant until Mr. Pinnock took the initiative and had him see Dr. Sewell on the 26th February.

[38] Such a period is far too long to treat with what Dr. Aiken said in his evidence is a condition that has to be treated as a medical emergency until one knows more. The presenting complaint of the Claimant to Dr. Sewell on the 26th was that of difficulty passing urine for 2 weeks, penile erection for 1 week, severe pain, discharge, blood in urine (haematuria), it had a discharge and was malodorant (foul smelling). From his observation and examination (O/E), Dr. Sewell saw that the Claimant had an erect penis, but observed no discharge. He assessed him as having dysuria (painful urination) and priapism (prolonged erection of the penis lasting for hours or longer).

[39] Two things become clear. One is that the difficulty in passing urine from the 16th February 2006 had not cleared up despite the Claimant getting medication. This alone should have prompted another visit to the physician or to the hospital for further treatment. But then this was compounded by the development of the priapism. Recall that under r. 19 of the Prison Rules as stated above, the Superintendent of Prisons has the duty to ensure that the Claimant's sickness received **proper** (emphasis mine) medical attention.

[40] I accept the evidence from the Claimant that he and Superintendent Lindo spoke about his worsening medical condition and that Superintendent Lindo gave certain directions, but these directives were not carried out. Lindo would have failed in his duty to ensure that the Claimant received proper medical treatment. There is no evidence from the Defendant, which evidence ought to have been available to them with due diligence exercised, to counter the Claimant's assertions. Mr. Gabbidon sought to discredit the Claimant by asserting the lack of records of the complaint to the Superintendent in the medical records of the Claimant. However, I find that the fact that there is no record of this complaint to the Superintendent in the medical records cannot be used by the Crown as a basis to challenge the Claimant's evidence because the medical records would not contain the evidence of the complaint by the Claimant to the Superintendent. That would have been in the Superintendent's journal. This should have formed part of the Defendant's

standard disclosure[3]. Prudence on the part of the Claimant could also have led him to seek an order of specific disclosure for those records. But this was not done either.

[41] So in all the circumstances, I find as proven that the Defendants knew of the Claimant's condition, but failed to act with the appropriate promptness to give him the proper medical attention required.

But Did this Failure Cause the Damage?

[42] Here is where things get decidedly more difficult for the Claimant. It is for the Claimant to prove that it was more likely than not that it was the failure of the prison authorities to get him proper medical treatment within a reasonable time after he complained of the priapism to them that led to his erectile dysfunction and/or impotence as pleaded.

[43] In his pleadings, at paragraph 3 of the Amended Particulars of Claim and in his Particulars of Negligence, the Claimant sought to lay the blame for the initial priapism at the foot of the prison authorities for the medication they gave him (see paragraphs vi-viii of the Particulars of Negligence of the Amended Particulars of Claim). He said that the prison authorities:

> **(a) Provided the claimant with inappropriate [medication] and then failed to heed the Claimant's complaints about his adverse reaction to the drugs provided;**
>
> **(b) Failed to ensure that the drugs with which the Claimant was provided were safe for consumption by him; and**
>
> **(c) Causing and/or permitting the Claimant to consume drugs which were not safe for consumption by him.**

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[3] See CPR Rule 28.4(1)

[44] None of these have been proven on the evidence on the balance of probabilities. As Dr. Aiken rightly pointed out, his expert report does not speak to causation of the priapism, just what happened after the priapism occurred. There is no other evidence of the effect of the medication given the Claimant to treat his epilepsy or the UTI on the Claimant or that it is even possible for these drugs to cause priapism.

[45] In fact, there is no evidence that establishes that the Claimant suffered an epileptic attack on the 21st February 2006. In his evidence in chief, he says that it was *sometime in February of 2006*. But then at paragraph 6 of his Witness Statement filed on the 28th December 2021, he gives a specific narrative on what happened on the 21st February 2006 and does not mention getting a seizure on that day.

[46] His medical records do not disclose any seizure on the 21st February 2006 and the last seizure, from the medical records, was on the 26th January 2006.

[47] The evidence, which I accept, is that the Claimant had been treated for a suspected UTI from February 16, 2006. Following this, he said he began to experience the priapism from February 21, 2006. Importantly, **he** (emphasis mine) delayed in going to the medical orderly until sometime on February 22, 2006. This was a long delay. Indeed, in his evidence in chief, the Claimant said he was experiencing a low feeling and was suffering from a mild erection **for the entire day** (emphasis mine). He said that he decided to take a cold shower **among other things** (emphasis mine) to relieve the erection. According to Dr. Aiken, an erection lasting more than 4 hours is the definition of priapism.

[48] Dr. Aiken testified that the type of priapism the Claimant had was ischaemic priapism where blood does not drain from the penis. He confirmed that the blood loses oxygen which leads to the scarring in the penile tissue. This scarring prevents the penis from being able to become erect. I accept this evidence.

[49] This type of injury – ischaemic priapism – is a very time sensitive ailment. Meaning, as per the evidence of Dr. Aiken which I accept, if you have an erection for over four hours without sexual stimulation or interest, it is a medical emergency and the faster you are treated the better. Indeed, the evidence is that permanent injury can start as early as 12 hours after the priapism sets in. So the time when the complaint is made is critical to show, on the part of the Claimant, that the prison authorities had ample notice, but failed to act within a reasonable time.

[50] When ischaemic priapism occurs, Dr. Aiken says it is to be treated at a tertiary level hospital with a urologist. This type of intervention must be done as soon as possible after the priapism to reduce the likelihood of permanent scarring occurring. This I accepted as being true.

[51] The result is that by the time the Claimant went to see the medical orderly, on his case, it would have been far too late and the permanent scarring would likely have set in already. Bear in mind that we do not know when on the 21st the erection started. We do not know therefore, when the priapism arose. But I accept his evidence that he experienced the erection for the entire day on the 21st. From this I can reasonably infer that he had been experiencing the priapism for more than 12 hours between the 21st February 2006 and the time he went to the medical orderly on the 22nd, which specific time we still do not know. By this stage the permanent damage was likely done.

[52] No evidence was elicited from the Claimant as to the source of the Lasix he told the doctor he received and took. But as Dr. Aiken said, this would only have made a situation where he was experiencing difficulty urinating even worse. The jumbled timeline of the history in the doctor's report betrays the fact that Mr. Campbell did not give an accurate history to Dr. Aiken. Dr. Aiken also confirmed that he did see any of the Claimant's medical records before doing the report.

[53] I am minded to accept the submission from the Defendant that the Claimant has failed to establish negligence on the basis that the Claimant has not established that it is more likely than not that had he been afford the appropriate medical treatment from at least the 22nd February 2006, his impotence/ED would not have happened.

[54] The case of ***Barnett v Chelsea and Kensington Hospital Management Committee***[4], as cited by the Defendant is instructive.

[55] I also looked at the House of Lords decision of ***Wilshire v Essex Area Health Authority***[5] which reaffirmed the principle that causation was for the Claimant to prove and not for a defendant to disprove.

[56] In that case, the plaintiff was born prematurely and was placed in a special care baby unit at a hospital managed by the defendants. If he was to survive, he needed extra oxygen and to ensure that the correct amount was administered it was necessary to insert a catheter into an umbilical artery so that his arterial blood oxygen levels would be accurately read on an electronic monitor.

[57] A junior doctor mistakenly inserted the catheter into the umbilical vein with the result that the monitor would give a lower reading. Neither he nor the senior registrar appreciated that the X-rays taken showed the catheter in the vein but both realised that there was something wrong with the readings on the monitor. The senior registrar inserted another catheter but into the same vein and other means of monitoring the arterial blood oxygen were also adopted. The following day the second catheter was replaced by one in the artery. Thereafter the monitoring of the arterial blood oxygen levels continued and at times during the following weeks there were periods when the levels were considered too high. The plaintiff developed retrolental fibroplasia, a condition of the eyes, which resulted in

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[4] [1969] 1 QB 428
[5] [1988] AC 1074

blindness. The plaintiff claimed damages from the defendant health authority for the negligent medical treatment he had received in their special care baby unit. The judge held that the defendants were liable since they had failed to prove that the plaintiff's condition had not been caused by the negligence of their employees. The Court of Appeal, by a majority, dismissed the defendant's appeal.

[58] On appeal by the defendants, the House of Lords allowed the appeal. They stated that the onus of proving causation rested on the plaintiff; that where a number of different factors, including the administration of excess oxygen, could have caused retrolental fibroplasia, its occurrence following the defendants' failure to take a necessary precaution to prevent excess oxygen causing the condition provided no evidence and raised no presumption that it was excess oxygen rather than one of the other factors which caused or contributed to the plaintiff's condition, and that, since there was conflicting expert evidence as to whether excess oxygen in the first two days of life caused or materially contributed to the plaintiffs condition, a question on which the judge had failed to make relevant findings of fact and which could not be resolved by an examination of the evidence on transcript, the issue of causation must be retried before a different judge.

[59] So the Claimant must establish that it was the Defendant that caused him to suffer the impotence/permanent ED as a result of their failure to have him get the proper medical attention within a reasonable time of the priapism occurring. In my view, the Defendant cannot be held liable to administer treatment for a condition unknown to them. Yes, the Superintendent has a duty to speak to each prisoner every day as far as is possible and, if not possible, he is to record same in a journal. But there is no evidence that the Superintendent either did or did not speak to the Claimant on the 21st February 2006.

[60] In the case of ***Bolitho v City and Hackney Health Authority***[6], the House of Lords decided that although in the generality of cases the *Bolam* test had no application in deciding questions of causation, where the breach of duty consisted of an omission to do an act which ought to have been done the question of **what would have constituted a continuing exercise of proper care had the initial failure not taken place, so as to determine if the injuries would have been avoided, fell to be decided by reference to that test**.

[61] Their Lordships stated that in applying the test the court had to be satisfied that the exponents of a body of professional opinion relied upon had demonstrated that such opinion had a logical basis and in particular had directed their minds where appropriate to the question of comparative risks and benefits and had reached a defensible conclusion; that if, in a rare case, it had been demonstrated that the professional opinion was incapable of withstanding logical analysis, the judge was entitled to hold that it could not provide the benchmark by reference to which the doctor's conduct fell to be assessed, but that in most cases the fact that distinguished experts in the field were of a particular opinion would demonstrate the reasonableness of that opinion; and that, accordingly, since the judge had directed himself correctly and there had been good reason for acceptance of the defendants' expert opinion, it had not been proved that the doctor's failure to attend had caused the injuries complained of.

[62] In the case at bar there is no evidence of any such divergence of medical opinion on the appropriate treatment of priapism. As such I would merely need to be satisfied, on the balance of probabilities, that had the prison authorities given/facilitated the Claimant receiving appropriate treatment by the earliest possible date (on the evidence, February 22, 2006), he would not have likely suffered impotence/ED.

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[6] [1998] AC 232

[63] As stated above, there is no evidence to establish this clearly. The evidence, which I accept from the sole expert in the case, puts into play the likelihood that by the time the Claimant sought the medical intervention from the prison authorities, he had likely suffered irreversible damage to his penis which would have led to the impotence/ED in any event. The Claimant has not established that it is more likely than not that by the time he made the report on the 22nd, there was sufficient time for the prison authorities to act to prevent the permanent damage.

Can the Claimant Recover Damages for Pain and Suffering Arising from the Pain Suffered in the Period Between February 22 to February 26 When He got Treated?

[64] I find that the Claimant has established liability in negligence on the part of the Crown for failing to have him receive treatment to relieve the pain he was experiencing as a result of the priapism. So whilst he has not established that the Crown's failure resulted in the ED/impotence, he has established that the failure to get him treated caused him undue pain and suffering. But not for the 5 days he asserted in his pleadings, but for 4 days.

[65] I do accept that there was delay in getting the Claimant the appropriate medical attention once he brought it to the attention of the authorities on the 22nd February 2006. This delay was for 4 days and not five. So the Claimant would have been in what I find to be excruciating pain for some 4 additional days. He was on ibuprofen around the same time of the priapism arising. But the evidence suggests, and I accept, that this was not sufficient to ease the pain.

[66] However, the Court is uncertain how much of this pain was attributable to the priapism vs the UTI and the difficulty passing urine which had persisted. The evidence from the records is that when Dr. Sewell examined the Claimant on the 26th February, the Claimant was still having difficulty passing urine in addition to the priapism. Bear in mind as well that Dr. Aiken testified that the Claimant told him

that he, the Claimant, was taking Lasix in circumstances where the Claimant was already having difficulty passing urine. The evidence from Dr. Aiken was that this would have made that situation even worse. There is no evidence as to the source of the Lasix.

[67] So, all told, the Claimant's case, for the extended period of pain and suffering, was established.

[68] Counsel for the Defendant suggested $50,000.00 for General Damages. The assessment of damages in this case was made more difficult because the cases to hand are all more serious than the present case in light of the fact that I am not considering the permanent ED/Impotence. The authority submitted by the Defendant is applicable, but that Claimant had many other injuries and a primary consideration was the impact of the damage to the penis and the effect it would have on his sex life[7]. The Court of Appeal upheld the award of general damages in the Court below[8]. Based on the calculation of counsel, the award updates to approximately $1.9m.

[69] In the circumstances of this case, I am minded to significantly discount the award made in that case. To my mind, a figure of $200,000.00 is appropriate to compensate the Claimant for the four days of excruciating pain that would be attributable to the priapism that was not relieved.

[70] Concerning Special Damages, this has not been established as the Claimant's evidence is that he did not pay for these expenses out of his own pocket and there is no evidence that he will have to reimburse his benefactor for their generosity.

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[7] See the decision of the Court of Appeal *Alcan Jamaica Company v Leslie Mighty* Unreported SCCA No. 94/97 Court of Appeal, Jamaica, December 20, 1999.
[8] *Leslie Mighty v Alcan Jamaica Company* Unreported CL M 503/95, Supreme Court of Jamaica, Marsh J(Ag), July 4, 1997

DISPOSITION:

1. Judgment for the Claimant;
2. General Damages assessed at $200,000.00 for pain and suffering;
3. Costs to the Claimant assessed at $20,000.00 using the Parish Court Tariff.

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D. Staple
Puisne Judge (Ag)