

Constitutional Law/Tort

Custodial death – Claim for damages on misfeasance of public office, assault, battery and false imprisonment – Whether High Court rightfully awarded damages for false imprisonment, public misfeasance and exemplary damages – Whether High Court judge erred in failing to consider 2nd appellant’s role in custodial death

Datuk Seri Khalid bin Abu Bakar & 4 Ors v N. Indra a/p P. Nallathamby

8 August 2014, Court of Appeal

Facts Following the custodial death of one Kugan a/l Ananthan (“deceased”), the plaintiff/respondent who is the mother of the deceased as administratrix of the estate, commenced legal proceedings against the first defendant/appellant (Deputy Commissioner of Police and the Chief Police of Selangor at the material time), the second defendant/appellant (a police constable of Taipan Police Station at the material time), the third defendant/appellant (the personal representative of the estate of Zainal Rashid bin Abu Bakar, the deceased, who was the Subang Jaya District Police Chief at the material time), the fourth defendant/appellant (the Inspector General of Police) and the fifth defendant/appellant (the Government of Malaysia) for damages based on the tort of negligence, breach of statutory duties, misfeasance of the public office, assault, battery and false imprisonment. The High Court allowed the respondent’s claim and awarded damages in the sum of MYR801,700.00. Dissatisfied with the decision of the High Court, the appellants appealed to the Court of Appeal.

Issues The first appeal concerned the question of whether damages were rightfully awarded for false imprisonment, public misfeasance and exemplary damages. In the second appeal, the 2nd appellant disputed the extent of liability and further alleged that the High Court judge failed to address his findings that there were other police officers involved in the circumstances leading to the deceased’s death which the 2nd appellant could not have been responsible for.

Held In allowing the appeal in part, the Court of Appeal set aside the award for false imprisonment on the basis that the deceased was lawfully detained. In affirming the awards of damages for public misfeasance and exemplary damages, the Court of Appeal further held that the High Court’s decision was justified to reflect the severity of the breach of the deceased’s constitutional rights. The Court of Appeal also ordered for the 2nd appellant’s liability to be amended and reduced to 45% upon ruling that the High Court judge had failed to address his findings when determining the liability of the 2nd appellant.