THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Reportable

CASE NO: 295/05

In the matter between :

THE MINISTER OF SAFETY AND SECURITY Appellant

and

SEYMOUR, DENNIS THOMAS Respondent

Before:	**NAVSA, NUGENT & HEHER JJA**
Heard:	**2 MAY 2006**
Delivered:	**30 MAY 2006**
Summary:	**Unlawful arrest and detention – amount of award.**
Neutral citation:	**This judgment may be referred to as The Minister of Safety and Security v Seymour, D T [2006] SCA 67 (RSA)**

J U D G M E N T

NUGENT JA

NUGENT JA:

[1] The respondent, Mr Seymour, was unlawfully arrested and imprisoned by the state for a period of five days. For that he was awarded general damages of R500 000 by the Johannesburg High Court. This is an appeal against that award. It comes before us with the leave of that court.

[2] At the time Seymour was imprisoned he was 63 years old. He lived on an agricultural small-holding in the Ennerdale district. Seymour was the chairman of an association of small-scale farmers from previously-disadvantaged groups that he had been instrumental in forming. He had also taken the initiative to create a co-operative to establish and operate a dairy. The members of the co-operative were some of the members of the association, who were to contribute grants they were entitled to from the government, and it was otherwise to be funded with assistance from government agencies and the Danish International Development Agency. Seymour was the managing-director of the co-operative and received a salary of R23 000 per month.

[3] Some members of the association who had been excluded from the co-operative believed that financial irregularities were taking place and reported their belief to the police. As a result, a certain Superintendent Smith, of the commercial crime unit of the police, obtained from Seymour

copies of the accounts and other documents of the co-operative. Some time later, on Friday 29 December 2000, at about 16h30, Smith arrived at Seymour's premises. He asked Seymour to accompany him to the Ennerdale police station to make a statement. Seymour was at first reluctant but eventually he agreed to do so. He followed Smith to the police station in his own vehicle. When they arrived at the police station Smith instructed the duty officer to arrest Seymour. Seymour was informed that he was being arrested on a charge of fraud and he was informed of his rights. Smith then departed.

[4] The duty officer permitted Seymour to telephone his daughter, who in turn telephoned other members of his family and informed them what had occurred. Seymour's family arrived at the police station and implored the police to release him but to no avail. Later Seymour was locked in a cell where he spent the night alone.

[5] Seymour suffered from high blood-pressure. The following morning he felt ill and experienced pains in his chest. He informed his son, who had arrived at the police station to see him, and his doctor was summoned. The doctor examined Seymour in an interview-room and diagnosed hypertension with angina. He told the police that Seymour should be admitted to a medical high-care unit. Such a unit existed at the Rand Clinic and the doctor

arranged for the resident physician to take over Seymour's further treatment when he arrived.

[6] Notwithstanding those medical instructions Seymour remained at the Ennerdale police station for the remainder of the day. Members of his family were in constant attendance and were given free access to Seymour. Later in the day the doctor was informed by a family member that Seymour had not been taken to the clinic. The doctor telephoned the police and repeated his instruction that Seymour should be taken to the clinic. He was told that the police were waiting for a vehicle to enable them to do so.

[7] At about 17h00 Seymour was taken in the rear of a police van to the Johannesburg Central police station. On his arrival his fingerprints were taken and he was placed in a cell. The police at Johannesburg had not been informed that Seymour was to be taken to the clinic, nor did Seymour tell them. Meanwhile, Seymour's doctor had again been alerted. At about 18h00 he arrived at the police station and repeated that Seymour required medical attention. Seymour was then taken to the Rand Clinic and admitted to the intensive-care unit at about 20h05. He slept through the night. The following day he was seen by a cardiologist and was transferred to a general ward.

[8] On Wednesday 3 January 2001 Seymour, in the company of his attorney, was taken by Smith, apparently from the clinic, to the magistrates' court at Vereeniging. The chief prosecutor declined to pursue the charge of fraud that had been levelled at Seymour and he was discharged.

[9] There is no indication in the evidence that Seymour received any medical treatment after he was discharged. But on 15 May 2003, after the present claim had been instituted, he consulted a psychiatrist to assess his condition. The psychiatrist diagnosed moderate to severe symptoms of depression and symptoms of post-traumatic stress, and expressed the view that the symptoms would respond to treatment. Seymour attributed those symptoms to his incarceration. No doubt that may have played a role, but in my view the evidence does not exclude other factors. In particular, his co-operative project had by then foundered, and that may also have played a role. Seymour did not submit himself to treatment for the symptoms that had been diagnosed. Asked why he had not done so Seymour responded that he relied rather upon his Christian convictions to see him through and expected that payment of compensation by the state would enable him to put the matter behind him.

[10] In its plea the state (nominally represented by the appellant) admitted that Seymour was arrested and detained unlawfully. The particulars of claim

went rather broader, alleging that the conduct of Smith was in other respects unlawful. In my view the conduct of Smith, described more fully in the evidence, is a matter to be taken account of in assessing the degree of humiliation to which Seymour was subjected, but was not established by the evidence to constitute a separate act of wrongful conduct. That is how the matter was dealt with by the court below and by counsel in argument before us. What was in issue at the trial, and now before us, is only what amount is appropriate to compensate Seymour for the wrong that was done.

[11] In *Protea Assurance Co Ltd v Lamb,*[1] Potgieter JA said the following in relation to general damages for bodily injury (the principles apply equally to a case like the present one) which was repeated more recently by this court in *Road Accident Fund v Marunga*:[2]

> 'It is settled law that the trial Judge has a large discretion to award what he in the circumstances considers to be a fair and adequate compensation to the injured party for these *sequelae* of his injuries. Further, this Court will not interfere unless there is a "substantial variation" or as it is sometimes called a "striking disparity" between what the trial Court awards and what this Court considers ought to have been awarded.'

[12] In assessing the appropriate award to make the court below considered awards that had been made in numerous earlier cases. The learned judge said

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[1] 1971 (1) SA 530 (A) 534H-535A:
[2] 2003 (5) SA 164 (SCA).

that the case that he found to be most illuminating was *May v Union Government*.[3] In that case an advocate of high standing was arrested on a charge relating to dishonesty and tried six months later. At his trial the plaintiff was acquitted after the first witness had given evidence. He sued the state for wrongful arrest and malicious prosecution. Broome J found that the prosecution was not malicious but that the plaintiff had been arrested unlawfully and then unlawfully detained for some hours. For that he was awarded £1 000. In making the award Broome J said the following:[4]

'The plaintiff is, and was then, an advocate of standing, and in actual practice. He was a professional man of good reputation in the community. He was the author of legal text books and of other works in more than one branch of literature. His arrest was unceremonious and was given wide publicity in the press. On the other hand, his period of actual detention amounted only to a few hours, and during that period he was shown some consideration. It was said that the shock of arrest impaired his health, which was not good at the time as he had suffered a coronary thrombosis some years before and lived under the constant threat of a further attack. But in fact no further attack occurred, and I do not think that his damages were appreciably aggravated by any actual impairment of his health. In my opinion, in all the circumstances, he is entitled to a substantial sum. Our law has always regarded the deprivation of personal liberty as a serious injury, and where the deprivation carries with it the imputation of criminal conduct of which there was no reasonable suspicion the injury is very serious indeed.

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[3] 1954 (3) SA 120 (N).
[4] At 130C-F.

Taking into account all the relevant circumstances, I find that the sum of £1,000 would be an appropriate amount.'

[13] In the present case the learned judge in the court below said that the equivalent of that award in present-day terms was 'in the order of R350 000 to R400 000'. Observing that that case was decided '40 years before we had constitutionally enshrined rights to freedom and dignity and much else besides' and that 'the courts must move, however glacially, to reflect in their awards for damages in cases of this nature, the change in values which have occurred not only in society as a whole but which we as judges are expected to apply' he concluded as follows:

'I wish to emphasise that my conclusion is this: a shift, even though it is not a so-called "sea change", must be manifested in the value which the courts attach to freedom and, correspondingly, the value to be applied to a person's deprivation thereof.'

[14] I do not think that the courts in earlier cases placed less value on personal liberty than ought to be placed on it today. Indeed, what was said in *May* shows the contrary. Nor do I think there is any basis for concluding that awards that were made at that time reflect a more tolerant judicial view of incursions upon personal liberty. It was precisely because personal liberty has always been judicially valued that the incursions that were made upon it by the legislature and the executive at that time were so odious. The real import of the Constitution has not been to enhance the inherent value of

liberty, which has been constant, albeit that it was systematically undermined, but rather to ensure that those incursions upon it will not recur. To the extent that the learned judge placed a jurisprudential premium on personal liberty that was absent before now,[5] in my view it was misdirected.

[15] The learned judge also seems to have misdirected himself in relation to the starting point for his assessment. The manner in which he arrived at the present-day estimate of the award in *May* was not expressed, but it is difficult to see how he arrived at his estimate of R350 000 to R400 000. Calculated according to the consumer price index referred to in Robert J Koch: The Quantum Year Book 2006, the present-day value of that award is approximately R116 000.[6] But that apart, in my view the amount that was awarded in the present case reflects a misdirection that seems to go rather deeper.

[16] As pointed out by Botha AJA in *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms*[7], it is generally undesirable to adhere slavishly to a consumer price index in adjusting earlier awards. But provided that stricture is borne in mind it is useful as a general guide to the devaluation of money. In the

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[5] Cf *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) esp para 67.
[6] The index for 1954 was 66,5.
[7] 1980 (3) SA 134 (A) 141G-H.

cases that follow I have added, in brackets, the value of the relevant award adjusted according to the indices in Koch.[8]

[17] The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that. As pointed out by Potgieter JA in *Protea Assurance*, after citing earlier decisions of this court:[9]

'The above quoted passages from decisions of this Court indicate that, to the limited extent and subject to the qualifications therein set forth, the trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries

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[8] The index for 2006 is 3 847.
[9] 535H-536B.

and their sequelae may have been either more serious or less than those in the case under consideration.'

[18] The dangers of relying excessively on earlier awards are well illustrated by comparing the award in *May* to the award that was made in *Maphalala v Minister of Law and Order*.[10] In *Maphala* the plaintiff was arrested on 23 June 1992 and released in consequence of an order of court on 16 September 1992. He was immediately arrested again and released only on 19 November 1992. During the period that he was detained the plaintiff was held in solitary confinement, mostly incommunicado, for 150 days. While in detention he was also tortured. In a comprehensive and closely reasoned judgment, and after referring to the decisions in *Ramakulukusha v Commander, Venda National Force,*[11] and *Minister of Justice v Hofmeyr*[12] (both of which the court considered to be less serious) Coetzee J awarded the plaintiff R145 000 (R300 000)[13] for his unlawful arrest and detention. (He was awarded an additional R35 000 for assault.) Needless to say, the circumstances in that case were gross compared to those in *May*. Whether the award in May was excessive, or the award in *Maphala* was niggardly, is beside the point. I use them only to illustrate that the gross disparity of the

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[10] Unreported decision of the Witwatersrand Local Divison under Case no. 29537/93, given on 10 February 1995.
[11] 1989 (2) SA 813 (VSC).
[12] 1993 (3) SA 131 (A).
[13] The index for 1995 is 1 863.

facts in each case is not reflected in the respective awards and neither is in those circumstances a safe guide to what is appropriate.

[19] The following awards also provide some indication of how other courts have viewed incursions upon personal liberty (they are by no means exhaustive of the cases that have confronted the issue). In *Solomon v Visser,*[14] a 48 year old businessman who was detained for seven days, first in a police cell and then in a prison, was awarded R4 000 (R136 000). In *Areff v Minister of Polisie,*[15] this court awarded a 41 year old businessman who was arrested and detained for about two hours R 1000 (R24 000). In *Liu Quin Ping v Akani Egoli (Pty) Ltd,*[16] a businessman who was unlawfully detained for about three hours was awarded R`12 000 (R16 978). In *Manase v Minister of Safety and Security,*[17] in which a 65 year old businessman was unlawfully detained for 49 days, incarcerated at times with criminals, the sum of R90 000 (R102 000) was awarded. In *Seria v Minister of Safety and Security,*[18] a professional man who was arrested and detained in a police cell for about 24 hours, for a time with a drug addict, was awarded R50 000 (R52 000).

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[14] 1972 (2) SA 327 (C). The 1972 index is 113.
[15] 1977 (2) SA 900 (A). Esp 914H-915A. The 1977 index is 194.
[16] 2000 (4) SA 68 (W). The 2000 index is 2 719.
[17] 2003 (1) SA 567 (Ck). The 2003 index is 3 392.
[18] 2005 (5) SA 130 (C). The 2005 index is 3 681.

[20] Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernable pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.

[21] In the present case Seymour was deprived of his liberty for five days. Throughout his detention at the police station he had free access to his family and medical adviser. He suffered no degradation beyond that that is inherent in being arrested and detained. After the first period of about 24 hours the remainder of the detention was in a hospital bed at the Rand Clinic. There can be no doubt that the experience was throughout traumatic and caused him great distress. But yet there were no consequences that were of sufficient concern to warrant medical attention after Seymour was released. As to the continuing depression and anxiety I am not sure that that can be attributed solely to the arrest and detention. Indeed, in his own words, the making of an award will enable him to finally put the matter behind him. Bearing all the circumstances in mind in my view an appropriate award is the sum of R90 000. That is so startlingly disparate

from the award made by the court below as to warrant interference with the award on those grounds alone.

[22] Accordingly the appeal is upheld with costs. Paragraph (a) of the order of the court below is set aside and the following paragraph is substituted:

'(a) The sum of R90 000.'

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R W NUGENT
JUDGE OF APPEAL

NAVSA JA) Concur
HEHER JA)