

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE EQUAL OPPORTUNITY TRIBUNAL**  
(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0003 of 2014

**BETWEEN**

**VIDYA S. MAHARAJ**

**Complainant**

**AND**

**IMMIGRATION DIVISION**  
**MINISTRY OF NATIONAL SECURITY**

**Respondent**

**CORAM:**

His Honour Mr. Rajmanlal Joseph	- Judge/Chairman
Her Honour Ms. Leela Ramdeen	- Lay Assessor
His Honour Mr. Harridath Maharaj	- Lay Assessor

**APPEARANCES:**

Mr. A Mohammed instructed by Mrs. Afreen Mohammed Khan for the Complainant  
Ms. Michelle Ottley Jones for the Respondent

**JUDGMENT ON QUANTUM OF DAMAGES**

**Date of Delivery of Judgement: April 7, 2017**

## BACKGROUND

1. On June 16, 2015 this Tribunal gave judgment in default of defence in favour of the Complainant herein. On October 20, 2015 the Tribunal heard evidence on the assessment of damages. In this regard the Complainant relied on three (3) witness statements; namely, those of the Complainant Vidya Maharaj, dated 20.08.2015, Ramzan Soodoo dated 20.08.2015 and Richard Ramdass dated 20.08.2015.
2. The Complainant was duly sworn and his witness statement and exhibits thereto was admitted as evidence. Thereafter counsel for the Respondent was invited to cross-examine this witness but declined to do so. In addition, the second witness Mr. Soodoo took the witness stand and was also sworn in and his witness statement was admitted as evidence. Counsel for the Respondent was again invited to cross-examine this witness but declined the invitation. The final witness for the Complainant Mr. Ramdass was duly sworn and his witness statement was admitted as evidence; counsel for the Respondent was invited to cross-examine this witness but declined to do so.
3. Counsel for the parties herein elected to do written submissions on damages, rather than to do oral submissions. Consequently, directions were given for the filing of these said submissions. Counsel for the Complainant filed his submissions on November 20, 2015 and Counsel for the Respondent filed her submissions on October 27, 2015.
4. In this matter the Complainant succeeded in his action against the Respondent for discriminating against him on the basis of origin, religion and ethnicity and by reason of victimisation.  
Further, it is the pleaded case of the Complainant that the genesis of his complaint of discrimination began on March 19, 2008 when he returned to Trinidad and Tobago from Canada when the Immigration Officer stamped his passport "*employment not permitted*" even though he was and still is a citizen of the Republic of Trinidad and Tobago. The Complainant maintained that he drew this anomaly to the attending Immigration Officer but he became verbally abusive and hostile towards him.

5. The Complainant further pleaded that he attended the Immigration Office on numerous occasions in attempts to rectify the situation without success. He then issued instructions to his Attorney-at-Law to write a Pre-Action Protocol Letter to the Chief Immigration Officer and was invited to the Respondent's office but the stamp on his passport was not changed; and on September 10, 2013 he filed an application for judicial review. It was in this application that the Honourable Madam Justice Pemberton ordered the Respondent on October 11, 2013 to remove the stamp or modify it. It was only then that the Chief Immigration Officer struck out the word "**NOT**" and initialled same and also wrote the words "The bearer is a citizen of Trinidad and Tobago and is permitted to work" and the signature "Keith Sampson" appeared at the foot of the said statement.
6. The Complainant in his witness statement indicated that as a result of the restriction of "**no employment permitted**" indorsed on his passport he was forced to decline employment as a journalist at the T&T Mirror; in which he was offered a contract for 3 years at a monthly salary of \$6,000.00 for the first year, thereafter increasing by 10% in the second year and third year. He calculated that he would have earned \$72,000.00 in year one and \$158,400.00 for the second and third years.
7. He further stated in his witness statement that he had a reputation for being a controversial writer...but when his immigration status became known throughout the media fraternity he became embarrassed and humiliated.
8. He also indicated in his said witness statement that he suffered a loss of income from his business "*Unscathed Tattoo Studio*" in which he generated an annual income of \$580,609.00; and he suffered this loss for the period from March 2008 to September 2013 amounting to \$3,241,733.58.
9. The Complainant's counsel in his written submissions requested the Tribunal to award General as well as Special damages. However, there is a distinction between these two, according to Lord Goddard in *British Transport Commission -v- Gourley* (1956) A.C. 185 at p. 206 he stated that: "... damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and





proved. This consist of out of pocket expenses and loss of earning incurred down to the date of trial, and is generally capable of substantially exact calculations. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future”. Counsel for the Respondent on the other hand in her written submissions sought to persuade the Tribunal to award nominal damages, which was rejected.

## GENERAL DAMAGES

10. In the instant matter the Complainant in his uncontroverted evidence indicated that he was embarrassed and humiliated by the act of the Immigration Officer when he stamped his passport “**employment not permitted**” and when he inquired about the justification for the officer placing this stamp on his passport; the officer became verbally abusive and hostile saying “go to immigration, ent Sat Maharaj is your father? you don’t need work your father carried the government to court for the Trinity Cross and Radio License. Go let him fix it”
11. It is clear from the foregoing evidence that the Complainant was treated in a discriminatory manner – which is not contested by the Respondent. And he therefore must be compensated.
12. The jurisdiction of the Tribunal to make awards of compensation can be found in Section 41(4) of the Act wherein it states:  
*“The Tribunal shall have jurisdiction to make such declarations, orders and awards of compensation as it thinks fit”.*
13. The contemporary approach to dealing with the remedy of compensating the victim of discriminatory acts by a discriminator is succinctly stated by the learned author Karon Monaghan in his textbook entitled “*Equality Law*”, Oxford University Press, 2007 at page 575 para. 143 where he states that: “*Remedies for claims of discrimination closely match the remedies available in other claims for breach of a statutory tort. Compensation may be awarded, including compensation for INJURY TO FEELINGS and*

*aggravated damages. Compensation is otherwise generally to be assessed in the same way as with any other statutory tort. Exemplary damages may be awarded in an appropriate case”.*

14. In the English jurisdiction, the Court of Appeal in *Vento –v- Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102* in dealing with compensation for injury to feelings in anti-discrimination cases, was critical of the employment tribunal which awarded Ms. Vento £65,000 for injury to feelings, which sum included £15,000 as aggravated damages. The Court of Appeal found the award excessive. It substituted the sum of £18,000 for injury to feelings, plus £5,000 for aggravated damages. The court also discerned three broad bands of compensation for injury to feelings. These are as follows:

“(i) *The Top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*

(ii) *The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.*

(iii) *Awards of £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings”.*

15. The above *Vento* guidelines were updated in line with inflation in *Da’Bell –v- National Society for the Prevention of Cruelty to children (NSPCC) [2010] IRLR 19* where the top of the lower band moved from £5,000 to £6,000; the top of the middle band moved from £15,000 to £18,000 and the top of the higher band moved from £25,000 to £30,000. The court in that case noted that assessing compensation for injury to feelings is not an

exact science. Disputes about the placement within a band are likely to be about fact and impression.

16. However, since it has been advanced that “*remedies for claims of discrimination closely match the remedies available in other claims for a breach of a statutory tort*” it may be useful to examine decisions in this jurisdiction within the tort of defamation to be able to discern a trend of awards in such cases. In this regard the Tribunal examined a number of recent cases; these are as follows:

- a) *Pan Trinbago and Owen Serrette –v- Maharaj HCA 1071 of 1995*, where the court by its judgment delivered on December 20, 2002, awarded Pan Trinbago the sum of \$90,000.00, being damages for vindication of reputation, while Owen Serrette was awarded \$100,000.00 which said award included the additional element of damages for hurt feelings.
- b) *In Moore-Miggins –v- TnT News Centre HC 138 of 2001* where the allegation was made that the claimant had abandoned her legal practice to the detriment of her clients, the court in its judgment of July 17, 2007 awarded the claimant the sum of \$130,000.00 as compensatory damages and exemplary damages of \$20,000.00.
- c) *In Robin Montano –v- Harry Harinarine and Hindu Credit Union Communications Limited CV 2008 – 03039* the court, on March 22, 2012, awarded the claimant the sum of \$250,000.00 as general damages to compensate him for his injury to his feelings and reputation.
- d) *Nizam Mohammed –v- The Trinidad Express Newspaper Limited, Omatie Lyder and Ria Taitt, CV 2011 – 00264* is a case where the third named defendant wrote an article in which she stated that the claimant had been referred to the Disciplinary Committee of the Law Association and an order was made against him which was shown to be pure misinformation. In this case the court, by its judgment delivered on July 19, 2013, awarded the claimant the sum of \$325,000.00, inclusive of aggravated damages.



- e) *Dr. Keith Rowley –v- Michael Anisette, CV 2010 – 04909* is a case where the Defendant made certain defamatory statements of the claimant in Parliament and subsequently republished those statements in the media. The court by its decision delivered on February 12, 2014, awarded the sum of \$475,000.00, inclusive of an element of aggravated damages.
  - f) *Rajnie Ramlakhan –v- Trinidad and Tobago News Centre Limited and Ramjohn Ali, HCA No. S-634 of 1999* a case where the Plaintiff was called a racist, inter alia. The court, by its decision of May 29, 2009, awarded the Plaintiff the sum of \$700,000.00 as general damages, inclusive of aggravated damages, to compensate the plaintiff for the serious distress, hurt and humiliation suffered for the injury to her reputation and as a vindication of reputation.
17. It is apparent from the cases from this jurisdiction mentioned hereinabove, that our courts have awarded sums ranging from \$90,000.00 to \$700,000.00, depending on the seriousness of the defamation. And generally awarded compensation, taking into consideration the distress, hurt, suffering, injury to reputation and hurt feelings.
18. It is the opinion of the Tribunal that the discriminatory acts by the Respondent against the Complainant in this case was indeed serious. It began on March 19, 2008 and ended on October 11, 2013, as a result of judicial review proceedings at the High Court of Justice. It is also a finding of this Tribunal that the Immigration Officer on March 19, 2008 acted in a high handed manner, which in our view justifies an award – (inclusive of aggravated damages) - in the “Vento” upper band in the amount of £26,000 which is equivalent to approximated TT231,303.80 (using an exchange rate of £1 to TT 8.8963). This amount closely approximates the sum awarded in CV 2008-03039 Robin Montano –v- Harry Harinarine & Hindu Credit Union (Supra), and our award in E.O.T. No. 0002 of 2014 between Kerwin Simmons (Comp.) –v- The Water and Sewerage Authority of Trinidad and Tobago (Resp.) adjusted for inflation.

## SPECIAL DAMAGES

19. The Complainant requested loss of earnings from his practice as a journalist in the amount of \$406,600.00 and support this amount by a letter from the T&T News Centre in which he was offered employment to recommence writing a weekly column entitled "The Order of the Wood" commencing on May 3, 2008 for a period of three (3) years at a monthly salary of TT\$6,000.00 for the first year with a 10% increase for the remainder of the contract. In addition he was required to visit their office to sign the contractual agreement. This offer was as a result of a letter dated February 21, 2008 addressed to the T&T News Centre. However, based on the Prohibition stamp on his passport as regards to his employment, he could not enter into the said contract offered.

20. However, the calculation of the amount he would have earned for the 3 year period, would be as follows:

First year -	\$6,000.00 x 12 = \$ 72,000.00
Second & Third years -	\$6,600.00 x 24 = \$158,400.00
<b>TOTAL</b>	<b>= \$230,400.00</b>

Therefore the sum of \$406,600.00 is disallowed; however the Tribunal allows the sum of **\$230,400.00**.

21. With reference to his other claim in the amount of \$3,241,733.58 from his Tattoo business he sought to justify this amount by using his cash book records for 2007. He claimed that he made a profit of \$580,609.00 for that year and suggested that based on the 2007 performance the subsequent years would generate similar profits. The Tribunal found that "*reasoning*" rather tenuous to say the least, since to project future income one should realistically possess quite a few years of income to make any reasonable projected future income.

22. In addition, the Complainant called Mr. Reggie Ramdass to give evidence in support of the above business claim and he filed a witness statement dated August 20, 2015 in which he described himself as a tattoo artist and the owner of a business, trading as Paris Ink Tattoos and has been in business since 2007 and generated an average monthly income of

\$30,000.00. However, that evidence is of no assistance to this Tribunal as the income generated relates to his business and not that of the Complainant.

23. The final witness called by the Complainant to support his claim for special damages was Mr. Ramzan Soodoo, who gave a witness statement dated August 20, 2015 in which he described himself as a accountant, without condescending to give any information concerning his qualifications in accounting and whether he is a member of any recognised accounting body. In addition, he indicated that he was also an accountant for several other small businesses without giving some of the names of these businesses. However, at the trial of this matter on October 20, 2015, after he was sworn in as a witness, he was asked by counsel for the Complainant *"What is your occupation?"* his response was *"Well I do farming most of the times, I also do book keeping for small businesses"*
24. Based on his response on oath the Tribunal finds that Mr. Soodoo was less than honest in his evidence concerning his occupation as an accountant. And the Tribunal also finds that he was not qualified in the field of accountancy and therefore not competent to give any credible evidence concerning the accounts of the business "Unscathed Tattoo Studio". Consequently, the claim of loss of profits in the amount of \$3,241,733.58 has not been adequately proved and is hereby disallowed.

## **ORDER**

25. (i) The Respondent to pay the Complainant general damages (inclusive of aggravated damages) in the amount of \$231,303.80 with interest at the rate of 6% per annum from the date of filing the Complaint to the date of judgment.
- (ii) The Respondent to pay the Complainant special damages in the amount \$230,400.00 with interest at the rate of 6% per annum from the date of filing the Complaint to the date of judgment.

(iii) The Respondent to pay the Complainant his costs on the prescribed scale, that is, the sum of \$69,255.57 in accordance with rule 20.4(d) of the Rules of Practice and Procedure, 2016 of the Equal Opportunity Tribunal.

27. The foregoing decision was made and delivered by the Judge/Chairman of the Tribunal in accordance with Section 44 (7) of the Equal Opportunity Act, Chap. 22:03 which states:

*"The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him".*

**HIS HONOUR MR. RAJMANLAL JOSEPH  
JUDGE / CHAIRMAN  
EQUAL OPPORTUNITY TRIBUNAL**