



[2022] JMSC Civ 112

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014 HCV04448

BETWEEN	CHRISTOPHER HALL	CLAIMANT
AND	CHINA HARBOUR ENGINEERING COMPANY LIMITED	DEFENDANT

Miss Serena Byron instructed by Everton J Dewar & Co for the claimant.

Mrs Colleen Franklyn for the defendant.

Heard May 24, 2022 and July 14, 2022

Assessment of damages - mallet finger deformity of the left index finger - 7% whole person impairment - PTSD diagnosis – damages for domestic help - lack of evidence to support claim for handicap on the labour market

CORAM: JARRETT, J (Ag)

Introduction

[1] June 3, 2013, turned out to be an unfortunate day for the claimant, Christopher Hall. While he was at work, he was instructed by his supervisor to repair a machine. In the process of effecting the repairs, the machine fell on his left hand, and caused serious injuries to his left index finger. The incident occurred at premises occupied by the defendant at Treadways District in the parish of St Catherine. At the time, the claimant was 30 years of age and employed to the defendant as an electrician. He filed suit against the defendant on September 22, 2014, seeking damages for

negligence as well as under the provisions of the Occupiers Liability Act. On November 7, 2014, judgment in default of defence was obtained against the defendant. That judgment was set aside on June 2, 2016, on the defendant's application. It was ordered that a defence be filed on or before June 16, 2016. The defence was filed on June 21, 2016. The defendant's failure to comply with an unless order subsequently led to the defence being struck out on July 3, 2017. Judgment was thereafter entered for the claimant on March 14, 2018. At the scheduled hearing of the assessment of damages, the defendant had not filed a Form 8A demonstrating that it intended to participate in the assessment of damages. Coupled with that, counsel for the defendant sought an adjournment on the basis that her client was not ready to proceed. Not surprisingly, counsel for the claimant objected to the adjournment. Given the absence of a Form 8A and a pattern of dilatory conduct on the part of the defendant reflected on the court's records, I refused to grant the adjournment. The sole issue for me to determine in this case is the quantum of damages to be awarded to the claimant.

The evidence

Non-pecuniary losses

[2] The claimant's witness statement made on December 15, 2015, stood as his evidence in chief. He testified that after he repaired the machine, he proceeded to test it when it "flipped over" and fell on his left index finger. After the incident he lost consciousness. On regaining consciousness, he felt excruciating pain. He was taken first to the Family Life Wellness Centre on Fletcher's Avenue and then to the Andrew's Memorial Hospital where he was prescribed pain medication. With the pain recurring after the medication wore off, on June 10, 2013, the claimant went to see Dr Andrew Ameerally, who determined that he was unfit to carry out his work. On a follow up consultation with Dr Ameerally three months later, on September 5, 2013, the claimant was informed that his finger was not healing and that he needed surgery. A bone graft with wire fixation was ultimately done. However, after surgery, Dr Ameerally recommended further surgery. On the

claimant's objection to that course of action, the suggestion from Dr Ameerally was to amputate the finger.

- [3] Unable to use his left hand because of the pain he was feeling, and dissatisfied with Dr Ameerally's recommendation of further surgery, the claimant turned to Dr Denton Barnes. Dr Barnes advised the claimant to do physiotherapy, but there was still no improvement. He was then told that he should learn to use his right hand, since the left hand was his dominant hand. The injury to his finger had an emotional effect on him as he was unable to care for himself and his family and it appeared that he was about to lose his livelihood as an electrician. He regularly wrapped his left index finger with a piece of cloth to avoid being reminded of the injury. Psychologist, Dr Geoffrey Walcott was consulted. He diagnosed the claimant with Post Traumatic Stress Disorder with symptoms of major depression.
- [4] The claimant's further evidence is that as a result of the injury to his finger, he was unable to perform many of his daily activities, including washing, cooking and cleaning. He would feel 'intermittent pain' whenever he 'tried to do anything'. Hired household help had to be sought two days per week for a period of seven months between June 2013 and December 2013. The injury has left him unable to properly use his hands and to secure meaningful employment. He has tried to use his right hand but has not mastered it's use.
- [5] The medical reports Dr Denton Barnes, Dr Geoffrey Walcott and Registered Physiotherapist Marcia Swyer-Forbers were tendered by the claimant and admitted into evidence. Dr Barnes has been practicing orthopaedics since 2002. He first saw the claimant on September 13, 2013. His findings on physical examination were as follows: -
- a) There was an obvious mallet finger deformity of the left index finger.
 - b) Two K wires were present in the left index finger.
 - c) The wounds to the left index finger were healed.
 - d) There was no evidence of pin site sepsis.

- e) There was decreased range of movement of the proximal interphalangeal and the distal interphalangeal joints of the left index finger.

Dr Barnes reports that radiographs showed a fracture of the middle phalanx of the left index finger with K wire fixation present. The claimant was advised to do repeat radiographs of the left hand to see whether the fracture had healed.

- [6] The claimant was seen again by Dr Barnes a month later on October 4, 2013. At that time, radiographs revealed that the fracture had healed, but there was pin site sepsis. Removal of the K wire was advised. It is not very clear from Dr Barnes' report when the K wire was removed, however the report does seem to suggest that this procedure was undertaken by him as he speaks about removing sutures and applying dressing on October 11, 2013 and advising the claimant to start physiotherapy.
- [7] On November 5, 2013, the claimant again consulted with Dr Barnes. The report on this visit is that the fracture of the left index finger middle phalanx had healed, but there was a decrease in the range of movement of the finger. Dr Barnes cautioned that as the claimant is left hand dominant and is an electrician, he was at risk of electrocution. He described the claimant's left index finger as having a 'significant deformity'. When the claimant saw Dr Barnes a few weeks later on November 29, 2013, although physiotherapy had begun, that did not seem to help with the decrease in the range of movement of the left index finger. By the December 31, 2013, visit; Dr Barnes described the claimant as still having a decrease in the range of movement in the left index finger with a: "mallet finger deformity". His functional assessment at that time was that the claimant is unable to work as an electrician, since he is left hand dominant and is therefore at a: "significant risk of electrocution and he is not able to withdraw the finger from the area where electricity is present".
- [8] The final reported consultation with Dr Barnes was on January 28, 2014. The claimant reported having difficulties moving the left index finger and holding onto small objects, and an inability to grip large objects without significant problems.

This is how the doctor records his findings on physical examination of the claimant on that last visit: -

- a) Grip strength to large objects was 5/5
- b) Grip strength to small objects was 3/5
- c) He was not able to hold very small object due to the fact that the index finger pulp was very sensitive and unable to oppose against the thumb
- d) There was a 70° fix flexion deformity of the distal interphalangeal joint
- e) Range of movement of the proximal interphalangeal joint was 5-45°
- f) Range of movement of the metacarpophalangeal joint was +20-90°.

Radiographs of the left hand revealed a gap of non-union of the left index finger middle phalanx and a mild change in the proximal interphalangeal joint. Dr Barnes said that the claimant was advised to change to being right hand dominant to improve his dexterity. Although there was some improvement with physiotherapy, Dr Barnes opined that the claimant was: “now at a steady state and will not gain and further meaningful improvement in the range of movement”.

[9] Due to the fixed flexion deformity of the distal interphalangeal joint, and the decrease range of movement of the proximal interphalangeal joint, Dr Barnes assessed the claimant as having a 63% impairment of the left dominant index finger, which he says is equivalent to a 12% impairment of the left extremity or a 7% whole person impairment. His prognosis is that the fixed flexion deformity of the distal interphalangeal joint and the decrease range of movement of the proximal interphalangeal joint have negatively impacted the claimant's hand function and his occupational performance as an electrician. It is his opinion that the claimant will have to change to being right hand dominant, should be wish to continue to work as an electrician, given the risk of electrocution.

[10] Dr Geoffrey Walcott is a consultant Psychiatrist. He says that he conducted a full psychiatric evaluation of the claimant on November 1, 2013 using history and

mental status examination. He did one follow up session with counselling psychologist Mr Garth Russel on November 8, 2013 from which he gathered information and performed further assessments. He states that his diagnostic impressions were guided by clinical experience as well as the Diagnostic Manual for Mental Disorders 4th Ed (DSM-IV). Dr Walcott reports that the claimant complained of having numerous episodes of vivid and intense flash backs throughout the day since the incident. These episodes are typically triggered by seeing his left index finger or from pains he may experience, and are accompanied by feelings of fear and dread. He carries around a cloth to wrap his finger so as to avoid seeing it. Persons in his community however provide a constant reminder of his injury as they call him "finger. He has feelings of sadness; his sleep pattern has been affected so too his appetite. He fears he will not get back to his normal self.

[11] On November 1, 2013, Dr Walcott made the preliminary diagnosis of Post-Traumatic Stress Disorder (PTSD). He opined that the claimant has symptoms of Major Depressive Disorder but he does not meet the full criteria of the illness. He assessed the claimant depressive symptoms as relating to the social impact of the injury and not from the injury itself. He describes the claimant as being concerned about the aesthetic impact of the injury as the deformity of his left index finger is obvious, has caused distress to his children and resulted in him being labelled by his community. He says that the claimant admitted to drinking alcohol socially prior to the incident, but has since been drinking alone.

[12] Dr Walcott's opinion is that the claimant: "meets the DSM-IV diagnostic criteria for a major psychiatric disorder, Post Traumatic Stress Disorder (PTSD)". He says that PTSD is characterised by a cluster of symptoms occurring in the aftermath of a severely traumatic event. In his assessment, the claimant's diagnosis has resulted in a: "significant impairment in his social and occupational functioning resulting in a diminished quality of life." The claimant was started on an antidepressant. Using the State of California (USA) Schedule for Rating Permanent Disability (2005), Dr Walcott says that his "initial assessment" of the

claimant is that he had a whole person impairment resulting from his psychiatric complaint of 25% from a Global Assessment Score of 54.

- [13] Physiotherapist Marcia Swyer-Forbes reports that the claimant did three sessions with her. Her observations of the claimant's left index finger largely mirror the findings of Dr Denton Barnes. Her first session with the claimant was on November 11, 2013. On palpation there was pain on anterior posterior pressure of the distal interphalangeal joint of the left index finger. Her last session with the claimant was on February 15, 2014, at which time her evaluation was that no improvements were seen. She opined that he started physiotherapy late. According to her the joints of fingers respond to prompt movement. She said that the claimant reported that the long period of immobilization was because of the difficulties he had with healing.

Pecuniary losses

- [14] The claimant pleaded special damages totalling \$ 856,000.00. This included medical expenses, the cost of physiotherapy, transportation costs and, the cost incurred to employ a helper to assist him with his daily duties. Also included in the pleadings as special damages was what was described as the cost to further employ a helper for one year. The claimant gave evidence of paying \$8,000.00 per week for a helper over a 28-week period totalling \$224,000.00. His evidence in relation to the total cost of out of pocket expenses is \$ 397,500.00. He gave no evidence of the need for future assistance from a helper and, despite pleading that he was handicapped on the labour market, he gave no evidence in relation to this head of damages. He did however give evidence in his witness statement of being unemployed in December 2015, when the statement was made. At trial no evidence was led as to whether he is currently still unemployed.

Claimant's submissions

- [15] Miss Serena Byron counsel for the claimant relied on the authorities of **Marcia McIntosh v Elite Wholesale and Distribution Limited**, decided on March 31, 2009; **Donovan DeSouza v CB Duncan & Associates Ltd**, **Victor Whyne**,

Rohan Roberts (Administrator Ad Litem in the Estate of Anthony Roberts, deceased) and Rohan Roberts, decided June 18, 2004; and **Garth Burton v Jamaica Biscuit Company**, decided February 23, 2011. She banked on the decision in **Marcia McIntosh** to support the claimant's claim for domestic assistance. The claimant in **Marcia McIntosh**, was just shy of 30 years of age when she was injured in a motor vehicular accident and was awarded a sum to cover her expenses for a helper to provide domestic aid. Counsel sought support for the claimant's claim for pain and suffering and loss of amenities in **Donovan DeSouza**. Miss Byron argued that although the claimant in **Donovan DeSouza** suffered fractures of several joints in his hand as well as an amputation; and his injuries were more significant than those of the claimant at bar, the decision is a good comparable. She said that the claimant **Donovan DeSouza** was a painter and like the claimant at bar, required the use of his hand for his trade. She contended that both claimants' ability to earn a living, were affected by their injuries. **Donovan DeSouza** like the claimant was unable to hold onto things with his injured hand.

- [16] In her bid to show the usefulness of the **Donovan DeSouza** decision, counsel pointed to the fact that in the case of the claimant, he has been advised that he ought to stop working as an electrician. Although no similar warning was issued to **Donovan DeSouza**, he could no longer continue to do the job of a painter. Miss Bryon further submitted that in the case of **Donovan DeSouza**, there was no evidence of pain and suffering, but in the case at bar, there is evidence of the claimant experiencing excruciating pain. There was evidence she says of the claimant's difficulty with the healing of his injured finger and the onset of infection which delayed the healing process. She remarked that there was no similar evidence of infection and its impact in the case of the claimant **Donovan DeSouza**. Counsel then focused her attention on the impact the injuries had on the quality of life of both the claimant **Donovan DeSouza** and the claimant at bar. Both claimants she posits, have had their enjoyment of his life diminished by their respective injuries. She pointed to the claimant's evidence of hiding his finger with

a cloth. Both claimants, she argued, suffered injuries to their dominant hand. Counsel submitted that the loss of a finger by amputation in **Donovan DeSouza** was equivalent to the claimant's left index finger deformity since the claimant cannot use his left index finger and that loss is tantamount to an amputation. The sum of \$1,200,000.00 was awarded in **Donovan DeSouza**, which updates to \$4,914,208.71 using the April 2022 consumer price index.

[17] **Garth Burton v Jamaica Biscuit Company** was said to be a useful authority because, coupled with injuries to his fingers, the claimant in that case was also diagnosed with PTSD. According to Miss Byron, the court awarded the sum of \$500,000.00 for PTSD which updates to \$ 940,620.25 using the April 2022 consumer price index. She recommended that I award the claimant \$4,500,000.00 for pain and suffering and loss of amenities and \$ 940,000.00 for PTSD making a grand total of \$5,440,000.00 for general damages. Counsel made no submissions in relation to the claim for handicap on the labour market. In closing she said that although pleaded, no evidence was given by the claimant to support such a claim.

Analysis and discussion

[18] The purpose of damages in personal injury claims is compensatory. But while money cannot fully compensate for a physical or psychiatric injury, nevertheless, judges faced with assessing damages for non-pecuniary losses, are called upon to do the very best they can to award a sum of money which places the claimant, as near as possible, in the position he would have been in had the injury not occurred. In seeking to find a reasonable sum to compensate a claimant, it is axiomatic that judges, with the assistance of earlier comparable authorities, consider the nature and extent of the injury and any resultant incapacity suffered as a result. As manifest as this principle has become, I nevertheless remind myself of it as I embark upon the process of assessing damages in this case.

[19] Having regard to the claimant's evidence as well as the medical report of Dr Denton Barnes, I am satisfied that the injury he suffered to his left index finger, was as a

result of the incident which took place while he was at work on June 3, 2013. The claimant's evidence is that he felt excruciating pain after the machine fell on his left index finger. I have no reason to doubt the veracity of this evidence. At trial, there was nothing about his demeanour or attitude that would lead me to doubt his credibility. The evidence reveals that the claimant endured a bone graft with wire fixation of his left index finger but his healing was difficult and protracted. Five months after the incident, and after the removal of the K wire, Dr Denton Barnes' description of the claimant's left index finger as having a significant deformity is quite telling. As a consequence of the deformity, his range of movement in the left hand was decreased.

[20] The extent of the deformity of the claimant's left index finger is evident from Dr Barnes' functional assessment that he can no longer work as an electrician. He describes the injury as a "mallet finger deformity". I take judicial notice of the fact that a mallet finger bends inwards towards the palm. I am satisfied that this deformity has incapacitated the claimant in his use of his hands particularly in his job as an electrician where he is exposed to electricity and where the dexterity of his dominant hand is critical to prevent electrocution. I therefore accept Dr Barnes' functional assessment. The claimant is left hand dominant. One's dominant hand is the hand used to perform fine and gross motors tasks. I therefore accept the claimant's evidence that the injury affected his ability to perform his daily activities such as washing, cooking and cleaning. His evidence that he employed a helper to assist him with these daily activities during the seven months' period after his injury, I also accept.

[21] I however have some concerns with Dr Geoffrey Walcott's medical report. The first concern I have is that it is not clear to me whether he saw the claimant once or twice. He says he did a full psychiatric evaluation of the claimant on November 1, 2013, seven months after the incident; and a follow-up session with psychologist Mr Garth Russell on November 8, 2013. The claimant however gives no evidence of seeing a psychologist. Therefore, in the absence of an explanation from Dr

Walcott of the nature of this “follow up session”, and the role of Mr Garth Russell in the treatment of the claimant, there is not much I can do with this evidence.

- [22] The second concern I have is that Dr Walcott gives the claimant a whole person impairment rating at his initial assessment, which was on November 1, 2013, and he says he relies on the “State of California (USA) Schedule for Rating Permanent Disability (2005)”. I ask myself how he could make a permanent assessment rating without positing that the PTSD (which he diagnosed), is not likely to change significantly overtime even with rehabilitative treatment. I note that under the **American Medical Association’s Guides to the Evaluation of Permanent Impairment 6th Ed**, as it relates to mental and behavioural disorders, as a general principle a condition is rated as permanent when it is not expected to change significantly over the next 12 months. Dr Walcott gives no indication in his report of any such expectation. Indeed, the same **American Medical Association’s Guides to the Evaluation of Permanent Impairment** state that the proper evaluation of an impairment must take into account variations in the level of functioning overtime. Furthermore, on his own evidence, he only did one full psychiatric evaluation of the claimant. I question whether one such session would be sufficient to enable him to do a permanent disability rating of the claimant relative to the PTSD diagnosis.
- [23] The third concern I have is with Dr Walcott’s Global Assessment Functioning (GAF) rating of 25% based on a GAF score of 54. According to the **American Medical Association’s Guides to the Evaluation of Permanent Impairment** (supra), the GAF is a scale by which mental and behavioural disorders are rated. It describes a GAF score between 50 – 60 as: “Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g. few friends, conflicts with co-workers)”. Such a score has a GAF impairment score of 10% and not 25% as stated by Dr Walcott.

[24] Despite these concerns which all relate to Dr Walcott's disability assessment, I am prepared to accept his diagnosis of PTSD. Therefore, while I do not place significant weight on his disability assessment rating due to the concerns I have highlighted, I will accept that in the seven months after the incident, the claimant had the cluster of symptoms that he describes. The claimant has said that the injury has had an emotional effect on him. He hides his finger by wrapping it in a cloth as some temporary reprieve from remembering that he has a deformity. He saw Dr Walcott seven months after the incident. His evidence is that he needed domestic help for seven months after the injury. His means of livelihood he can no longer pursue. He testified about the distress of being labelled "finger" within his community and the impact of his injury on his children and his ability to support his family.

[25] In **Garth Burton v Jamaica Biscuit Company**, the claimant suffered injuries to both his right and left index fingers as a result of an incident which occurred when he was cleaning a cutter while at work. In relation to the left index finger he suffered an amputation through the proximal interphalangeal joint, resulting in no distal neurological or vascular function. As to the right index finger, there was amputation at the level of the distal interphalangeal joint. He also had a comminuted distal phalangeal fracture of the right index finger and his whole person impairment was assessed at 14%. It is reported that he had intense pain both before and after surgery and since the incident he was in shock and depressed. He could no longer do his job as an assistant line operator and was relegated to a lower status in the defendant company. He was diagnosed by Dr Wendell Abel who saw him two and a half years after the incident, as having PTSD and major depression. The court awarded him damages for pain and suffering and loss of amenities in the sum of \$2,500,000.00 and \$500,000.00 on account of the diagnoses of PTSD and major depression. This award was made on February 23, 2011. Using the current CPI for May 2022, those figures update to \$4,753,906.20 and \$ 950,781.25 respectively.

[26] There are several factors that distinguish the claimant in **Garth Burton** from the claimant at bar. **Garth Burton** had amputations on two fingers. One on each hand. He had a whole person impairment of 14%. Dr Wendell Abel, a psychiatrist diagnosed him definitively with both PTSD and major depression two and a half years after the incident. The claimant did not suffer an amputation. As a result of his left index finger deformity, he did not have as high a whole person impairment rating as **Garth Burton**. His was 7% or half that of **Garth Burton**. Without the aid of medical expert opinion on the point, I am not prepared to accept Ms Bryon's submissions that the amputations suffered by the claimant **Garth Burton** are equivalent in terms of functionality, to the mallet finger deformity of the claimant's left index finger. In relation to the psychological impact of the injuries, Dr Walcott said that the claimant did not meet the full criteria for Major Depressive Disorder even though he had symptoms of the disease. In **Garth Burton**, Dr Abel definitively made the diagnosis of major depression. It is my impression that the physical and psychological injuries suffered by the claimant **Garth Burton** were more serious than those suffered by the claimant at bar.

[27] The claimant in **Donovan DeSouza v CB Duncan & Associates Ltd, Victor Whyne, Rohan Roberts (Administrator Ad Litem in the Estate of Anthony Roberts, deceased) and Rohan Roberts**, had fractures of the distal phalanx of the right index finger, the middle phalanx of the right middle finger, the proximal phalanx of the right ring finger and a traumatic amputation through the proximal phalanx of the right little finger. He ultimately suffered the amputation of the 4th and 5th fingers of the right hand. His injuries resulted from a motor vehicular accident. With a 30% impairment of his right hand, no whole person impairment rating and in the absence of any evidence of pain and suffering, the court awarded him \$ 1,200,000.00 for pain and suffering and loss of amenities. That award was made on June 18, 2004, and updates to \$ 4,967,346.80, using the current consumer price index for May 2022. The differences between the physical injuries suffered by the claimant and those suffered in **Donovan DeSouza** are evident. The claimant **Donovan DeSouza** had two amputations and several fractures. In the

result, his right hand impairment was 30%. The claimant at bar suffered no fractures. Nor did he suffer any amputations. The impairment rating for his left hand due to the deformity is 12%, which is around two and a half times less than the right-hand impairment rating in **Donovan DeSouza**. The claimant's injuries are evidently less severe than those of **Donovan DeSouza**.

[28] With the clear disparities between the injuries suffered by the claimant and those reported in the above authorities, it is my view that to arrive at a reasonable award for the claimant's pain and suffering and loss or amenities, the updated figures in both these authorities should be discounted by at least 40%. I therefore award the sum of \$ 3,000,000.00 for pain and suffering and loss of amenities. In relation to PTSD, I award the sum of \$ 750,000.00. The total general damages I award is therefore \$ 3,750,000.00. In all the circumstances, I believe this is a reasonable sum.

Handicap on the labour market

[29] A claim for handicap on the labour market is no longer shrouded in as much doubt and uncertainty as it used to be decades ago. In our jurisdiction, the decision of Sykes J (as he then was) in **Andrew Ebanks v Jephther McClymount**, delivered March 8, 2007, is in my view, close to being the Jamaican *locus classicus* in this area of the law. It therefore warrants the following extensive quote from the decision, in which Sykes (J) outlines some guiding principles to consider when dealing with a claim under this head-:

- a) If the claimant is working at the time of the trial and the risk of losing the job is low or remote, then the lump sum method is more appropriate, and the award should be low (**Ashcroft v Curtin; Gladys Smith v The Lord Mayor**)
- b) If the claimant is working at the time of the trial and there is a real or serious risk of losing the job and there is evidence that if the current job is lost there is a high probability that the claimant will have difficulty finding an equally

paying or better paying job than the lump sum method may be appropriate depending, of course, when this loss is seen as likely to occur. The size of the award may be influenced by time at which the risk may materialise. Admittedly, this is a deduction from what Lord Denning said in **Cook v Consolidated Fisheries**.

- c) It seems that if the claimant is a high-income earner the multiplier/multiplicand method may be more appropriate. This latter point seems to be a principle that is emerging from the Jamaican case of **Cambell v Whyllie**. This proposition is derived from my attempt to reconcile **Campbell** and **Consolidated Fisheries**. Both cases are very close in terms of the actual evidence before the court, the main difference being the earning power of the medical doctor vis vis a young man working on a trawler and then later a lorry driver.
- d) The lump sum is not arrived by reference to and comparison with previous cases (**Nicholls v National Coal Board**);
- e) If the claimant is not working at the time of the trial and the unemployment is the result of the loss of earning capacity then the multiplier/multiplicand method ought to be used if the evidence shows that the claimant is very unlikely to find any kind of employment or if employment is found but the job is very likely to be less well paying than the pre-accident job, assuming that the person held a job. The reason is that the financial impact of the loss of earning capacity would have begun already and the likelihood of the financial impact being reduced by the claimant finding employment would be virtually none existent.
- f) If the person has not held a job but there is evidence showing the person is unlikely to work because of the injuries, then the lump sum method is to be used (**Joyce v Yeomans**).

[30] In the case before me, the claimant's evidence, supported by the medical opinion of Dr Denton Barnes, is that he can no longer work as an electrician due to the risks attendant on his left index finger deformity. There was however no evidence

given by the claimant of his employment status at trial; whether or not he had mastered the use of his right hand since making his witness statement in December 2015; or whether he has had difficulty finding other employment since the incident. Due to the lack of evidence, I am unable to fit the claimant into any of the categories outlined in **Andrew Ebanks v Jephther McClymount**. Counsel Miss Byron was right to concede that no evidence was given by the claimant to support a claim under this head.

Domestic help and special damages

[31] As a matter of principle, a claimant in a personal injury claim is entitled to recover the cost of paid assistance and care which is reasonably incurred. I have accepted that the claimant required help with his usual daily activities for the first seven months after the incident. He has provided evidence both oral and documentary to support paying a helper \$8,000.00 per week for 28 weeks which is approximately seven months. I therefore have no difficulty awarding him the total sum of \$224,000.00 under this head. I find the incurred cost reasonable having regard to the nature and extent of the injury to his left index finger. The claimant's proven special damages are as follows: -

a) Domestic help	-	\$224,000.00
b) Physiotherapy	-	\$ 45,000.00
c) Medical report of physiotherapist	-	\$ 7,000.00
d) X-rays	-	\$ 6,000.00
e) Medical report of Dr Barnes	-	\$ 20,000.00
f) Medical report of Dr Walcott	-	\$ 45,000.00
g) Transportation	-	\$ 50,500.00
Total: -		\$ 397,500.00

For special damages therefore I award the total sum of \$397,500.00

Conclusion

[32] In the result, my orders in favour of the claimant are as follows: -

- a) General damages in the sum of \$3,750,000.00 with interest at 3% per annum from September 24, 2014, to July 14, 2022.
- b) Special damages in the sum of \$397,500.00 with interest at 3% per annum from June 3, 2013, to July 14, 2022.
- c) Costs to the claimant to be agreed or taxed.