IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. C.L.J 015 OF 1995

BETWEEN *ANTHONY JACKSON*
(a minor by Mavis Arnold, his mother and next friend) and MAVIS ARNOLD

1st CLAIMANT

AND *DR. GEORGE DONALDSON*

1st DEFENDANT

AND *THE ATTORNEY GENERAL OF JAMAICA*

2nd DEFENDANT

Mr. Roy Fairclough and Mr. Ronald Paris
Instructed by Paris & Co. for Claimant.

Miss Julie A. Thompson and Mr. Stuart Stimpson
instructed by the Director of State Proceedings for Defendants.

24TH April, 2007
25TH April, 2007
27th June, 2008

Medical Negligence

Marsh J.

The claimant Anthony Jackson was reportedly born on 22nd January, 1983. On the 31ST day of January, 1994, some days past his eleventh birthday, the first of an unfortunate sequence of events occurred. He was at home in Retirement, St. James, playing with his

friend Tommy, when he fell and broke his left hand receiving a cut between the wrist and elbow. He w as taken for treatment to the Cornwall Regional Hospital, sometime between 4 p.m. when it happened and 5 p.m.

By 5 p.m. when his mother came to the hospital the claimant Anthony Jackson had gone to the Third Floor where patients register, and had been registered.

An x-ray was taken and he was placed in a ward on the hospital's 8th floor. He received liquid medication and was put to share a bed with another guy. His hand was still in the sling made from a belt which had been put on the damaged hand the previous day at home.

The doctor, Doctor Donaldson put the claimant's injured hand in plaster of paris, after looking "on the x-ray." The claimant denied that only dressing of the hand took place, even though a bone protruded through broken skin. He was also adamant that Dr. Donaldson did nothing to him before he placed the plaster of Paris on his hand. He spent the night in great pain. His cries for help attracted reproach from a nurse but no assistance was forthcoming that night or for sometime next day.

The claimant was so loud in his bawling that the nurse called Dr. Lindo who came, during the night and cut a hole in the cast. By this time the hand "was smelling awful like it was rotten." That night and the next morning the pain not only continued but became worst. His mother was sent for, spoken to by Dr. Lindo and the cast was removed from the injured hand on the 3rd day of February, 1994. None of the fingers responded to movement; fingers were swollen and black and blue. After he was put to sleep, his hand was amputated at a point some 3 -4 inches below the left shoulder.

After a further hospitalization of two months, he was released. Later, the claimant was examined by Professor John Golding and Dr. Paw Tun at the Mona Rehabilitation Centre.

These are the unfortunate circumstances which formed the basis of Writ of Summons and Endorsement and Statement of Claim filed on the claimant's behalf against the defendants in this matter on the 31st January, 1995.

The claimant contended that the first defendant Dr. George Donaldson treated him unskillfully and negligently.

By virtue of this negligence the claimant developed gas gangrene when he was treated at the Cornwall Regional Hospital for a compound fracture he had sustained. This resulted in an amputation of the injured left arm. Further the claimant will rely upon the doctrine of res ipsa loquitur.

The 2nd defendant's amended defence denied that the 1st defendant was negligent. The sole admission was that on the 1st day of February, 4. X-rays were obtained and the 1st defendant applied a plaster of paris cast to the claimant's left hand; which left hand was amputated and that claimant was discharged from hospital in March 1994.

The 2nd defendant further denied that the first defendant breached his duty and treated the claimant unskillfully or negligently.

The 2nd defendant will say that subsequent to the treatment by the 1st defendant, Medical personnel's observations indicated that the claimant's condition was fair and that the left hand appeared normal and with no signs of a right plaster cast.

Further, the 1st defendant was on departmental leave when the claimant started showing signs of adverse development in the left hand, to the time of the amputation.

The claim is in negligence – the particular negligence alleged is medical negligence.

The prime issues in this case are

(a) Whether the 1st defendant are negligent in the treatment of the claimant; if this is so, whether the 2nd defendant is vicariously liable.

(b) If the court finds that the 2nd defendant is vicariously liable by virtue of the negligent and unskillful treatment of the claimant, what quantum of damages the Court should award.

The only evidence produced by the claimant, is to be found in the claimant's witness statement and the cross examination. The defendants relied on the evidence of Dr. Francis Carlyle Lindo, Medical doctor and Consultant Orthopedic surgeon at the Cornwall Regional Hospital on 31st January, 1994. He has been consultant Orthopedic Surgeon at the said hospital since November, 1992.

Dr. Lindo first saw the claimant on February 1, 1994. This was while the doctor was doing a ward round that morning. Neither

himself nor the 1st Defendant Dr. George Donaldson had been summoned to see the claimant or to the ward the previous night.

The claimant had an open fracture and bone was gaping through the skin – this was noted to be a compound fracture.

Dr. Lindo took the decision to debride and release the wound, clean it and remove from it any dead tissue or dirt. Both operating theatres were unavailable. Normally there were four but the hospital was undergoing major rebuilding at the time. A wait of six hours would have to take place before one of the operating theatres would become available. Since such a delay would be too long a time to achieve the best outcome, alternate arrangements were made. In a clean room in the outpatient's department, in aseptic condition, Dr. Lindo cleaned the claimant's wound and excised all "dead muscles."

Dr. Donaldson, after the wound was left open and packed with a gauze swab soaked with povidine iodine, applied a plaster of paris cast.

Dr. Lindo observed that this procedure was correctly done. The claimant was returned to his ward. Later, that same evening, the cast was split longitudinally so the skin could be observed – standard procedure in these cases. Next day, Dr. Donaldson being absent,

Dr. Lindo saw the claimant made further opening of the cast and elevated the arm.

On the following day, the 3rd day of February, 1994, the claimant's hand was noted to be cold, swollen, had crepitus and a foul smell. It was diagnosed that there was gas gangrene.

After Dr. Lindo had explained to the claimant's mother what had happened, at about 2 pm that day the claimant's left arm was amputated at a point above the elbow.

Dr. Lindo deponed that he and Dr. Donaldson, the 1st defendant took the appropriate steps in treating the claimant "as soon as he came into our service" and despite the best efforts and appropriate treatment he could have developed gas gangrene.

The claimant's permanent partial disability of the limb was 100% and 60% of the whole person.

The evidence on which the claimant relies is that of the claimant himself. The claimant had in his further amended Statement of Claim indicated that if necessary, he would rely upon the doctrine of res ipsa loquitur. (See paragraph 8 (l)).

The classic definition of the doctrine of res ipsa loquitur is to be found in the judgment of Sir William Erle CJ in ***Scott v. London and St. Katherine Docks Co. (1865) 3 H & C 596 at 601-***

> ***"... but where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant that the accident arose from want of proper care...'***
>
> ***When all the facts are not known the maxim helps the plaintiff to discharge the onus placed on him to prove negligence."***

The undisputed evidence of the claimant is that on the 31st day of January, 1994, he fell while playing and broke his left hand and sustained a cut to his left elbow.

He was taken to Cornwall Regional Hospital where they registered him and made him to wait on a doctor. He had reached the hospital at about 5 p.m. that day. At about 8 p.m. he was placed on a ward on the eighth floor after an x-ray had been taken. He received medicine in liquid form and was placed with another "guy" on a bed.

The 1st defendant look on the x-ray. He put plaster of paris on the claimant's hand and returned him to the eighth floor.

Where the fracture existed, the bone had protruded. They did not dress the hand. Because of pain, the claimant was crying and making so much noise, the nurse called Dr. Lindo who came and cut a hole in the cast. This was about 9 p.m. The claimant's mother came and was spoken to by Dr. Lindo who later cut off the cast from the hand, which was by then dead.

This was the 3rd day of February, 1994.

The claimant was taken to the operating theatre and his left arm was amputated surgically at a point some three to four inches below the shoulder.

He remained in hospital for about two months, still in great pain.

The medical records of the claimant were not located by the Health Records Administration as they were either mislaid or missing "prior to January 2005", and have not since been traced.

Dr. Golding saw the claimant after the amputation, took measurement for prosthesis and indicated the cost to be $2,500 U.S.

The claimant's Attorney at Law submitted that the evidence shows that there was an admitted breach of duty of the servants or agents of the 2nd defendant at the Cornwall Regional Hospital.

The loss suffered by the claimant was directly caused by breaches of duty and that loss was not too remote.

The claimant's injury ranked as a medical emergency. The consultant Othopaedic Surgeon, Dr. Lindo, was not alerted by any member of the hospital staff, when there was in place a system for so doing.

It was because the claimant's life was threatened by gas gangrene that amputation of the left arm became necessary.

The claimant had been seen by doctors before he was seen by Dr. Lindo. There is evidence from Dr. Lindo that the cause of the gas gangrene was infection by bacteria present in foreign matter which had entered the claimant's arm at the time of the receipt of the injury.

Dr. Lindo had, in cross examination indicated that he was of the opinion that delay in treatments i.e. admitted at 6:42 p.m. seen by him (Dr. Lindo) at 10 a.m. debridement done one hour later, it could be said with certainty that by then infection was already established.

The medical people, it was further submitted did not act in accordance with proper practice and in a timely manner.

The claimant's burden of proof is not proof beyond a shadow of a doubt. He needs to satisfy the Court that it is more likely than not that the claimant's loss was either caused by or contributed to by the defendant's breach of duty.

Steps were taken to give the claimant tetanus toxoid and penicillin, but nothing was done to remove contaminant foreign matter from the injury site.

The defendant had not done to completion, all those things demanded to minimize the risk, such as irrigation, debridement or alerting the Consultant Orthopaedic Surgeon, Dr. Lindo.

Mr. Fairclough referred to and relied upon the stated opinion of Dillon L.J. in ***Bull v. Devon AHA (1993) 4 Med. L.R. 117.***

> ***"In my judgment the plaintiff has succeeded in proving by the ordinary civil standards of proof that the failure to provide for Mrs. Bull, the prompt attendance she needed was attributable to the negligence of the defendant's in implementing an unreliable and unsatisfactory system for calling the registrar."***

The claimant is contending that the defendants saw the need to do anti infection work, but only did part of what they were obliged to do. Infection has ensued and defendants had not done all he reasonably could to have prevented it.

It is immaterial that the doctors who saw the claimant before Dr. Lindo did, were junior doctors. See **Wilsher v. Essex AHA (1986) 3 All E.R. 801.**

The question to be answered must be whether the defendant had taken steps to avoid what had happened. What happened was a reasonably foreseeable result of action or inaction.

The duty to treat the claimant in accordance with that normally given by skilled medical people arises immediately the claimant became a patient in the Cornwall Regional Hospital.

The Claimant seeks damages: -general damages, special damages and aggravated damages.

General Damages:-

Although he conceded that the instant case is not on all fours with this case, Mr. Fairclough relied on ***Victor Campbell v. Samuel Johnson et al (1991) 28 JLR 109 and Khan's Vol. 5 P. 91.***

Here the claimant's right arm had to be amputated after it had been crushed in an accident. The claimant was then a passenger in a government owned motor vehicle, driven by the first defendant. The sum awarded for Pain, Suffering and loss of amenities then (22nd March, 1991) was $250,000.00 – in Today's Money, this award would be equivalent to approximately $3,600,000.00.

The claimant in the instant case was in excruciating pain and when the injured arm was placed in a plaster of paris cast, the pain was not alleviated. In the case cited, Campbell v. Johnson et al (supra) the injury was a crush injury with there being no chance to save the arm, the claimant Anthony Jackson stood an almost 100% chance of having his arm saved. Taking all this into consideration, the amount to be awarded for pain, suffering and loss of amenities should be a round figure of $4,000,000.

Because of the age of the claimant at the time the injury was sustained, (he was 11 plus years old) there should be an award for handicap on the labour market" rather than "loss of future earnings." It was conceded that the claimant would be unable to show what sums he would have earned but for the loss of his arm. The claimant has

suffered a clear and distinct loss of earning capacity. An award of not less than $200,000 is suggested.

The device which the claimant should be entitled to as prosthesis should be a device in the middle ranges of such devices, such as can grip objects. In addition to an award to provide for this, there should also be the award of a sum to service the prosthesis.

An award for aggravated damages, not less than $90,000 ought to be made by the Court.

The second defendant submitted in response that the claimant must prove, on a balance of probabilities that the 1st defendant and/or servants or agents of the 2nd defendant are liable for the loss of his left hand. He is obliged to satisfy the Court.

(i) that there was a duty of care owed to the claimant;

(ii) that there was a breach of that duty due to the failure of the 1st defendant and/or servants or agents of the 2nd defendant to exercise the necessary level of care;

(iii) that this breach caused the claimant's injury and that

(iv) the damage suffered by the claimant was not too remote.

The issues identified by the 2nd defendant's attorney are as follows:

(i) Were the 1st defendant and/or servants or agents of the 2nd defendant negligent in the treatment of the claimant and, if so whether the 2nd defendant is vicariously liable.

(ii) if (i) above is answered in the affirmative, what quantum of damages should be awarded?

It was conceded that a doctor owes a duty of care to the patient simply from the existence of the relationship regardless of the activity undertaken.

Bolam v. Friern Management Committee (1957) 1 W.L.R. 582 lays down the test for establishing negligence in matters of treatment and diagnosis. This has been applied with approval in local Courts. See ***Miller V. University Hospital of the West Indies Management Board*** and in ***Howard Genus v. the Attorney General et al (1966) 44 W.I.R. 274*** and ***(Suit No. C.L. 1996/G01509 unreported*** judgment delivered October 6, 2006, respectively).

McNair J. in laying down the test n **Bolam v. Friern Management Committee (supra) stated:-**

> ***"Where you get a situation which involves the use of some special skill or competence then the test as to whether there has been negligence or not is not the test of the man on the Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill..... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art" .....***
>
> ***"A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art."***

The claimant must not only prove the existence of a duty but must also prove that the breach caused the injury suffered. See ***Bolitho v. City and Hackney Health Authority (supra).***

The loss or injury incurred must have been reasonably forseeable at the time of the breach.

It was further submitted on behalf of the 2nd defendant that the action did not fall short of what was required and proper care was administered to the claimant once he had come into the care of Drs. Donaldson and Lindo.

Dr. Lindo's evidence is that the claimant could still have developed gas gangrene despite all proper measures being taken.

The breach which, it is submitted formed the basis of the negligence alleged was that there was an omission on the part of the 2nd defendant's servants or agents on the 31st day of January, 1994.

Factual enquiry as to what ought to have been done is in the realm of hypothesis.

See Lord Browne Wilkinson's statement in ***Bolitho v. City and Hackney (supra)***

> ***".... But in cases where the breach of duty consists of an omission to do an act which ought to have been done (e.g. failure by a doctor to attend) that factual enquiry is by definition in the realm of hypothesis. The question is what would have happened if an event which by definition did not occur had occurred.***

It is therefore within the realm of hypothesis to say that if the procedure had been adopted as outlined by Dr. Lindo, the claimant would not have developed gas gangrene.

Finally, it is submitted that the doctrine of res ipsa loquitur does not apply.

The court should therefore find that there was no negligence on the part of the 1st defendant and or the servants or agents of the 2nd defendant in the treatment of the claimant as alleged. So ran the submissions in this matter.

I will begin at the point of the claimant's case and the reliance on the doctrine of res ipsa loquitur.

The claimant's case is, in short, that he was admitted in the Cornwall Regional Hospital, suffering from a fractured left arm – he received treatment of sorts and was seen by a doctor who ordered an x-ray. His fractured arm remained in a home-made sling, a belt, until the next morning when Dr. Donaldson "looked on the x-ray" and placed the arm in plaster of paris and returned the claimant to the ward on the eighth floor from which he had been taken. No dressing had been applied to the fractured arm which had had broken bones protruding from it. Despite his bawling with pain, the claimant received no attention from the nurse but for her calling Dr. Lindo. He cut a hole in the plaster of paris cast, during the night. The claimant had been a patient in the hospital since before 5 p.m. on the afternoon of the 31st

January 1994. By this time the injured hand had begin to smell "like it was rotten."

By the 3rd day of February 1994, the cast was removed by Dr. Lindo and later that day, the left arm of the claimant was amputated 3 – 4 inches below the shoulder.

Although the principle of res ipsa loquitur does not arise generally in actions of negligence against a surgeon, there may be circumstances when it may. For it to arise, some positive evidence of neglect of duty is required.

In ***Mahon v. Osbourne (1939) 2 KB, 14 at P. 21***, Scott L.J. in discussing whether the principle of res ipsa loquitur could apply generally in a case of medical negligence, expressed his opinion thus –

> ***"the very essence of the rule when applied to an action for negligence is that on the mere fact of event happening, for example an injury to the plaintiff, there arise two presumptions of fact:***
>
> ***(1) that the event was caused by a breach by somebody of the duty of care towards the plaintiff; and***
>
> ***(2) that the defendant was that somebody. The presumption of fact only arises because it is an inference which the reasonable man knowing the facts would naturally draw, and that is in most cases for two reasons:***

> ***(i) because the control over the happening of such event rested solely with the defendant and***
>
> ***(ii) that in the ordinary experience of mankind such an event does not happen unless the person in control has failed to exercise due care .....***
>
> ***Where complete control rests with the defendant, and it is in the general experience of mankind that the accident in question does not happen without negligence, the maxim may well apply."***

This is an exception to the general rule that the claimant bears the burden of proof of the negligence alleged, arising where the facts established are such as that immediate inference arising from that is that the injury complained of was caused by the defendant's negligence; or where the event providing the basis of the negligence, tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous."

The account given by the claimant is, I find, clear and unambiguous. He arrives in hospital suffering from a fractured left arm and four days later, it becomes necessary to have the whole arm surgically removed. The claimant in the interim is seen on admission by

a doctor who orders an x-ray. Nothing more is done until Dr. Donaldson applies a plaster of paris cast.

The claimant is racked with pain and his cries are finally heard when a nurse involves Dr. Lindo in the process. However, by then, whatever could have gone wrong did, and in under 4 days, what began as a fracture ends with the need for a surgical amputation.

The defendant's witness is the said Doctor Lindo referred to by the claimant as coming to him when called by a nurse. His evidence in chief contained in his witness statement explains that at the relevant time in this matter, 4 out of 6 operating theatres at the Cornwall Regional Hospital were closed for refurbishing. When the claimant was admitted to the hospital, neither the 1st defendant nor he, Dr. Lindo was summoned to the Casualty Department.

If as the medical docket revealed (according to Dr. Lindo) the claimant was admitted in hospital at 6:42 p.m. on the 31st January, 1994, he saw him while dong a ward round at 10 a.m. on the 1st of February, 1994. he examined the x-rays and "took a decision to debride and release the wound, clean it and remove any dead tissue or dirt."

The operating theatres were not then available and so to prevent a delay which would be too great to achieve "the best outcome", an operating space was cleared in a clean room in the Outpatient Department, in antiseptic conditions. The wound was cleaned and excised all dead muscles and skin excised. The cast of plaster of paris was then applied to the claimant's injured hand. Next day the claimant was examined by Dr. Lindo, as the 1st defendant was absent.

On the 3rd day of February, 1994, Dr. Lindo, in explaining to claimant's mother why an amputation was necessary, told the claimant's, mother that the claimant had developed gas gangrene in the arm and that unless the said arm was amputated, it would take his life.

Dr. Lewis indicated that open fracture sites are sometimes contaminated with soil containing spores and careful cleaning of the wound to remove gravel, soil and other debris is indicated as also the application of antibiotics. Despite the application of antibiotics, gas gangrene may occur as antibiotics have "no activity against spores."

In cross examination Dr. Lindo indicated that time lost in the beginning of the treatment when the patient presents with an open

fracture, cannot be regained. In standard practice, if more than 6 hours pass until treatment is instituted, the wound must now be considered to be infected. This means that there is a critical mass of bacteria present in the wound `which will cause disease.

Although the records indicate the claimant's admission into hospital to be 6:42 p.m. on the 31st January, 1994, he may well have came earlier. Dr. Lindo further stated that he first saw the claimant at 10 a.m. on the 1st of February, 1994.

He agreed that there is in Western Medicine a recognized and accepted procedure in treating open fractures sustained from a fall to the ground:

He agreed with the writer of **Campbell's Orthopaedics**, that "open fractures are surgical emergencies that perhaps should be thought of as incomplete amputations."

He outlined how he would have treated the injury had it been presented to him, according to proper medical procedure. When he saw the claimant on the 1st of February, 1994, no debridement had taken place nor was there any indication that irrigation had taken place. If

irrigation had been done, it would be expected that the wound would have a clean appearance and dependent on the nature of the fluid used, traces of the irrigant fluid would be present.

The purpose of irrigation, he explained, is to physically wash away dirt and bacteria visible and invisible. Where the substance used has bactericidal and sporicidal activity, it may kill bacteria and spores that are present. If it is used within 6 hours of injury this is the best opportunity to prevent infection. Beyond 6 hours, "we may consider that infection may already be established."

He further testified, in cross examination, and this is a quotation–

"Given the event that transpired after the claimant came under my care, I can offer an opinion as to whether or not the open fracture I saw at 10 a.m. on the 1st February, had already been infected. Given the delay in treatment, i.e. admitted at 6:42 p.m., seen by me at 10 a.m. debridement done at 11 a.m. we know with certainty that contamination did occur at the time of injury. Given time line we can say that infection was already established though it was not immediately obvious or apparent."

It was also Dr. Lindo's opinion that from the point of view of the claimant, debridement was not timely, it was delayed.

Applying the Bolam test to these facts, the standard of care owed to the claimant was that his injury, such as it was, an open fracture, should have been entreated as an emergency. It is Dr. Lindo's evidence that the treatment accorded to the claimant on his admission to the hospital was not in accordance with recognized and accepted procedure of treating open fractures sustained in a fall to the ground. Some procedures which should be done within 6 hours of the patient's injury was not done until several hours beyond the 6 hours. The patient was injured around 4 p.m., admitted to hospital on the same day at 6:42 p.m. Cleaning and debridement seem only to have been done by Dr. Lindo in the makeshift operating facility on the 1st of February, 1994 after 10 a.m.

Despite Dr. Lindo's reply in reexamination that it cannot be said with 100% certainty that the failure or delay in debriding the wound presented by the claimant caused the gas gangrene, I have concluded from the answers given by him in cross examination and even his own witness statement, that the procedure adopted in dealing with the

claimant's condition fell short of what is recognized and accepted procedure for treating open fractures sustained from a fall to the ground. His haste to do what should have been done initially, speaks volumes of the fact that the doctor or doctors who saw the claimant on admission were negligent in the treatment extended.

I have no difficulty in accepting that the resulting gas gangrene which dictated the amputation of the claimant's left arm was essentially, caused by the deficient treatment earlier mentioned.

The defendant's attorney –at-law has submitted that, should the claimant succeed, then the Court will find the following cases useful guides in making the appropriate award of damages:

(a) ***Victor Campbell v. Samuel Johnson and the Attorney General (1991) 28 JLR 109, and***

(b) ***Eric Webb v. Donnette Abraham and Paul Stephenson – Suit CL 1995/W181 (delivered 21st June, 1999 (Khan's Vol. 5 p. 91)***

They each relate to injury similar to that suffered by the claimant – amputation of a hand. The sole distinction is that the hand which the

instant claimant lost was not his dominant hand. He was also much younger at the time of his loss than the claimants in the cases cited. In Victor Campbell's case, the claimant a 48 year old farmer suffered an amputation of his right hand, after it was crushed in an accident while he was a passenger in a vehicle owned by the government. His was an assessed disability of 60% of the whole person.

In 1991 (March) his award for Pain, Suffering and loss of amenities, was $250,000.00. Updated the award in today's money would equate to approximately $3,600,000.00 in the ***Eric Webb*** case, his right arm was totally removed in the region of his shoulder – his disability being 60% of the whole person.

General damages, in 1999 were awarded for Pain, Suffering and Loss of Amenities were awarded in the sum of $2,633,200.00. Updated the award today would be equivalent to approximately $5,285,000.00.

The essential distinction, the defendant has submitted is that loss of a hand at 11 years old is less traumatic than loss at the ages, of the claimants in the 2 cases cited. Consequently an awarded in the region of

$3 – 3.5 million dollars would be an appropriate award in these circumstances.

Interestingly, the ***Victor Campbell*** case (supra) has also been proffered by the claimant as providing this Court with the necessary guidance in making the award for General Damages, in this case.

The cumulative award for General Damages should include considerations for

(i) pain and suffering;

(ii) loss of future earnings;

(iii) handicap of the labour market and

(iv) acquisition and servicing of prosthesis

The figure for Pain, Suffering and loss of amenities should be $4,000,000.00; for handicap on the labour market, $200,000.00.

There should be an amount awarded for the acquisition of prosthesis and for servicing the acquired prosthesis.

Dr. Lindo's evidence that a simple hook device would cost about $2,500 US but the more 'state of the art' device, a so called manuelectric

(one where finger can move) would cost in the vicinity of $40,000.00 U.S. and require frequent and regular maintenance i.e. trips abroad.

There is no evidence of the amount of trips or the regularity of such trips abroad for maintenance. The claimant's request is boldly that "a sum should be added for recovering the prosthesis."

I am not moved by the distinction made by the defendant's attorney as to the difference between the injury of the instant claimant and those of the claimants in the cases cited. Nothing convinces me that the trauma is any less because of the claimant's youth.

I am impelled, relying on the precedent awards in the cases cited (supra) to make an award for Pain, Suffering and loss of amenities in the sum of $5,000,000.00.

I will make an award of $50,000 U.S. for the acquisition of the kind of prosthesis referred to by Dr. Lindo in his testimony as "state of the art." There being no evidence as to the likely cost of maintenance, I will make a token award of $10,000 U.S. for maintenance of the prosthesis acquired.

Nothing in the facts of this case indicates that the claimant's injury was aggravated by conduct of the defendant's servants or agents which could be described as aggressive or malicious and which caused injury to the pride and dignity of the claimant.

Lord Devlin's famous statement of the law in ***Rookes v. Bernard (1964) 2 WLR 269 at page 234*** is as follows-

> ***"..... it is very well established that in cases where the damages are still at large, the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where the aggravate the injury done to the plaintiff. There may be such as to injure the plaintiff's proper feelings of dignity and pride."***

There shall therefore be no award of aggravated damages.

The claimant seeks an award for handicap on the labour market. However, the claimant, at 11 years old at the time of his injury, was engaged for employment in washing his brother's car and selling in the market on Saturdays. He was therefore self-employed. There is no evidence, directly or inferentially, that the claimant would be thrown out of work because of his injury.

See the guidelines set out by Browne L.J. in ***Moeliker v. Reyroke and Co. Ltd. (1977) 1 All E.R. 9-***

There has been no proof of special damages as pleaded. It is well served that the claimant should prove the damages claimed strictly and not just throw them at the head of the Court saying "this is what I have lost." See ***Bonham Carter v. Hyde Park Hotel Ltd. (1948) 68 T.L.R.*** (per Lord Goddard CJ.)

Cooke JA in ***S.C.C.A. no. 109/2002 Attorney General of Jamaica vs. Tanya Clarke (nee Tyrell)*** delivered on 20th December, 2004 distilled the principle with admirable economy thus:

> "The Court should be wary to relax this principle..... What amounts to strict proof is to be determined by the Court in the particular circumstances of the case .....
>
> Although not usually specifically stated, the court strives to reach a conclusion which is in harmony with the justice of the situation...."

Judgment is therefore entered for the claimant as hereunder:-

1. General Damages

   (a) Pain Suffering and Loss of Amenities $5,000,000.00 with interest thereon of 6% per annum from 3rd February, 1994 to 21st June, 2006; 3% per annum thereon from the 22nd June, 2006.

(b) **U.S. $50,000.00 for acquisition of manuelectric prosthesis.**

(c) U.S. 10,000.00 for maintenance of the said prosthesis.
No interest awarded on (b) and (c) above.

Costs to the claimant to be agreed or taxed.