



[2025] JMSC Civ 70

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV00847

BETWEEN	DARVEN SAMUELS	CLAIMANT
AND	DOLPHIN COVE LIMITED	DEFENDANT

IN CHAMBERS

Khadine Dixon (now Khadine Nurse) instructed by Dixon & Associates Legal Practice, Attorneys-at-Law for the Claimant

Camille Wignall-Davis instructed by Nunes, Scholefield, Deleon & Co., Attorneys-at-Law for the Defendant

Heard: 21st May and 6th June 2025

Civil Procedure - Civil Procedure rule 20.6 - Amendments to particulars of claim after limitation period - Whether amendments prohibited on the ground that they set up a fresh claim in negligence after expiration of the limitation period - Whether the court should exercise its discretion to permit the proposed amendments

C. BARNABY, J

BACKGROUND

[1] By his claim filed 21st March 2023, the Claimant seeks to recover damages against the Defendant for negligence and employer's liability; and alternatively, damages for breach of contract. It is contended that the accident was caused by the negligence of the Defendant and/or its servants and/or agents, and that the

Claimant suffered personal injuries, loss and damage. Reliance is also placed on the doctrine of *res ipsa loquitor*.

[2] The Claimant particularised his injuries as follows

- (a) 6cm laceration and hematoma on the left upper arm
- (b) Infected open fracture to left humerus (*pseudomonas* wound infection)
- (c) Left brachial artery injury

[3] The Claimant also lists several items of special damages and in a *Notice under the Evidence Act* identifies several documents, including receipts, without reference to their date.

[4] With the consent of the Claimant, the Defendant filed a defence to the claim on 14th July 2023 wherein liability for the collision, injury, loss and damage are denied. It is also contended that the accident and any resultant injury were solely caused and/or materially contributed to by the Claimant's own negligence. The Defendant goes further and contends that if the Claimant sustained loss and damage as alleged, which is not admitted, he nevertheless failed to mitigate his loss by unreasonably refusing an offer of alternate duties after the incident.

[5] On 19th July 2024, after the relevant limitation period had passed but before the case management conference, the Claimant filed an Amended Particulars of Claim. He also filed a Notice of Application for Court Orders to Amend Particulars of Claim After Limitation Period, and Affidavit of Darven Samuels in Support of the Notice of Application for Court Orders to Amend Particulars of Claim after Limitation Period sworn on 17th July 2024 (the Application). He prays for permission to amend his Particulars of Claim after the end of the limitation period, that the Amended Particulars of Claim filed 19th July 2024 be permitted to stand, and for relief from sanctions.

[6] By the proposed amendments the Claimant seeks to add to his particulars of injuries, an additional item of special damages vis-à-vis the cost of medical report from a Dr. Rodney; give notice under the *Evidence Act* to tender a medical report

prepared by the said Dr. Rodney and a corresponding receipt dated 18th September 2023; and insert dates for receipts previously identified in the Particulars of Claim via notice under the *Evidence Act*.

- [7] The application was heard on 21st May 2025 and a decision on it reserved to today's date. For reasons set out below, I find that the application should be allowed in part.

REASONS

- [8] Pursuant to CPR rule 20.1, the general rule is that a party is permitted to amend a statement of case at any time before the case management conference and may do so without the court's permission, *unless* rules 19.4 and 20.6 of the Civil Procedure Rules (CPR) apply.
- [9] Rule 19.4 concerns the addition or substitution of parties after the end of a relevant limitation period; and rule 20.6 (1) applies to amendments in a statement of case after the end of a relevant limitation period. Further, pursuant to rule 20.6(2), the court may allow amendments after a limitation period to correct a mistake as to the name of a party, where the mistake was genuine and it would not cause reasonable doubt as to the identity of the party in question in all the circumstances.
- [10] The discretion given to the court by rules 19.4 and 20.6(2) of the CPR to permit amendments to statements of case after a relevant limitation period are not engaged on the circumstances of this case. Additionally, while the Amended Particulars of Claim was filed before the case management conference, the relevant limitation periods for actions grounded in negligence and breach of contract had passed. The court's permission to amend is accordingly required pursuant to rule 20.1.

[11] Rule 20.4 (1) provides that an application for permission to amend a statement of case may be made at the case management conference. The Claimant's application has been so made.

[12] While the Claimant pleads a breach of contract, the allegations relied on to ground that breach sound in negligence, of which employer's liability is a subset. The allegation is that the Defendant as the Claimant's employer

... exposed [him] to reasonably foreseeable risks of injury, when it failed to provide reasonably safe working equipment, a safe place and safe system of work for their employees, particularly the Claimant.

The claim is accordingly regarded as a claim in negligence, notwithstanding the Claimant's label.

[13] The considerations for the court on an application to amend after a relevant limitation period is not prescribed by the CPR but there are several authorities which aid in this regard. These two (2) broad issues arise on consideration of the authorities and will be addressed in turn.

(a) Whether the amendments are prohibited on account of the expiry of the limitation period for claims in negligence: and

(b) Whether the amendments should be permitted in the exercise of the court's discretion.

Whether the amendments are prohibited on account of the expiry of the limitation period

[14] A common authority between the parties is the decision of the Court of Appeal in **Judith Godmar v Ciboney Group Limited** SCCA No. 144/ 2001, delivered 3rd July 2003. The decision, so far as is relevant, concerns an appeal against a decision refusing amendment of pleadings to add post-traumatic stress disorder as an injury and particulars of special damages. The claimant's claim was for

damages in negligence and her pleaded particulars of injury may properly be characterised as “physical injury”.

- [15] It was observed by Smith J.A. at page 29 of the judgment that “*the court may not allow a [claimant] to amend by setting up a ‘fresh claim’ in respect of a cause of action which since the [claim form] would have become statute barred.*” He so concluded in reliance on the decision in **Weldon v Neal** (1887) 19 QB 394 (C.A.).
- [16] On the basis of the foregoing principle, the amendment to include the new injury of post-traumatic stress disorder was refused. The amendment to include the additional items of special damages was allowed however, because while the limitation period had run, it was not found to apply to the claim for additional special damages as they were consistent with the “***ongoing treatment of the appellant in respect of injuries pleaded... and represented expenses incurred during the limitation period.***” [Emphasis added]
- [17] Although not cited by either party, the court is aware of the decision of the Court of Appeal in **Attorney General of Jamaica v Abigaile Brown (By Next Friend Affia Scott)** [2021] JMCA Civ 50, where Brown, JA (Ag) (as he then was) in writing for the court made this observation of the **Godmar case** at paragraph [58].

Smith JA found that the limitation period does not apply to a claim for additional special damages as such damages are consistent with the ongoing treatment of the appellant in respect of the injuries pleaded. Also, the court held that these amendments need not be made within the six-year limitation period.

- [18] To the extent that the observation intends to reflect that Smith JA found that additional special damages which relate to the “*ongoing treatment*” of a claimant “*in respect of injuries pleaded*” are not affected by a relevant limitation period, I am entirely in agreement with it.
- [19] I do not believe it intends to do so, but to put it beyond doubt, the observation by Brown JA cannot be taken as proposing that limitation periods do not apply to

claims for special damages where a claimant seeks to add a new cause of action or set up a fresh claim after a relevant limitation period. Such a view would be inconsistent with the ratio for permitting amendments to the items of special damages in the **Godmar case**, and would offend the prohibition against adding a new claim or setting up a new cause of action after a relevant limitation period has passed. If an amendment of the new cause of action or fresh claim is prohibited in law, the limitation period must apply to related expenses.

- [20] Returning to **Weldon v Neal** - on which Smith JA relied in refusing the amendment to include post-traumatic stress disorder as an injury - the decision has consistently been applied in this jurisdiction. The point was well made by Phillips JA in **Sandals Resorts International Limited v Neville L Daley & Company Limited** [2018] JMCA App 24, who cited with approval the decision of the Full Court of Appeal in **National Commercial Bank Jamaica Limited and Another v Scotiabank Jamaica Trust and Merchant Bank Ltd** SCCA No. 22/2008, delivered 19th December 2008. In the latter case the dictum of Lord Esher MR in **Weldon v Neal** was cited with approval and Harris JA remarked as follows at paragraph 15.

*It is a well settled rule that an amendment will not be permitted, if to do so, would effectually divest a defendant of a right to a defence under the Statute of Limitation. That is, if the proposed amendment amounts to a **new cause of action, or a new claim**, a court will refuse to grant an amendment if to do so would deprive a defendant of a defence under the Statute of Limitation. [Emphasis added]*

- [21] The ratio in **Dornan v J W Ellis & Co Ltd** [1962] 1 Q.B. 583 was also relied on by Harris JA which led the court to conclude, as observed by Phillips JA in **Sandals Resorts International Limited** “*that the authorities [have] made it abundantly clear that the court would refuse an amendment sought if it is one involving a new consideration of a new set of facts.*”
- [22] In addition to demonstrating the continued applicability of **Weldon v Neal**, the foregoing extracts make it clear that the prohibition against amendments after a relevant limitation period is not only against a new cause of action but the setting up of a new claim, even if the cause of action remains unchanged.

- [23] This conveniently takes the enquiry back to the **Godmar case** and the following observation of Smith J.A. at page 27 of the judgment.

... [I]n the case of the tort of negligence the cause of action consists of two things: the wrongful act and the consequent damage... Thus, the cause of action accrues when there has been a wrongdoing of the defendant from which loss or damage is suffered by the plaintiff. Thus, the loss or damage or injury must be pleaded within the limitation period. Time runs from the accrual of the cause of action...

- [24] Subject to an insertion relative to the existence of a duty situation between a claimant and a defendant, I find no fault with the observation.

- [25] When confronted with an application to amend after a limitation period has passed, and the cause of action is negligence or one of its subsets, the facts which must be considered in determining permissibility cannot be limited to the relationship which gives rise to a duty situation and the act or omission which is alleged to constitute the breach of duty. Consideration must also be given to the consequent damage. This is required by the constituent elements of the cause of action itself. When approached in this way, the decision in the **Godmar case** and the ratio for permitting the amendments for special damages and refusing the amendment to plead a new injury are, in my view, unassailable. Though decided before the CPR, it remains good law and is not inconsistent with the approach taken in cases decided under the CPR. I am accordingly guided by it.

- [26] The facts relating to the existence of a duty situation and the act or omission which is alleged to constitute the breach of duty by the Defendant are not changed by the proposed amendments in this case. The question which arises however, is whether the damage which the Claimant now seeks to add involves a new consideration of a new set of facts. If they do, the amendments are not permissible.

- [27] As earlier indicated, these particulars of injuries were initially pleaded by the Claimant.

i. 6cm laceration and hematoma on the left upper arm

- ii. *Infected open fracture to left humerus (pseudomonas wound infection)*
- iii. *Left brachial artery injury*

[28] By the proposed amendment he now seeks to add the following.

- iv. *Abrasions to left knee and anterior-medial aspect 1/3 of left arm*
- v. *Numbness to left arm*
- vi. *Numbness to left fingers*
- vii. *Pain, swelling and loss of use of left arm*
- viii. *Reduced range of motion of left shoulder (difficulty abducting arm above 100°)*
- ix. *Varus and procurvatum deformity of the distal left arm*
- x. *Occasional pain at the fracture site*
- xi. *Swelling at the distal left arm that is deep to muscle and hard in consistency*
- xii. *22.5cm surgical scar medially on left arm*
- xiii. *Reduced range of motion of left elbow*
- xiv. *Surgical scar measuring 4-5cm at the ipsilateral shoulder*
- xv. *Hypertrophic non-union of the left humeral shaft at the junction of the distal 1/3 and proximal 2/3*
- xvi. *Posterior angulation at the fracture/non-union site*
- xvii. *Non-union of the left humeral shaft*
- xviii. *3% whole person impairment*

Particulars iv, v, and vi

[29] Numbness to the left arm was a complaint made by the Claimant on clinical evaluation by a Dr. P. Monthrope of the Noel Holmes Hospital on the day of the incident. The same is indicated on her medical report dated 27th January 2023. Abrasions to the left knee and anterior-medial aspect 1/3 of left arm, and numbness to left fingers appear in a summary medical report under the hand of Dr. R. Forrester dated 31st March 2020, bearing the stamp of the Cornwall Regional Hospital. Both medical reports are attached to the Particulars of Claim. These injuries do not involve consideration of a new set of facts and clearly existed prior to the limitation period. I accordingly find that they are not prohibited by its expiration.

Particulars vii to xviii; the medical report of Dr. Rodney, related receipt and item of special damages

- [30] I arrive at a different conclusion in respect of the other injuries at *vii* to *xviii*, which are set out in the medical report of Dr. Bert Rodney of the Cornwall Regional Hospital dated 18th September 2023.
- [31] It is the Claimant's evidence that he was advised by his Counsel that Dr. Forrester's medical report - which was attached to his Particulars of Claim - was not in the format prescribed by the CPR and therefore required an amendment. That would be correct to the extent that the Claimant intends to have it put into evidence as an expert report. A letter, which is not exhibited, is said to have been written to Dr. Forrester in this regard. The Claimant goes further to say that Dr. Forrester no longer works at the hospital and so Dr. Bert Rodney prepared his medical report.
- [32] The Claimant avers that Dr. Rodney's report "*simply expound[s] on the injuries that are stated in [the] Medical Summary Report prepared by Dr. Forrester of the same hospital that was attached to [his] Particulars of Claim filed on March 21, 2023.*" This is repeated by his Counsel in submissions. Based on observations set out in the subsequent paragraphs, I find the averment and submission in this regard to be a significant mischaracterisation of the report.
- [33] Dr. Rodney is a Consultant Orthopaedic Surgeon. His report is addressed to the Supreme Court, references his qualifications and contains a statement of understanding and discharge of his duties to the court as set out in rules 32.3 and 32.4. No evidence has been presented of the instructions given to Dr. Rodney. It is nevertheless expressly stated in the report that the Claimant "*was seen by [him] on September 7, 2023 for the purposes of assessment of his injuries and the writing of his medico-legal report.*" This was some five (5) months after the Claimant filed his Particulars of Claim and approximately three (3) months after expiry of the limitation period.
- [34] The report makes no mention of Dr. Forrester. It gives a history of the Claimant's impairment without any indication as to the material from which any aspect of it

was told. The history references the Claimant's involvement in the accident, treatment at the Noel Holmes and Cornwall Regional Hospitals and follow up at the Orthopaedic Outpatient Department (OOPD) of the latter hospital up to February 2020.

- [35] The amendment at *vii* is seen in the history of impairment recounted by Dr. Rodney, as a precursor to the Claimant being taken to the Noel Holmes Hospital for assessment and management. None of the medical reports attached to the Particulars of Claim, including from the Noel Holmes Hospital, speak to such a complaint being made to the Claimant's treating physician.
- [36] On physical examination of the Claimant, Dr. Rodney observed the injuries set out at *xi*, *xii*, *xiii*, *xiv* of the proposed amendments. The items at *xv*, *xvi* arose out of his investigations following presentation by the Claimant; *xvii* was diagnosed as a complication of the original fracture of the left humeral shaft; and *xviii* was the impairment rating assigned.
- [37] It is appreciated that a claimant in a personal injury claim has a right to call other or additional medical evidence at the trial of a claim, which right is not restricted on account that they were not attached to the claim form. See CPR rule 8.11 (4) in this regard.
- [38] When the proposed amendments are considered in isolation, one may be inclined to the view that the Claimant merely seeks to exercise the right to rely on other or additional medical evidence of his claim at trial. It is my judgment however that the proposed amendments go much further, and that a supervening event involving a new consideration of a new set of facts in respect of consequent damage emerges. This observation applies to the proposed amendments at *vii* to *xviii* and the medical report of Dr. Rodney; and has caused me to regard those amendments as the setting up of a "fresh claim" in negligence against the Defendant.
- [39] The supervening event is to be found in the concluding paragraph of the impairment history given by Dr. Rodney. It reads:

February 2020, radiographs showed moderated callus at the fracture site with Mr. Samuels reporting increased function and movement of the left shoulder and elbow. The fracture had not yet fully healed and the plan at that visit was for Mr. Samuels to return to OOPD with repeat radiographs and clinical assessment. However, he defaulted from follow up after this visit on February 20, 2020.

- [40]** No explanation has been provided for the default in follow. There is also no evidence of the Claimant receiving any ongoing medical treatment thereafter or of his being referred to Dr. Rodney by a medical practitioner. Additionally, as earlier indicated, there is no evidence of the instructions provided to Dr. Rodney for the assessment of and reporting on the Claimant's injuries. Yet, some three (3) years and seven (7) months after defaulting from follow up at the OOPD of the Cornwall Regional Hospital; after the filing of the claim almost on the cusp of the limitation period; and months after the limitation period had in fact expired, the Claimant presents to Dr. Rodney with the complaints set out in the proposed amendments at *viii, ix and x*, which then enabled the other amendments which have the report of the said doctor as their genesis. Further still, the report does not address the effect of the Claimant's default on the injuries indicated. Whether the injuries are the consequence of the alleged negligence of the Defendant or the Claimant's default in following up is therefore live on these proposed amendments.
- [41]** Unless consequent damage is to be regarded as a mere collateral or subordinate requirement of the cause of action of negligence and not one of its essential elements, it is my judgment that the question which arises relative to the cause of new injuries, following examination by Dr. Rodney after expiry of the relevant limitation period, must be regarded as involving a new consideration of a new set of facts.
- [42]** It is in these premises that I find that the injuries at *vii to xviii* of the proposed amendments would constitute a fresh claim in negligence against the Defendant and are not permissible. It accordingly follows that the amendments sought to enable reference to and reliance on the medical report of Dr. Bert Rodney dated 18th September 2023 and the related receipt, and the addition of an item of special damages for its procurement are also impermissible.

Inclusion of receipt dates

[43] The dates which the Claimant now proposes to include by amendment relate to receipts already identified in his Particulars of Claim. The amendments merely bring clarity to the face of the pleadings and show the dates on which the related costs were incurred. They are not prohibited on account of expiry of the limitation period.

Whether the amendments should be permitted in the exercise of the court's discretion

[44] Several authorities have been cited by Counsel which treat with the considerations for the court on an application to amend a statement of case. There is consistency among them, and I have not found it necessary to refer to each in arriving at a decision.

[45] In **Jamaica Redevelopment Foundation, Inc v Clive Banton and another** [2019] JMCA Civ 12, McDonald-Bishop JA (as she then was) distilled general principles at paragraph 26 of the judgment, and I have found them instructive. Though said in the context of an appeal and a late-stage amendment, I find them to be generally applicable to the amendment of pleadings under the CPR.

- i. The foremost consideration is whether the proposed amendment is needed in order to determine the real issues in dispute between the parties in the light of all the relevant circumstances.*
- ii. The court must have regard to the need to avoid prejudice to the other party as well as to the need for the efficient administration of justice: **Cobbold v London Borough of Greenwich**, 9 August 1999, unreported, CA; [1999] Lexis Citation 1496, per Peter Gibson LJ. The court must have regard to the need to ensure that court and party resources are not unreasonably wasted: **Bowerbank v Amos (formerly Staff)** [2003] EWCA Civ 1161.*
- iii. The court's approach to late amendments cannot be radically different from the approach to enforcing compliance with any other process requirements and to case management generally. Tolerance to late amendments may undermine the court's ability to manage the litigation process effectively.*

- iv. *The jurisdiction is now governed by the overriding objective. The older authorities that amendments should be allowed as of right, if a party could be compensated in costs without injustice, had made way for a view, which pays greater regard to all the circumstances. This is now summed up by the overriding objective (**Savings and Investment Bank Ltd v Fincken** [2003] EWCA Civ 1630 per Rix LJ).*
- v. *A heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court (**Swain-Mason and others v Mills & Reeve (a firm)** [2011] EWCA Civ 14 per Lloyd LJ).*
- vi. *Applications for permission to amend must necessarily turn on the particular facts and no hard and fast rules are possible. The outcome of an application to amend will, therefore, depend on a fact-based assessment of the various relevant considerations. Decided cases can only illustrate the way in which discretion is exercised.*
- vii. *The interests of justice would not be advanced by amendments that are bound to fail on the merits and so, the court will allow an amendment only if it has a reasonable prospect of success.*

[46] The Claimant's application is being made at the case management conference as permitted by the rule 20.4(1). Though made after the relevant limitation period, I do not regard the application as late.

Inclusion of receipt dates

[47] At the hearing of the Application, Counsel for the Defendant indicated - quite appropriately in my view - that the request to amend by inclusion of dates for receipts already pleaded in the Particulars of Claim was not opposed.

Particulars iv, v, and vi

[48] It was submitted by the Defendant that the proposed particulars at *iv*, *v*, and *vi* do not arise on the Dr. Rodney's medical report. That observation is indeed correct but as earlier indicated, they were included in the medical reports attached to the

Particulars of Claim. The Claimant attributes their omission from his particulars of injuries to oversight and avers that he does not believe the Defendant will be prejudiced by their inclusion. The complaint and injuries having been disclosed in the medical reports attached to the Particulars of Claim, I think it is just to enable the Claimant to make the amendments in the absence of any prejudice, alleged or otherwise, to Defendant.

Particulars vii to xviii; the medical report of Dr. Rodney, related receipt and item of special damages

- [49] I have earlier found that that the proposed amendments at *vii* to *xviii* of the particulars of injuries, the medical report of Dr. Rodney from which they derive, the related receipt and the related item of special damage are prohibited on the ground that they enable the setting up a fresh claim in negligence against the Defendant.
- [50] If I am wrong in so concluding and the question of causation of the new injuries do not set up a fresh claim in negligence and are to be regarded as necessary to determine the *existing* real issues in dispute between the parties, I would nevertheless refuse to exercise the discretion reserved to the court to permit the amendments now under discussion. I arrive at this conclusion even in the face of an appreciation that the Claimant may be prejudiced by his inability to pursue the proposed amendments.
- [51] When a party approaches the court to exercise a discretion, it is my view that all relevant cards should be placed on the table by the requesting party to enable its judicial and favourable exercise. This is particularly true for personal injury cases which because of their subjective nature are susceptible to fraud and exaggeration, requiring the court to approach them with caution with a view to ensuring that the interests of justice are advanced and there is efficient justice administration.

- [52] As previously indicated, the Claimant's evidence as to the nature of Dr. Rodney's medical report, which is repeated in submissions, appears to the court to be a mischaracterisation of its contents. It is not a report which seeks to make the report of Dr. Forrester compliant with the CPR.
- [53] As observed by Counsel for the Defendant in submissions and seen on the preceding examination of Dr. Rodney's report, the proposed amendments have at minimum caused a material expansion of the injuries which the Claimant has allegedly suffered and raises questions about the causal connection between those injuries and the incident which gave rise to the claim. In consequence, while the Defendant has led no evidence of prejudice by way of affidavit evidence, I find merit in the submission that the proposed amendments, if permitted, would change the complexion of the case which the Defendant would be called to meet. If that is to be allowed, the circumstances under which the additional injuries arose require careful scrutiny by the court if the risks of fraud and exaggeration in personal injury claims are to be properly managed.
- [54] While the Claimant relies on the fact that he indicated in his Particulars of Claim that further particulars of injury would be added when they become available and the pleadings amended accordingly, I do not believe this would have caused this or any other defendant to reasonably anticipate the proposed amendments premised on Dr. Rodney's examination of the Claimant after the limitation period had expired.
- [55] Further still, on the Claimant's own evidence he defaulted from follow up at the OOPD at the Cornwall Reginal Hospital after his visit on February 20, 2020. Also on his evidence, his next interaction with a medical practitioner was three (3) years and seven (7) months later when he saw Dr. Rodney. That default and the absence of any evidence of any ongoing treatment for more than three (3) years is entirely unexplained. There is also no evidence before the court as to why the Claimant required further medical attention after that passage of time, after he filed his claim form, and after the expiration of the relevant limitation period.

- [56] In these circumstances, it is my judgment that the overriding objective of dealing with cases justly, the interests of justice and its efficient administration are best advanced in refusing the Claimant's application to amend his statement of case to include the proposed injuries at *vii* to *xviii* of the Amended Particulars of Claim; the cost of Dr. Rodney's medical report as an item of special damages; and to rely on the said medical report and corresponding receipt in the pursuit of his claim.

APPLICATION FOR LEAVE TO APPEAL

- [57] Ms. Nurse applies orally for leave to appeal the decision refusing the amendments indicated, on the grounds that the Claimant is not bringing a fresh claim, and that she considers that some of the matters raised by the court in disposing of the application were not in keeping with the principles established in decisions of the court of appeal. Without particularisation, she submitted that some of the issues considered were extraneous and are better left to a trial judge for determination.
- [58] Ms. Jones opposes the application for leave on the ground that the judgment delivered is sound and well founded on the authorities.
- [59] For reasons given for determining the application as I have, the articulated grounds of appeal are not considered as having a real prospect of success. The application for leave to appeal is accordingly refused.

COSTS

- [60] It was submitted by Ms. Nurse that considering that the application was made at the case management conference and allowed in part, if there was opposition to the court making no order as to costs, costs should properly be awarded in the claim.

- [61] Ms. Jones submits that costs should be awarded to the Defendant as the Claimant's application was only successful in part; and that a substantial part of it was refused. If that submission was not accepted by the court, she indicates her agreement with Ms. Nurse that costs of the application should be costs in the claim.
- [62] There is merit in the submission made by Ms. Nurse as to costs and I accordingly find that it is to be awarded in the claim.

ORDER

1. The Claimant's application for permission to have the Amended Particulars of Claim filed on 19th July 2024 stand as filed is refused.
2. The Claimant is permitted to file and serve an amended Particulars of Claim:
 - (d) To insert the following after "*Left brachial artery injury*" which appears under the subheading "*Particulars of Injuries of the Claimant*":
 - iv. *abrasions to left knee and anterior-medial aspect 1/3 of left arm*
 - v. *Numbness to left arm*
 - vi. *Numbness to left fingers*
 - (b) To insert under the subheading "*Notice Under the Evidence Act*" and as indicated, the words
 - (i) "*dated the 9th day of December 2021*" before "*Appendix 2*";
 - (ii) "*dated the 9th day of December 2021*" before "*Appendix 3*", and
 - (iii) "*dated the 27th day of January 2023*" before "*Appendix 5*".
3. The Claimant is to file and serve the permitted amended particulars of claim within fourteen (14) days of today's date.
4. If advised, the Defendant is permitted to file and serve an amended defence within fourteen (14) days of service of the Defendant's amended particulars of claim.
5. The application for leave to appeal is refused.

6. The case management conference is adjourned to 24th September 2025 at 10:00 a.m. for forty (40) minutes.
7. Any applications which may be made at a Case Management Conference, including but not limited to applications for the appointment of expert witnesses, will be considered at the adjourned Case Management Conference. In consequence all such applications are to be filed and served at least fourteen (14) days before 24th September 2025.
8. The party who files any application pursuant to order 7 is to produce a copy of this order to the Registry and request that the application be sealed and the date of the Adjourned Case Management Conference be inserted as the date for the hearing of the application, to facilitate timely service.
9. The term "NEG 1" is to be inserted in the top centre of the first page of any documents to be filed prior to their filing at the Registry.
10. Costs of the application to be costs in the claim.
11. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge