In the Supreme Court of Judicature of Jamaica

Claim No. C.L.N-052

Between	**Milton Nolan**	**Claimant**
And	**Staples Electrical Contractors Limited**	**Defendant**

Mr. Bert Samuels and Miss Akilah Anderson instructed by Knight, Junor and Samuels for Claimant.

Miss Ayanna Thomas instructed by Nunes, Schofield, DeLeon & Co. for Defendants

Heard: **23rd & 24th April, 2007**
3rd May, 2007 & 9th November, 2007

MARSH J.

The Claimant Milton Nolan was employed as a Senior Climber to the Defendant Company Staples Electrical Contractors Ltd.

On the 28th day of September, 1999, while climbing and in the process of erecting cables for and on behalf of the Defendant, the Claimant received electrical shock and sustained burns to several parts of his body. The injuries, the Claimant averred, and the resultant loss, were sustained as a result of the negligence of the Defendant.

The Claimant had also alleged that the Defendant was in breach of the Statutory Duty under the Factories Act, but this was abandoned at the trial by the Claimant's Attorney, Miss Anderson.

The particulars of negligence alleged against the Defendant are as hereunder:-

1. Failing to adequately protect the Plaintiff from the risk of electric shock by outfitting him with a safe system of work.

2. Failing to have proper safety equipment in place to prevent the risk of electric shock.

The particular of injury to the Claimant as a result of the negligence of the Defendant were stated as follows:

1. Burns to the right side of his neck, chest and abdomen anteriority.

2. Patchy area of burns to the postero-lateral aspects of his right buttock, right thigh and right leg.

3. Two centimeter laceration over his right parieto-occcipital scalp.

4. Puckered burn over the medial aspect of his right mid foot metallic density in the right parieto occipital scalp in the region of the scalp laceration with no radiological evidence of a skull fracture.

Special damages were also itemized and totalled $98,200.00.

Further there was claim for damages, costs and attorney's fees. Interest on the damages for the period stipulated by the Court was also claimed.

The Claimant's case was founded on his and the evidence of Livingston Stephenson a fellow employee of the Defendant. His evidence in chief, contained in his witness statement, quite tersely stated that on the day in question, he was working on a light pole at Six Miles near Cremo on Spanish Town Road. He was then employed as a contractor to the Defendant Company Staples Electrical Contractors Ltd. He had climbed the pole about three times. He was on the pole waiting on a machine called "a lasher to come to him across from another pole." The lasher got stuck and one of the workmen attempted to free it by shaking it with a view to clearing it. It weighed 75 lbs. and had to be shaken very hard in order to be released. This caused the pole to shake as well and the spur which the Claimant had been wearing to provide him with a firm grip on the pole got loose and slipped from the grip that he had. As a result of this he lost his balance, and part of his body dangled from the pole. He had been wearing a helmet and this slipped from his head.

In the Claimant's effort to regain his balance, his head hit a copper switch which was on the pole and as a result he was "electrocuted." His Boss, Junior Staples was somewhere in the vicinity of the pole but the Claimant was unable to say what he was doing.

Livingston Stephenson supported the Claimant and stated that he was present at the time of the incident which occurred on the 29th day of September, 1999. They were installing telephone cables for their employer Staples Electrical Contractors Ltd.

He and one Rohan Thomas were engaged in dragging a rope to free the lashing machine. The post, on which the Claimant was climbing, was rocking. It was while Stephenson was rocking the post that he noticed that the Claimant was hanging from the post head down and foaming from the mouth. He went up on a ladder, took the Claimant down, assisted by one Wayne Gordon. The Claimant was transported to the Kingston Public Hospital.

The Defendant provided no evidence and called no witnesses. The Defendant denied the negligence claimed or any negligence at all. It was contended that the injuries, loss and damage were caused solely by or materially contributed to by the Claimant's own negligence.

The Claimant failed to have any or any adequate regard for his own safety. He had failed to keep any proper look out and had failed to exercise reasonable care for his own safety.

He had failed to wear the protective helmet which had been provided by the Defendant, which should be worn he was performing his various tasks, including the operation of the 28th day of September, 1999. He had also exposed himself to a risk of injury of which he knew or ought to have known.

In extensive Written Submissions, Miss Anderson for the Claimant submitted that the relationship at the material time was that of employee and employer as between the Claimant and the Defendant. As such, the Claimant was owed a duty of care by the Defendant. That duty of care is to –

a. provide a competent staff of men,

b. adequate material; and

c. a proper system of effective supervision.

See ***Wilson's and Clyde Coal Company v. English (1938) AC 57.***

This duty has been breached by the Defendant as it failed to provide adequate material and a proper system of effective supervision.

The Claimant's helmet had no straps and fell off while the pole was rocking and his head hit a copper switch which controls the electricity. The hitting of the exposed head on the switch caused the "electrocution." The freeing of the lasher machine (it was not unusual for a lasher machine to get stuck) necessitated someone to pull on a rope attached to it; the pulling of the machine caused the wire on which it was to shake the pole to which it had been attached.

A failure of the Defendant to supply its employee with helmets with straps in the circumstances, visits the Defendant with liability, if "as happened, injury results." It was further submitted that the Claimant climbed with the helmet as directed to do by his boss. The Defendant is not helped by the fact that the Claimant had admitted that the type of helmet issued to him was of the type ordinarily issued, "in his experience as a climber," since his evidence also indicated that the last 8 of 10 years were spent in the employ of the Defendant Company. The "experience" to which the Claimant refers speaks to experience of the Defendant Company's ordinary practice, not of the industry as a whole.

The workers, at the time of the incident, were under direct supervision. The supervisor had failed to direct the Claimant to come off the pole while the lashing machine was being cleared.

This indicated that a safe system of work was not put in place by the Defendant, whose agents and or employees caused or contributed to the accident. The Claimant has proven that he had suffered injury to his person and "therefore that he suffered damage." A further submission of the Claimant is that since the Defendant had not adduced any evidence to challenge the Claimant's case, then the Claimant case ought to succeed.

Several cases were cited to be considered by the Court when the quantum of damages for pain and suffering was being considered.

The Defendant stoutly responded to the submissions of the Claimant.

The issues in dispute were as follows-

1. Did the Defendant provide the Claimant with a safe system of work?

2. Was the Claimant provided by the Defendant with proper safety equipment to prevent electrical shock?

The Defendant submitted that the Claimant was negligent as he failed to have any adequate regard for his own safety; failed to exercise

reasonable care for his own safety and exposing himself to a risk of injury which he knew or ought to have known.

It is the Defendant's contention that the Claimant was provided with a helmet, safety belt and a spur.

This is a helmet of the sort normally used in those operations. There are no allegations that any of the equipment provided to the Claimant by the Defendant was defective. There was no evidence to prove that the equipment supplied to the Claimant (by the Defendant) was not proper to enable him to carry out his functions safely; nor is there any evidence as to what other equipment should have been supplied to him. These therefore were no failure on the Defendant's part to provide the Claimant with proper safety equipment.

There was adequate supervision by the Defendant to ensure the use of the safety equipment supplied. The Claimant's evidence is that he could not take his helmet off as he was directed to do so by his boss. When the machine is being cleared, the Claimant is not obliged to do anything until the machine has been cleared. It is only after the machine has been cleared that the Claimant has to hold on to the machine. He is

therefore free to come off the pole or line until the machine has been cleared.

The Defendant submits that since the Claimant was an experienced climber, his situation differed from that of an inexperienced climber, so was in need of limited if any supervision as to how he should carry out his work safely. He therefore needed no special instruction as to what to do when a machine was being cleared. He was aware of the risks of being on the pole or line while this machine was being cleared.

Reliance is placed on the case Wilson v. Tyneside Window Cleaning Co. 2 All E.R. 265 at p. 274:-

According to Parker L.J.

> ***"In fact in the present case there not only has been no repeated warning, but no initial warning. But the circumstances here are these: this is a man who was fifty-six years of age at the time, and who has been all his life a window cleaner: he is a very experienced man, usually acting as a charge-hand, and he frankly said that he knew of the dangers involved, of handles coming off. It is said that he should have been told again and again --- one witness suggested that it should be impressed on him twice a year. For my part, I would like to adopt entirely what Donovan, J., said on that point. It seems to me that the disadvantage of doing that in the case of skilled men of this sort may well outweigh the advantages; and I cannot think that "reasonable care" demands a repeated warning to skilled men in a case at any rate***

> ***such as this, where the dangers involved are patent. It is not a case, like that which one sometimes meets, of the danger of silicosis from particles of dust which are quite invisible and cannot be seen. I do not know, but it may well be that in such cases "reasonable care" would demand that the employer should warn and exhort the men constantly to wear masks. However, there, as I have said, the danger is not patent.***

In ***Qualcast (Wolverhampton) Ltd. v. Haynes (1959) AC 74***, it was held that an experienced man does not need any warnings and advice about risks with which he is thoroughly familiar.

It was also submitted that the accident complained of by the Claimant was caused by his own negligence in failing to take reasonable care for his own safety in obeying instructions given to him by the Defendant.

It would have been prudent of the Claimant, knowing from experience what is involved in the clearing of the machine which had become stuck on the line, to have come off the line or the pole completely. He is therefore the sole cause of the accident herein.

The Claimant is the only party to present evidence in this case. The Defendant has called no witness. In his witness statement the Claimant stated that he had climbed a pole and while waiting on the

lasher machine to come across to him from another pole, the lasher got stuck and "one of the workmen" attempted to free it by shaking the machine in order to clear it. As it weighed about 75 pounds, it had to be shaken very hard in order for it to be released. This caused the pole to shake as well and the spur he had on to provide him with a firm grip on the pole got loose and slipped from the grip that he had. He lost his balance as a result of this, a part of his body dangled from the pole, his helmet slipped from his head. While he was trying to regain his balance by pulling himself up on the pole, he "was electrocuted."

In cross examination by Miss Thomas for the Defendant, the Claimant said that his "body was on the line at the time of the incident." He agreed that he is aware that when the machine was being cleared that the line on which it is, shakes and that the pole shakes as well.

It is only after the machine is cleared that the Claimant has to hold the machine. Further in cross – examination, the Claimant stated that that section of his witness statement which stated -"He had to shake it very hard in order for it to release it as it weighed about 75 pounds. This caused the pole to shake as well and the spur that I had on to provide me with a firm grip on the pole got loose and slipped from the

grip that I had," was incorrect." In his corrected version, I recorded the Claimant to say 'I made the slip because I had nothing to secure myself because the spurs were not on the pole. I had nothing when the machine was being cleared and the pole and the line were shaking....." In cross examination further, the Claimant stated quite firmly – "I was on the line."

It is the same Claimant who was later cross examined and his recorded answer to Counsel for the Defendant, Miss Thomas was this: "The boss gave instructions to climbers that they were not supposed to be on the line when the lasher machine was being cleared."

The Claimant, by his own admission, was a Senior Climber employed to the Defendant for eight years. He had previously worked as climber for two years in the employ of someone else. His duty while employed to the Defendant also included teaching "others who came there to climb."

It is therefore not in question that the Claimant was an experienced climber. He admitted to having received from the Defendant for use in his climbing operations, a helmet, a safety belt and a spur. The helmet, Claimant stated, based on his experience as a climber is the sort

that is normally used in these operations. He has made no criticism of the suitability of the helmet for use in the operations for which he is employed. However, the Claimant's Attorney, with no basis to so conclude, submitted that the helmet did not 'have on straps."

The Claimant had been witness in the past to the machine being cleared and was well aware, based on those observations that both line and pole would shake when the machine was being cleared. In the present case, there was a period of some 3 – 4 minutes between the time the machine became stuck and when any effort was made to clear it. He had no further role to play thereafter until the machine had been cleared, when he would be expected to hold it. His remaining on the line, ran directly counter to what he himself testified, that his boss had instructed him, that climbers are not supposed to be on the line when the lasher machine was being cleared.

It was submitted by Counsel for the Claimant that there should have been instructions to the Claimant to come off the 'pole' while the machine was being cleared. Having given instructions to climbers, which included the Claimant, to come off the line when the machine is being cleared, the Defendant cannot be said to be in breach of its duty.

The Claimant is an experienced climber, by his own admission. The Defendant by giving the Claimant safety equipment and instructions had taken reasonable care not to subject the Claimant to unnecessary risk, in an occupation in which danger was patent. The Claimant had himself indicated that he was aware of the presence of a copper switch on the pole and that he had, being an experienced climber, looked to see where on the pole the copper switches were. He said he had not counted them.

The Claimant had failed to prove to me, on the evidence that, the Defendant is liable in negligence for causing him to be 'electrocuted', because the Defendant had breached any duty of care to the Claimant. It is my conclusion that he is the author of his own wrong.

In the event that I am incorrect in my conclusion as to liability, the Claimant had claimed special and general damages but has made no efforts to prove either. There is not one scintilla of evidence to prove a single item under the heading of Special damages which totalled $98,200.00.

It is trite law that a claim for special damages must be specifically pleaded and proven i.e. there must be evidence to support each item under this head of damages.

In the instant case, none of the four items listed under Particulars of Special damages has been proven. See ***Attorney General of Jamaica vs. Tanya Clarke (unreported S.C.C.A. 109/2002- delivered on 20th December, 2004. Bonham – Carter v. Hyde Park Hotel Ltd. (1948) 64 J.L.R. 177.***

Except for Rohan Thomas witness statement which mentions that the Claimant was "foaming from his mouth," there was no other evidence led as to any injury to the Claimant. The particulars of injury were not supported by any evidence, albeit a medical certificate relating to the Claimant formed part of the records. No reference in any way was made to it by the Attorney at Law for the Claimant at the trial. There was no agreement as to that certificate being an item of proof.

For these reasons, I am obliged to find that the Claimant has failed to prove its case against the Defendant. Judgment is therefore entered for the Defendant with costs to the Defendant to be taxed if not agreed.