[2020] **JMSC Civ 47**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV02906

BETWEEN	**LAMAR GLENARD WILLIAMS**	**CLAIMANT**
AND	**IMAGE ONE LIMITED**	**DEFENDANT**

IN OPEN COURT

Ms K. Michelle Reid until October 31, 2017 and from July 3, 2018, Mrs Camille Wignall-Davis and Ms. Kathrina Watson instructed by Nunes Scholefield Deleon & Co. for the claimant.

Franklin Halliburton instructed by Halliburton & Associates for the defendant.

Heard October 23 – 25, 27 & 31, December 13 –14, 2017; July 3, 5 & 12, 2018; April 1, 2020

Employer's Liability – Components of duty of care owed by an employer to an employee – Whether employee contributorily negligent – Quantum of Damages for injuries including electric shock

D. FRASER J

BACKGROUND

[1] On May 13, 2013, the claimant, Mr. Lamar Williams, filed a Claim and Particulars of Claim seeking damages against the defendant company, Image One Limited, for negligence and/or breach of contract of employment. He also claimed interest pursuant to the **Law Reform (Miscellaneous Provisions) Act** ('LRMPA') and costs.

[2] Mr. Williams has averred that on or about November 08, 2010, he was employed to the defendant as a welder. He was instructed to install a multimedia banner at a location along Hope Road, St. Andrew in the vicinity of the Starapples Restaurant Parking Lot. He contends that whilst in the course of his duties as the defendant's employee, he suffered an electric shock and fell from a height of approximately 25 feet onto the ground. Consequently, he sustained severe personal injuries, suffered loss and damage and incurred expenses.

THE CLAIM

[3] Mr. William's Further Amended Particulars of Claim details that while in the course of his employment with the defendant, he was instructed by Ms Rochelle Rowe, the defendant's servant and/or agent, to work with two fellow employees to install a multimedia banner on one of its billboards situated in the vicinity of the Starapples Parking Lot. Mr. Williams said that when he was installing the banner, he suffered electric shocks from high tension electrical wires which were in close proximity to the billboard, and as a result he lost consciousness and fell from a height of approximately 25 feet onto the ground.

[4] He has claimed that the following were implied terms of his contract of employment and/or that the defendant had a duty to:

i) take all reasonable precautions for his safety while he was engaged in the course of his employment in carrying out his work;

ii) not expose him to any risk of damage or injury of which it knew or ought to have known;

iii) take reasonable care to ensure that his place of work was safe;

iv) provide and maintain a safe system of work;

v) provide adequate staff and supervision;

vi) provide adequate and safe gears and equipment; and

vii) provide all necessary equipment.

[5] Mr. Williams has also alleged the following particulars of breach of his contract of employment and/or negligence on the part of the defendant:

i) failing to take any or any adequate precautions for his safety while he was engaged in his work;

ii) installing its billboard in too close proximity to high tension electrical wires;

iii) caused and/or allowed a practice whereby its workers installed banners on its billboards which are in close proximity to high tension wires;

iv) causing or permitting him to work in an area which was too close to high tension wires;

v) failing to provide him with ladders or scaffolding on which to stand and/or traverse the area that he was instructed to work at the material time;

vi) failing to provide him with proper, appropriate and necessary safety equipment, tools and/or apparatus in particular gloves, helmet, harness, ladders and scaffolding to perform the assigned task;

vii) exposing him to risk of damage or injury of it knew or ought to have known;

viii) failed to have due regard for his safety and that of its employees;

ix) failed to request the presence of trained Jamaica Public Service Company professionals to raise/lift the said high tension wires to facilitate the installation of the banner on the billboard;

x) causing or permitting him to work in a dangerous environment;

xi) failing to provide any or any adequate supervision and training;

xii) failing to provide and/or maintain a safe and proper system of work; and

xiii) in the circumstance, failing to take reasonable steps to ensure his safety.

THE ISSUES

[6] The issues to be resolved by the court are as follows:

i) whether the defendant company has failed in its duty of care as the claimant's employer;

ii) if the answer to i) is yes, whether that failure caused the accident of November 8, 2010; and

iii) if the answer to ii) is yes, whether the claimant was contributorily negligent?

SUMMARY OF THE EVIDENCE TENDERED ON BEHALF OF THE CLAIMANT

[7] In Mr. Lamar Williams' statement which was permitted to stand as a part of his evidence in chief, he indicated that he was trained as a welder and started working in that capacity at Image One Jamaica Limited in April 2010. His duties included building frames for the defendant's billboards and small advertising signs.

[8] On November 8, 2010 the day of the incident, when he arrived at work, neither Mr. Ainsley Lowe the owner of the defendant company nor Mr Fairweather the supervisor, was there. Ms. Rochelle Rowe, the defendant's production manager, instructed him to go with two other workers, Omar and Delroy to three locations to install banners on billboards and blades in the trimedia. He indicated that his general duties did not include installing banners on billboards and he had never worked on a trimedia before. This was the first time that he was working with Omar, whom he knew to be a general labourer and Delroy, whom he knew to be a driver.

[9] They were instructed to go to the defendant's billboard at the Starapple Restaurant parking lot on Hope Road. The defendant also had a trimedia there behind the billboard. They travelled to the Starapples location in the defendant's vehicle driven by Delroy. It was loaded with certain tools and equipment such as a 10 foot ladder,

banners and aluminium covers for the billboards, clips, screws, drill tools, blades for the trimedia and an electrical generator. However they were not given a tall ladder, nor scaffolding, hard hats, helmets, harness, rope or any other gear to do the job.

[10] To install the banner on the billboard, he climbed up on top of the trimedia directly behind the billboard. He was assisted by Delroy and Omar. After the banner was installed he and Delroy were putting the aluminum covers on top of the billboard. He was standing on the extreme right side of the billboard closest to Hope Road. He was holding the edge of the frame waiting to screw down the aluminum cover when he suddenly felt a "grab to my hands" and blacked out. The next thing he knew he woke up in the University Hospital.

[11] He indicated that where he was standing at the time he blacked out was about 25 feet above the ground and about 3 or 4 feet from live high tension electrical wires. He indicated he was not issued with gloves to install the covers nor was he issued with a harness. He also maintained that he never saw any safety signs on the compound whether in the workshop or the office and area and that he had never been a part of any safety sessions.

[12] It is evident that after feeling the grab to his hands and blacking out Mr. Williams fell approximately 25 feet to the ground. The medical report of Dr Randolph Cheeks shows that Mr. Williams received severe electrical injury to the left upper extremity and the left side of his trunk resulting in extensive scarring. Mr. Williams testified that it was the live high tension electrical wires that were in close proximity to the trimedia on which he was working that caused his injuries.

[13] The photographs of the *locus in quo* that are in evidence and which were taken on January 21, 2011 approximately four (4) months after the incident, show electrical wires surrounding the entire area of the billboard. In particular, the bulk of the wires extend from a post that appears to be a few metres from the billboard which touch on the edge of the frame where Mr. Williams stated that he felt the

"grab" while he was working on top of the billboard and subsequently fell 25 feet to the road. It seems the reasonable and inescapable inference is that it was then that he suffered serious electric shock, given the medical report of Dr Cheeks.

[14] In cross-examination, Mr. Williams denied that he was dispatched by Mr. Fairweather. He however admitted that before leaving the defendant company on the day of the incident, when he went into the storeroom he saw a harness and "the thing that connect the harness to the structure", but he never took it up. He also denied that before the day of the incident he was aware of the distance between the billboard and the electricity poles and wires. He further denied that he was standing on a catwalk or beam in between the trimedia and the billboard while doing the installation. He explained in re-examination that he never took up the harness and connector as he was not instructed by the production manager to take them up. He also sought to explain two apparently conflicting statements he made concerning where Omar was at different times by indicating that before the incident occurred Omar was standing on the concrete wall below the trimedia and that at the time of the incident he was not present, as he was across the road.

[15] Based on that evidence it is therefore the contention of Mr. Williams that the defendant company did not provide him with adequate instructions, supervision and appropriate safety gears, to carry out the duties that he was assigned to do on the day he was injured. He therefore asserts that his employer breached its duty of care to provide him with a safe system of work.

SUMMARY OF THE EVIDENCE TENDERED ON BEHALF OF THE DEFENDANT

[16] Mr. Fairweather, who gave evidence on behalf of the defendant, indicated that he dispatched the workers on the morning prior to the claimant's accident. He stated that the claimant was provided with the necessary instructions and safety gears to ensure his safety during the installation process. He indicated that the claimant had mounted billboards on two previous occasions before the day of the

incident. However, he admitted that Mr. Williams was not trained to mount billboards near to live high tension wires.

[17] The safety gears provided he said included a ladder and instructions on how to fix it properly, and a harness and lanyard which Mr. Williams chose not to wear. Mr. Fairweather testified that had Mr. Williams worn them, the fall to the ground would have resulted in less injuries, if he would have fallen at all. With regard to the defendant's duty to provide its employees with a safe place of work, Mr. Fairweather testified that there were safety signs posted on the premises and safety sessions were held every morning.

[18] In cross-examination he admitted that the claimant was employed to do welding. He also maintained that he was the one who dispatched the team and provided them with gears, though he conceded that he reported to Ms Rochelle Rowe who was the production manager. He also maintained that there were safety signs on the compound and that he conducted safety briefing sessions. He further indicated to the court that if a worker did not comply with safety instructions they would first be warned and then if they persisted in breaching these instructions they would be dismissed. He aIso stated, that Omar was in charge of the team and that he had heard of Omar bending rules and not wearing gloves.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE CLAIMANT AS TO FACT

[19] Counsel for the claimant submitted as follows:

i) The evidence presented established on a balance of probabilities that, contrary to its defence, the defendant company failed to discharge its duty of care to the claimant and unreasonably exposed him to a risk of danger which resulted in the incident and the consequential injuries, loss and damages he sustained.

ii) The claimant was unshaken in cross examination and showed himself to be a credible witness who was forthright and honest in his responses to the

questions asked of him. There were no material inconsistencies in his account. Conversely, the defendant's witness was less than forthright and there were certain inconsistencies on his evidence which made it clear that he was not being honest with the court.

iii) On a balance of probabilities, the claimant's evidence that he was dispatched by Ms Rochelle Rowe, the defendant company's production supervisor is credible and should be accepted as there was no compelling evidence from the defendant challenging this. There was absolutely no indication in the witness statement of Mr. Fairweather that he was the one who had dispatched the workers on the morning and accordingly it is unlikely that he did so, since he did not expressly say so at the earliest opportunity.

iv) Similarly, the court should accept the claimant's account that on the morning of the incident there was no meeting or instructions given in relation to safety on the job that they were assigned to do, and that no safety gear was provided to him and the other employees.

v) It should be noted that the admission in cross-examination by the witness for the defendant that the claimant was employed to do welding is consistent with the claimant's own evidence that he was generally required to do welding and that at the time of the accident he did not have much experience with banner instalment.

vi) Mr. Williams' contention in his evidence that there was no catwalk constructed between the trimedia and the billboard for the workers to work from should be preferred in light of his credibility throughout the trial and that all Mr. Fairweather did was to simply assert that a catwalk was constructed, without more. Mr. Fairweather's admission that he did not check the vehicle for sufficient safety gear is incapable of challenging the

claimant's evidence as to the absence of the safety gear on the day of the accident.

vii) The evidence from the claimant as to how he got up to the height from which he was working at the material time, is unchallenged and should be accepted. This evidence was that he specifically used the ladder to climb onto the wall. From the wall he then climbed onto the top of the guardhouse. From there he climbed unto the back of the trimedia and then to its top, where he stretched the banner onto the billboard. He further asserts that his account, on a balance of probabilities, ought to be accepted as being truthful, because he was the only person who witnessed the operation on the worksite on November 08, 2010 and so he is the only witness who can assist the court in ascertaining what transpired on that day.

viii) Mr. Williams' evidence regarding Omar Armstrong's location, that before the incident occurred he was standing on the concrete wall below the trimedia and that at the time of the incident he was not present as he was across the road, has not raised any inconsistencies in the true sense and is not, in any event material to the issues in dispute between the parties. It is Mr. Williams' position that what is material to the issue of liability is Mr. Armstrong's absence from the location at the relevant time and his lack of involvement, as well as, assistance with the installation of the aluminium cover during the time that the incident occurred. In any event, according to Mr. Williams, he clarified his position during cross-examination by indicating that both accounts did not relate to the moments just before the fall, that is, one was a reference to Mr. Armstrong's location at the time of the accident and the other related to where he was before the accident occurred. This is not inconsistent but even if it is found to be so, this inconsistency is immaterial and ought not to affect the view that the court takes of his credibility.

ix) The main thrust of the claimant's case is that the primary issue for the court in determining liability for the accident is whether the defendant discharged its duty of care to him as his employer, and alternatively whether or not he was contributory negligent. It is his view that on an application of the legal principles (those applicable to an employer's duty of care) to the facts established on the evidence, the defendant failed in its duty of care as his employer, and as a result, is liable for the injuries he sustained on November 08, 2010. Additionally, Mr. Williams says that there is no evidence of any want of care on his part and therefore the defendant is to be held fully liable for the accident and his consequential injuries, loss and damages.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE DEFENDANT

[20] Counsel for the defendant submitted as follows:

i) There is no dispute that in law the duty falls to the employer to provide a reasonably safe system of work for his/her employees and where it is delegated by the master to another, the master still remains liable. (See: ***Wilsons and Clyde Coal Limited v English*** [1937] 3 ALL ER 628);

ii) The evidence on the behalf of the defendant company, is that at all times it provided a safe system of work for its employees, including Mr. Williams. Mr. Fairweather maintained that safety gear (helmets, gloves, lanyards, harness, ropes and ladders) were as a matter of course provided by the defendant company and were issued by him to Mr. Williams. There was a discussion with him (the claimant) regarding the job he would be doing offsite at the Starapples location, the height at which he would be working, the necessary tools he would require and the safety measures he should employ. The defendant indicated that Mr. Williams, along with the team, were reminded to take with them the safety gears provided and were told to

fix the ladder properly and use the lanyard and catwalk in carrying out the banner installation.

iii) Mr. Williams admitted that when he went into the storeroom, to remove all the requisite tools for the banner installation and to pack them into the truck, he saw the harness and the lanyard. This is significant in the context that Mr. Williams was familiar with the layout of the location and was aware of the nature of the job he was going there to do, in particular that it was required of him to work at certain heights. Therefore, his failure to take the harness and lanyard amounts to a material contribution to his present condition. The defendant is therefore asking the court to infer that had Mr. Williams worn the harness and lanyard, his fall to the ground would have been buffered or avoided, resulting in fewer and less severe injuries, if any.

iv) Mr. Fairweather denied that there were no safety signs or notices posted on the walls of the defendant company and in the workshop where Mr. Williams worked. The defendant also relies on the evidence of its witness that Mr. Williams had participated in a similar type of job before and he had then worn his harness/lanyard and his insulated gloves to minimize the risk of injury.

v) According to Mr. Fairweather, there were meetings held every morning when the teams were being dispatched to various locations. The purpose of these meetings was to discuss the job to be done and to ensure their safety. Additionally, based on the evidence of Mr. Fairweather, several safety sessions were conducted at the offices of the defendant company. This was because the company understands the inherent risks posed to its workers and tries to take steps to safeguard against any eventuality by educating and increasing the workers' knowledge and awareness of those risks and how to avoid them.

vi) The defendant company asserts that it was committed to the safety of its employees and that this was borne out from Mr. Fairweather's response to the questions posed by the court after re-examination, in respect of the sanctions (warning and then suspension) that would apply if persons did not comply with the safety measures. The evidence elicited was that where an employee had been suspended following a warning, but remained non-compliant with the stipulated safety procedures after suspension, then he/she would be fired. It was submitted, that the fact that the defendant company had such a policy in place makes it clear that the issue of safety was of paramount importance to the organization and that this policy expressly communicated the company's commitment to safety not only to its employees but also to the world at large;

vii) It was the defendant's contention that Mr. Williams had experience in banner installation and was reminded and/ or instructed by Mr. Fairweather as to the best practices to employ whilst on the job. Further, he was familiar with the Starapples location prior to the accident. This would have given him prior and personal knowledge of the layout of the location and an opportunity to observe any and all the attendant risks at the location. Therefore like the claimant in ***Wilson v Tyneside Window Cleaning Company Ltd*** [1958] 2 ALL ER 265, Mr. Williams had experience in relation to the particular job he was tasked with and/or the particulars of the condition under which he was expected to work. He therefore would have known of the degree of safety that would be required of him to complete the job at this particular location on November 8, 2010. As a result, the defendant company did not expose Mr. Williams to any unnecessary risk or to any risk that was not or may not have been readily apparent to him, based on his prior knowledge of the location.

viii) Reliance is placed on the case of ***General Cleaning Contractors Limited v Christmas***, in which the House of Lord in assessing the employer's duty to provide a safe system of work for his/her employees,

outlined that employers are to consider the situation and devise a suitable safe system, to instruct their men what they must do, and to supply any implements that may be required. The defendant company contends that, following the guidelines laid down in this authority it supplied the requisite safety tools to carry out the job of installation in a safe manner.

ix) Mr. Williams was supplied with a ladder, a harness, a safety belt, insulated gloves and hard steel toe boots. The defendant, through its supervisor, awareness programmes and notices around the place of work, also provided a safe system of work for Mr. Williams. Accordingly, firstly, the defendant company contemplated the various perils of the job that may arise from time to time; and secondly, the defendant company tried to minimize the risks to its employees by providing job training, constant instruction and some amount of protection for its employees by the supply of safety gear. As a result, the defendant company ought not to be held to be wholly negligent and/or responsible for Mr. Williams' injuries which, from all reports, were caused or contributed to by his refusal to wear the protective gear issued to him by the defendant company.

THE LAW

[21] Both counsel for the claimant and for the defendant relied on a plethora of authorities in their submissions. They have been reviewed. The court in the overview of the law will refer to those found to be most useful in the determination of the matter.

[22] It is settled that at common law every employer is under a duty to take reasonable care to protect his employees against risks which are reasonably foreseeable and to take reasonable care for their safety. The employer's duty in this respect is personal to the employer and non-delegable. It is fulfilled by the exercise of due care and skill. A failure to perform such a duty is the employer's personal negligence. (See ***Delroy O'Connor v West Indies Aluminia Company*** Claim

no. 2006HCV03551 (jud. del June 1, 2010) and ***Davie v New Merton Board Mills Ltd and Ano*** [1959] AC 604.)

[23] The objective of the employer's duty is to ensure that the employer's operations are carried on without subjecting employees to unnecessary risks, and the duty exists whether or not the employment is inherently dangerous. The several ingredients of the employer's duty to take reasonable care for the safety of their employees have been illustrated in the case of ***Ray McCalla v Atlas Protection Limited and Ringo Company Limited*** Claim no 2006HCV04117 (jud. del. May 6, 2011). These are:

i) to provide a safe place of work (including a safe means of access);

ii) to employ competent servants;

iii) to provide and maintain adequate plant and equipment; and

iv) to provide a safe system of working and effective supervision.

[24] With regard to adequate equipment, the employer's duty to his employee is to see that care is taken to provide adequate plant and appliances for the work to be done and to maintain them in proper condition. The obligation is a continuing one by virtue of which the employer is required to supply the necessary protective clothing or appliances and to take reasonable steps to see that they are used where the employee is engaged in a dangerous process (***Nolan v Dental Manufacturing Co Ltd.*** [1958] 2 ALL ER 449).

[25] In respect of a safe place of work and access to it, the duty is to see that a reasonably safe place of work is provided and maintained. The place of employment should be as safe as the exercise of reasonable care and skill permits; it is not enough for the employer to show that the danger on the premises was known and fully understood by the servant.

[26] In relation to the safe system of work and effective supervision, the employer's duty is to organise a safe system of working for his employees which has been defined to include the sequence in which the work is to be carried out, the provision of warnings and notices and the issue of special instructions (***Speed v Thomas Swift and Company Ltd*** [1943] 1 K.B. 557).

[27] The employer is required to provide employees with proper training, instructions and guidelines and to give notices and warnings regarding the ways in which to work safely, highlighting dangers and conduct that they should refrain from, in order to maintain safety. (***General Cleaning Contractors Ltd v Christmas)*** [1952] 2 ALL ER 1110, ***Lincoln Nembhard v Wayne Sinclair and Linton Harriot***, 2004HCV03081 and ***Jones v British Broadcasting Corporation and others*** [2007] ALL E.R. (D) 283);

[28] Further, the employer is to ensure that the system is observed and complied with. He does not discharge the duty of a safe system of work by merely providing it; reasonable steps must be taken to see that it is carried out and followed. This involves instruction of the workman in the system as well as some measure of supervision (***Richard Henry v Marjoblac Limited*** [2017] JMSC Civ 42 and ***Annette Johnson v ER Farms and Company Ltd*** [2016] JMSC Civ 93). It is a question of degree and of fact whether this has been done in each individual case.

ANALYSIS

Issue 1: ***Did the defendant discharge its duty of care to the claimant as his employer?***

[29] Based on the review of the law, in determining whether the defendant's duty of care to the claimant was discharged in the circumstances of this case, the court is required to consider:

i) Whether on the evidence the defendant company provided adequate equipment to the claimant, in particular the safety gears and tools required for

the job such as scaffolding, safety harness, tall ladder, helmet and special gloves?

ii) Whether on the evidence the defendant company provided a safe place of work particularly having regard to the height of the billboard and trimedia and their proximity to live high tension wires?

iii) Whether on the evidence the defendant provided a safe system of work and effective training and supervision of Mr. Williams and his co-workers while engaged in their work?

Did the defendant discharge its duty to provide adequate equipment and safety gear for the job?

[30] The defendant company's duty in this regard was to provide the requisite equipment and safety gear reasonably required to ensure that Mr. Williams would be safe in performing the duties he was assigned. The defendant company was also required to ensure that he would not be exposed to any unnecessary risks while performing those duties. As established during the review of authorities, this duty extended to the defendant company being required to take reasonable steps to ensure that any safety gear provided was utilized. Having viewed Mr. Fairweather and assessed his evidence regarding the provision of appropriate safety gear to the claimant, I do not accept that he was the one who dispatched them to complete their assigned task on November 8, 2010. I accept the evidence of the claimant concerning the gear with which they were equipped when they left the defendant company to the location at Starapples. Given the nature of the task, what I find to have been the non-provision by the defendant company of scaffolding, safety harness, tall ladder, helmet and special gloves, represents a failing by the defendant company in respect of its duty to provide adequate equipment to Mr. Williams, so that he could safely perform the job he was tasked to do.

[31] I also found the evidence of the defendant company less than convincing, concerning its responsibility to take reasonable steps to ensure that Mr. Williams utilized any safety gears allegedly provided. I have already indicated that I do not accept that Mr. Fairweather was the one who dispatched the team on November 8, 2010 and that in so doing he ensured that they had the requisite safety gears. That being my finding, it follows that Mr. Fairweather did not have any discussions with the claimant on the morning of the incident in relation to safety mechanisms. I also do not accept that the defendant company had regular meetings regarding safety. I have also resolved the issue of whether there was any safety signage on the defendant company's premises in favour of the claimant who stoutly maintained that he saw no such signs.

[32] The defendant company apart from the evidence of Mr. Fairweather, which as indicated I have not accepted, took no opportunity to support its position by reference to any record of meetings, inventory of, or assignment of gears, or photographs showing the safety signs. Having accepted that it was under a duty of care to Mr. Williams to provide safety gear, the defendant failed to present compelling evidence to prove on a balance of probabilities that this was done (See ***Annette Johnson v ER Farms and Company Ltd,*** supra).

[33] Mr. Williams was honest enough to admit that he saw a harness in the storeroom at the defendant's premises. I find his explanation as to why he did not take it with him reasonable. He indicated that he was never instructed to take a safety harness or that it was required for the job. I also accept his evidence that there were no special gloves provided for banner installation and that there were no such gloves in the storeroom on the day of the accident. This evidence establishes on a balance of probabilities that Mr. Williams was not provided with adequate equipment and safety gear for the job he was directed to perform, and in any event no steps were taken by the defendant to ensure use of the safety equipment which it alleges was available.

Did the defendant discharge its duty to ensure that the claimant had a safe place of work and access to it particularly in view of the high tension wires?

[34] The defendant's duty in this matter was to ensure that the claimant's place of work was as safe as the exercise of reasonable care and skill permitted. That required the taking of active steps on the part of the defendant company as Mr. Williams' employer to eliminate or reduce the risk of dangers at any location where he would be required to work. The defendant company, therefore, cannot rely on presumed knowledge or understanding on the part of the employee of any danger on the premises. (See ***Jones v British Broadcasting Corporation and others,*** *supra*);

[35] There can be no dispute on the facts that the location where Mr. Williams was dispatched to work on November 8, 2010 was unsafe and exposed him to a serious hazard and risk of danger. The live high tension wires were in close proximity to both the trimedia on which he was working and the billboard on which the banner was being installed. This is clear from the photographs that are in evidence. The parties in this matter have agreed that they depicted the trimedia and billboard on the location at the material time.

[36] Mr. Williams' previous visits to the relevant premises and knowledge of conductors of electricity, did not operate to relieve the defendant company of its duty to provide a safe place of work and to warn of any dangers that existed at the workplace. Further, it was not unreasonable that Mr. Williams did not object to what he perceived as the ordinary request of his employer. The mere absence of an objection does not mean that he consented to risk and injury, neither does it absolve the defendant company of its duty to him as one of its employees (See ***Jones v British Broadcasting Corporation and others,*** supra).

[37] The requirement to work in close proximity to live high tension wires was no doubt dangerous and unsafe and the fact that the defendant did not arrange to have the Jamaica Public Service temporarily disconnect the electricity or raise the wires whilst the work was being done on the billboard, exposed all three employees to

the risk of electric shock and as a consequence Mr. Williams suffered greatly. Further, Mr. Fairweather accepted that Mr. Williams was not trained to install banners on billboards in close proximity to high tension wires and he agreed that he had no discussion with him concerning this. This, in my view, is a clear breach of the duty of care by the defendant. The ladder was also inadequate, as it was not tall enough, and contributed to making the claimant's access to the work area a hazardous enterprise.

[38] In this case, there was therefore a clear failure on the defendant company's part to take reasonable steps to eliminate a known danger at the place Mr. Williams was required to work. The defendant company cannot rely on any inferred knowledge on Mr. Williams' part as to the existence of the wires in that location prior to the incident occurring, to absolve itself of that breach of duty. That is so particularly in the absence, on Mr. Fairweather's own admissions, of any warnings to the claimant of the dangers of working in close proximity to high tension wires. Therefore on a consideration of all the evidence, the defendant failed in its duty to provide a safe place of work and safe access to it.

Did the defendant provide a safe system of work and supervision?

[39] The principle is that the employer is under a duty to instruct the employee as to a safe system of work and to provide some measure of supervision, ultimately with a view to ensuring, as far as reasonable, that the system is adhered to by the employee. On the evidence presented I have concluded that the defendant failed to do so.

[40] It was the responsibility of the defendant to ensure that Mr. Williams was adequately supervised while he was performing the duties assigned to him especially as he was not experienced in the installation of banners, and given the particular hazard of live high tension wires being close to the work space. The evidence which is accepted is that Mr. Williams had only installed banners on two previous occasions. It is evident that he was untrained and insufficiently

experienced in this area. The presence of high tension electrical wires being in close proximity to where the work was being done, and the absence of proper instructions as to what was to be done and what gears should be utilised, further compounded the issue.

[41] The submission by counsel for the defendant company that since it was a small company every employee was required to chip in and perform various tasks, coupled with the admission by Mr. Fairweather that he had heard that Omar would bend the rules, demonstrates that there was an unsafe system of work in place. That was so as untrained and unskilled workers sometimes did jobs that required specialization and special care. Further, there was inadequate supervision and insufficient attempts made to ensure conformity with such safety measures as may have been in place. Omar whom Mr. Fairweather said he heard would sometimes bend the rules, was purportedly in charge of the team on the material date. If this is in fact true, then placing Omar in charge of the team in and of itself constituted a failing on the part of the defendant company in ensuring there was adequate supervision. It should be recalled at this point that the claimant testified that at the time of the incident Omar was not there and that Omar had said he was going across the road.

Issue 2: ***Did the failure of the defendant company to discharge its duty of care towards the claimant cause the accident of November 8, 2010?***

[42] While it is the defendant company's position that this was not the first time that Mr. Williams was given the task to mount a billboard, that fact does not absolve the defendant of its duty of care to him. It would appear on the evidence, that Mr. Williams was accompanied by persons to the location who were similarly untrained. On the claimant's evidence these persons were a driver and a general labourer. They would therefore not have been in a position to either adequately assist or supervise him.

[43] Counsel for the defendant company relied on the case of ***Baker v T. Clarke Limited*** [1992] CLY 2019 in seeking to support its position that it had fulfilled its duty of care to the claimant. In that case Stuart-Smith LJ giving the leading judgment of the English Court of Appeal stated at page 13 of the transcript of the judgment that:

> As for being instructed to ensure that the locks were on the casters, again that was something, as shown from the passage which I have indicated, about which the plaintiff was well aware. It is not the duty of employers constantly to remind skilled workers of the things they should do unless the dangers are insidious or there is evidence that precautions are not being observed, none of which occurred in this case.

The learned judge also went on to state at page 14 that:

> If the plaintiff had been reminded of the regulations, reminded of the need to lock the casters. And reminded that it was matter for him to decide whether the outriggers should be used in the circumstance of which he as well aware, he might have forgotten those reminders and he might have cut corners. How often was he to be reminded of those matters? He was well aware of them. In my judgment he did not need to be constantly reminded.
>
> This was a case of a very experienced man who well understood the risks and dangers involved in the work that he was doing, was well able to make a decision as to whether or not additional precautions should be taken, and for those reasons in my judgment this appeal should be allowed.

[44] That case involved the regulations which guided scaffolding work in the particular field. ***Baker*** considered the fact that the plaintiff disobeyed instructions or precautions necessary to carry out the task of which he was well aware beforehand. ***Baker*** is not of assistance to the defendant company as in this case there was no mention of the claimant being provided with protective gloves, even though he was going to work in the vicinity of live high tension wires. Additionally, given the task that Mr. Williams was assigned, he could by no means be considered “a very experienced man”.

[45] Counsel for the defendant also submitted that Mr. Williams' training and qualifications as a welder would have exposed him to the safety requirements of working at heights. In reliance on the authority of ***Leach v British Oxygen Company Limited*** [1965] CLY 2725, counsel argued that Mr. Williams' injuries were as a result of an act of folly. The facts of ***Leach*** are that the plaintiff was employed to the defendants, a well-known company who carried on a business of preparing, compressing and delivering acetylene gas, a highly inflammable substance. The plaintiff, an employee of the defendants who was experienced in the task of breaking up calcium chloride, used the wrong tool for the job; as a result, an explosion occurred and the plaintiff was injured. The plaintiff contended that the defendants were negligent in not warning or reminding him to use the correct tool. It was held by the Court of Appeal that the plaintiff's conduct was not a "momentary aberration" but an act of folly, against which the defendants were not bound to guard him, so that they had not been negligent.

[46] The case of ***Leach*** I find is easily distinguishable and does not assist the defendant company. There is no evidence in this case that the claimant was experienced in banner installation. Proficiency in welding does not automatically carry with it proficiency in the task he was assigned. Also in ***Leach***, it was not that the plaintiff did not have access to the appropriate tool. The situation was that he forgot that using a particular type of tool would have been dangerous in the circumstances. In the instant case however, one of the main issues is the non-provision of adequate gear including insulating gloves.

[47] The case of ***Annette Johnson v ER Farms and Company Ltd*** [2016] JMSC Civ 93 has provided the basis for the finding that the defendant company ought to have presented compelling evidence to prove on a balance of probabilities that when Mr. Williams went to install the banner he had been provided with a competent staff of men, adequate safety equipment, a safe system of work with effective supervision and a safe place of work. The evidence presented on behalf of the defendant I found did not discharge that duty. I have also found, for the reasons

previously outlined, that the location at which the claimant was required to perform his duties was not a safe place of work.

[48] In summary, the court is satisfied, on a balance of the probabilities, that there were no notices (either in the workshop, office or on the compound) concerning safety gear and safety practices by the defendant company and that even if there existed any semblance of a warning system, it was not properly enforced by the defendant company in keeping with the principles enunciated in ***Nolan v Dental Manufacturing Co Ltd***. It was also the court's finding that there existed an unsafe system, unsafe place of work, inadequate supervision and inadequate equipment provided for the claimant to carry out the assigned task. Accordingly, I find that the defendant did not take reasonable care for the safety of the claimant and that the accident on November 8, 2010 in which the claimant suffered his injuries was a direct result of the defendant company's breach of the duty of care owed to him. These factors constitute a breach of the defendant's duty of care to Mr. Williams and consequently it is deemed liable for the injuries, loss and damages Mr. Williams sustained on November 08, 2010.

Issue 3: Was There Any Contributory Negligence on the part of the claimant?

[49] I can uncover no basis on the evidence to say that Mr. Williams was contributorily negligent. It was the defendant that failed in its duty to him as previously outlined. The only area in which it could be considered that he might have borne some responsibility, is in relation to the fact that he never carried a safety harness with him to the job. I however accept the submissions of counsel for the claimant that, as he was not warned of the danger of his work space, or provided with adequate equipment in light of that danger, and neither was he instructed that a safety harness was required, he cannot be faulted for not having taken a harness to the job. Accordingly, I find there is no contributory negligence attributable to the claimant and the defendant company is wholly liable for the injuries, loss and damage suffered by the claimant.

THE QUANTUM OF DAMAGES THAT SHOULD BE AWARDED TO THE CLAIMANT

GENERAL DAMAGES

[50] The nature and extent of the claimant's injuries and treatment have been summarised by counsel for the claimant as follows:

i) Electric shock;
ii) Forgetfulness/loss of memory;
iii) High voltage electrical burns to left hand, arm, chest, stomach and side;
iv) Unconsciousness;
v) Concussion;
vi) Injury to head with laceration;
vii) Severe and persistent headaches;
viii) Severe neck pain and stiffness;
ix) Swelling of the upper cervical spinal cord;
x) Cervical muscular strain;
xi) Soft tissue injury related to neck muscles;
xii) Pain to upper back radiating throughout body;
xiii) Mechanical back pain and knee pains;
xiv) Extensive scarring;
xv) Chest pains;
xvi) Numbness and burning in both hands;
xvii) Weakness in both upper limbs (dropping objects);
xviii) Pain to both shoulders;
xix) Bilateral torticollis of trapezius muscles
xx) Bilateral Trapezius muscle spasm
xxi) Chronic whiplash injury
xxii) Chronic mechanical back pains
xxiii) Post-traumatic Stress Disorder
xxiv) Depression

[51] The claimant also gave evidence as to how his activities of daily living have been affected by the injuries he has sustained. In this regard, he has indicated that he suffered from the following:

i) Persistent headaches which are not alleviated by medication;
ii) Dependence on painkillers;
iii) Pain that affects sleep;

iv) Embarrassment due to scarring to left upper extremity;
v) Reduced libido and premature ejaculation;
vi) Incontinence/ bedwetting;
vii) Inability to bend to pick up young child without pain;
viii) Can't bend for too long to pick up anything;
ix) Tingling/ nervous feeling in head;
x) Intermittent dizziness;
xi) Sensitivity to light and sound;
xii) No longer able to assist with household chores.

[52] The claimant indicated that because of his injuries he can no longer do electrical welding work. He was able to work at home servicing vehicles earning about $20,000.00 each month, but it was not regular work with steady pay. He also indicated that he had done some A/C refrigeration work with his brother for which he earned about $5,000.00 per month.

[53] The medical treatment and surgical procedures undergone by the claimant include:

i) Admittance to hospital for ten days;
ii) On-going post-discharge Medical treatment in orthopaedic, neurosurgery, neurology, psychiatry, cardiac, physiotherapy and pain management clinics at the UHWI;
iii) Cervical Collar;
iv) Physiotherapy;
v) Analgesics, muscle relaxants, oral and topical medication and neuromodulators;
vi) X-Rays of cervical spine and lumbar spine and both knees;
vii) MRI Scan of the brain and cervical spine;
viii) ECG;
ix) Stress test.

[54] Dr. Cheeks, consultant cranial and spinal neurosurgeon who saw the claimant on June 7, 2012, diagnosed the claimant as having sustained severe electrical injury to the left upper extremity and the left side of his trunk resulting in extensive scarring, head injury with concussion, scalp laceration and mild cognitive deficit. In respect of the concussion Dr. Cheeks described it as one of at least moderate severity and noted that the claimant had a significant period of posttraumatic amnesia. He assessed the claimant as having a combined permanent partial

disability of 10% comprised of 5% in relation to the left upper limb and 5% in relation to the impairment of his cognition and recent memory function.

[55] Dr. Kenneth Vaughn Consultant Orthopaedic Surgeon examined the claimant in September 2017 in respect of his persistent complaints of headache, neck and back pain. He also complained of memory loss at times, a sticking pain to the left chest and cramping of the hands. Dr. Vaughn's examination at that time evidenced reduced rotation of the cervical spine and reduced strength in the muscles of his left upper limb. His left upper limb reflexes though present were diminished. He also had, among other things mild discomfort in the lower back.

[56] Dr. Vaughn, assessed the claimant as having a Class 1 impairment of his cervical spine and Grade 2 modifier which equates to a 3% whole person impairment. He also assessed the claimant as having a Class 1 impairment of the lumbar spine with Grade 1 modifier which equates to a 3% whole person impairment. The combined impairment was 6% of the whole person.

Summary of submissions on behalf of the claimant

[57] Learned counsel for Mr. Williams, submitted that his medical reports which speak to him sustaining high voltage electrical burns together with his testimony concerning his close proximity to the high tension wires and the aluminium cover with which he was working support the claimant having sustained injury from electric shock.

[58] Counsel argued that the claimant sustained multiple severe injuries and has been left with permanent impairments in respect of them all. Further, that he suffered injuries, pain, and psychological trauma as a result of the incident and now has limitations as he has not fully recovered from the effects of his injuries. Counsel also advanced that the claimant's inability to compete in a field of his choice was something for which he should be compensated. Considering all his injuries and having regard to the authorities, it was submitted that a sum in the region of $8,000,000.00 – $9,000,000.00 would be reasonable for pain and suffering and

loss of amenities. Reliance was placed on the cases of ***St. Helen Gordon and Anors v Royland McKenzie*** Suit No. C.L. 1997 G 025 Khan Vol. 5 page 152; ***Dawnett Walker v Hensley Pink*** SCCA 158/01 Khan Vol. 6 page114; ***Lisa Housen v Leon Shackleford*** 2006HCV00601 (jud. del. December 3, 2008); ***Cecelia Buchanan v Seacoast Trucking Service Ltd and Brian Thompson*** 2008HCV00638 (jud. del. May 24, 2009); ***Walter Dunn v Glencore Alumina Jamaica Ltd t/a West Indies Alumina Company (Windalco)*** 2005HCV01810 Khan Vol. 6 page 179; ***Kirk Barrett v Glencore Alumina Ja. Ltd*** 2005HCV05127 Khan Vol. 6 page 181; ***Angeleta Brown v Petroleum Company of Jamaica Ltd and Juici Beef Ltd*** 2004HCV01061 (jud. del. April 27, 2007; ***Lora Hinds v Robert Edwards and Reginald Jankie*** Suit No. C.L. 1990H025 Khan Vol. 4 page 100, ***Bernice Clarke v Clive Lewis and Lyneire Ashman*** Suit No. C.L.2001/C234 (Heard April 11, 2003) and ***Tricia Thompson (bnf Alethia Sheriffe) v Junior Harriott*** ("Harrisons' Assessment of Damages" 2nd Ed. at pp. 556-7).

[59] It was submitted that the injuries suffered by Mr. Williams have affected his ability and capacity to work as he is no longer able to compete with other able bodied persons on the open market. He has also suffered a diminution of $9,858.00 per month in his earnings. The difference between his pre-accident earnings ($29,858.00) while employed to the defendant and his reduced earnings ($20,000.00) from motor vehicle servicing in the post-accident period would be the most appropriate indication of the diminution in Mr. Williams' earnings. Additionally, it was submitted that the $5000 he earned whilst working with his brother-in-law, ought not to be taken into account in determining his diminution in earnings, as it was not a permanent job.

[60] Considering the claimant's pre-accident earnings and the post-accident diminution in earnings, the multiplier/ multiplicand approach was advanced by counsel as appropriate for the calculation of the award for handicap on the labour market. Mr. Williams, it was submitted, has at least 30 working years until retirement and the risk of reduced competitive ability on the labour market as well as reduced earnings had already materialised since 2014. Accordingly, counsel

submitted that a multiplier of 10 years should be applied to calculate handicap on the labour market as the claimant could be expected to work for another 30 years. Having regard to his diminution in earnings of $9,858.00 per month and the multiplier of 10 years, the handicap on the labour market award would amount to $1,182,960.00. Reliance was placed on the authorities of ***Smith v Manchester City Council*** (1974) 17 KIR 1, ***Lincoln Nembhard v Wayne Sinclair and Linton Harriot***, 2004HCV03081 Khan Vol. 6 page 177 and ***Winston Pusey v Pumps & Irrigation Ltd and Jamaica Public Service Ltd*** Suit No. C.L. 1986P041 Khan Vol. 4 page 91.

[61] With regard to pleaded special damages, counsel indicated the sum of $864,407.28 and continuing was being claimed. Of this total, the sum of $380,957.28 was being claimed for medical expenses which has been proven by the receipts and invoices tendered as exhibits.

[62] Counsel also submitted that the sum of $447,870.00 was being claimed for compensation for the loss of earnings suffered for the period June 2013 (when the claimant stopped receiving his salary from the defendant) and September 2014 (when he commenced working on motor vehicles). Counsel advanced that there was no suggestion that the claimant had abandoned his job, but in any event based on the medical evidence, he was unable to do the work he used to do as a result of the injuries he suffered. Further, that there was no evidence that the defendant company has offered him any alternative jobs or positions.

[63] Counsel submitted that with respect to the sum of $36,180.00 claimed as transportation costs, while the claimant did not have receipts in proof, the costs were reasonable and in these circumstances a relaxation of the rule of strict proof was appropriate. Counsel relied on the cases of ***Ezekiel Barclay and Another v Kirk Mitchell*** Suit No. C.L.B 241/ 2000 (jud. del. July 13, 2001) and ***Desmond Walters v Carlene Mitchell*** (1992) 29 JLR 173 in support of this submission.

Summary of submissions on behalf of the defendant

[64] Counsel submitted that the claimants in the cases relied on by the claimant had far more significant permanent partial disability than the claimant in the instant case and were accordingly more serious. It was submitted that in the circumstances of the instant case, the court should grant an award of $2,300,000.00 for pain and suffering. The court was referred to the cases of ***Rowe v Lue*** Suit No. C.L. 1987/ R239 ("Harrisons' Assessment of Damages" 2nd Ed. at p. 230), ***Winston Pusey v Pumps Irrigation Limited and JPS*** and ***Vanura Lee v Petroleum Corporation of Jamaica & Juici Beef Limited*** Suit No. 2003/HCV 1517 ("Harrisons' Assessment of Damages" 2nd Ed. at p. 123).

[65] In relation to handicap on the labour market, counsel submitted that the claimant admitted that he presently works as a mechanic, servicing vehicles and fixing air conditioning units and refrigerators. Counsel maintained that even though the claimant tried to downplay the rigors of his vocation, the court was invited to take into account that he is not totally impaired and devoid of options to earn a living by other means. It was also submitted that although he listed his qualifications as a welder, there was no evidence presented to the court that welding was his only skill and that as a consequence of his injuries he has now been dispossessed of the only skill that he has.

[66] It was further submitted that the evidence suggests that immediately prior to working with the defendant company, Mr. Williams was gainfully employed in work other than welding. At the time of the up to the time of the accident, he had been a welder for only four years, having taken up welding in or around 2006. Since the accident, in or around October, 2014, he has engaged and continues to engage in other fields of endeavour, primarily servicing of motor vehicles, changing the oil, air and fuel filters, which, according to him requires the use of both hands; and sometimes requires him to lie flat on his back and under the motor vehicles.

[67] Regardless of the nature of the tasks that he undertakes in the servicing of vehicles, counsel invited the court to view Mr. Williams as not only employable on the labour market but also currently in control of his own earnings as a consequence of being self-employed. Therefore counsel submitted if Mr. Williams wished to go back into the labour market, he would be able to retrain/ recertify and find gainful employment in other areas of endeavour, other than welding.

[68] It was further advanced that if the court was considering an award for loss of earning capacity, it should be considered that Mr. Williams was 37 years old and would still be able to work for a substantial number of years before he reaches retirement age. Counsel argued that Mr. Williams had mitigated his own loss and found gainful employment since the accident, thereby reducing his 'handicap on the labour market'. Additionally, counsel maintained that the claimant had also, by virtue of starting his own motor vehicle servicing business, reduced or eliminated the real or substantial risk of him losing his job as a mechanic and being thrown on the labour market. Counsel also highlighted that the claimant had found employment relative to and/or commensurate with that which he earned prior to the accident, approximately $29,000.00, compared to the $25,000.00 which he now claims to earn, post – accident.

[69] It was submitted that the cases being relied on by the claimant in support of a high multiplier were concerned with injuries that were all more severe and critical than his. Accordingly, the court was invited not to adopt the 10-year multiplier used in the ***Winston Pusey v Pumps Irrigation Limited and JPS*** and other cases cited. If the award is to be entertained at all, a multiplier of no more than 3 years was suggested as appropriate for application applied, to account for any deficit in years whilst he was recuperating between the time of the accident in November, 2010 and October 2014 when he started to do motor vehicle servicing and fridge repairs.

[70] Counsel also submitted that the defendant company disputed the claimant's claim of approximately $60,000.00 for the cost of public transportation on the basis that the amount claimed does not accord with the number of physiotherapy/medical

visits he has been recorded as attending. The court was urged to accept a more conservative figure of approximately $25,000.00 for transportation costs as a reasonable alternative.

[71] Finally, counsel invited the court to award no more than $2,500,000.00 for pain and suffering, handicap on the labour market and transportation costs.

ANALYSIS

Pain and Suffering

[72] It was submitted on behalf of the claimant that the sum of $8M - $9M would be a reasonable award for pain and suffering and loss of amenities including psychological trauma flowing from of the incident. The defendant company on the other hand argues for an award of no more than $2.3M under this head.

[73] I accept the medical report of Dr Cheeks as to Mr. Williams' injuries and prognosis. According to the medical report of Dr Cheeks dated June 7, 2012, he has a PPD of 10% whole person, which combines the disabilities resulting from the impairment of cognition (5%) and the disability resulting from the impairment of function of his left grip (5%). Additionally, the scarring to his left upper extremity and left side of his trunk is permanent. I also accept the report from Dr. Vaughn who assessed the claimant as having a Class 1 impairment of his cervical spine and Grade 2 modifier which equates to a 3% whole person impairment. He also assessed the claimant as having a Class 1 impairment of the lumbar spine with Grade 1 modifier which equates to a 3% whole person impairment. The combined impairment was 6% of the whole person. No report was received from a psychiatrist or psychologist regarding his psychological trauma, though he was referred to the psychiatric department at the University of the West Indies. Given the absence of the appropriate medical report in those circumstances the court will not be able to properly take any alleged psychological aspect of his injuries into account in awarding damages.

[74] The case of ***Cecelia Buchanan v Sea Coast and Trucking Service Ltd*** was somewhat helpful. In that case the claimant sustained mild whiplash injuries, mechanical lower back pains, loss of cervical tenderness, mild left parallel headaches and mild intermittent pains along the medical aspect of the left knee. She had a PPD of 5% in relation to the back pains (Updated award $3,719,999.99).

[75] The cases relied on by the claimant in respect of quantum for pain and suffering, did not include any where the claimant suffered electrical shock and burns. In ***Walter Dunn v Glencore Alumina Jamaica Ltd t/a West Indies Alumina Company (Windalco),*** the burns were caused by a corrosive liquid and he suffered burns to 3% of his body (Updated award $2,608,173.08). In ***Angeleta Brown v Petroleum Company of Jamaica Ltd and Juici Beef Ltd*** the claimant suffered burns in a gas fire over 20 – 24% of her body (Updated award $6,724,198.25, including damages for psychological trauma). In ***Kirk Barrett v Glencore Alumina Ja. Ltd*** the claimant received chemical burns over 6% of his total body surface area (Updated award $4,601,332.06).

[76] Counsel for the claimant conceded that the burn injuries in ***Angeleta Brown*** and ***Kirk Barrett*** were more severe that the burn injuries suffered by the claimant in the instant case. However counsel contended that the range of injuries suffered by the claimant was such that it justified an award higher than the updated award in those cases

[77] Concerning a case where there was an injury to the hand, in ***Lora Hinds v Robert Edwards and Reginald Jankie*** the claimant suffered pain in her right elbow and injury to her right hand. Her permanent disability was assessed at 10% which is equivalent to 6% of the whole person. (Updated award $3,866,713.72)

[78] I have found considerable assistance from the case of ***Tricia Thompson (bnf Alethia Sheriffe) v Junior Harriott***. In that matter the claimant had brief unconsciousness with a minor concussion, lacerations to the left side of the head behind the ear, and on the left foot, bruising of left shoulder, dizziness and

darkening of vision intermittently, impairment of recent memory function, moderate impairment of hearing in both ears and risk of 4% of epilepsy developing. She was awarded $170,000.00 for pain and suffering in October 1990, which now updates to $6,557,785.04. While in the instant case the claimant does not have any hearing impairment, nor risk of epilepsy developing, there is the similarity of unconsciousness, laceration to head and impairment of memory function.

[79] There is no case to which the court was referred that closely approximates the combination of injuries and sequelae that the claimant suffered in this case, hence the number of different awards which counsel relied on. The claimant has had a vast range of complaints, which together require that the award be commensurate with the pain and suffering occasioned. This is the case even without taking into account the claim for psychological trauma for the reasons earlier outlined. Taking all factors into account including the nature and wide range of injuries he suffered, the length of time the claimant indicated he suffered certain symptoms and his remaining PPD, I am of the view than an award of $6.5M for pain and suffering is appropriate.

Handicap on the Labour Market

[80] As established in the case of ***Smith v. Manchester City Council*** a claimant is entitled to compensation for impairment to his earning capacity, if he can no longer earn or is earning lower than his pre-accident rate. Additionally such a claimant should also be compensated for the weakening of his ability to compete for comparable employment with other able bodied persons in the labour market. The claimant used to earn $29,858.00 per month before the accident. Based on his transition to servicing of motor vehicles and working with his brother to install A/C refrigeration he was able to earn $25,000 after the accident. Though counsel for the claimant submitted that the $5000 earned for working with his brother should not be included as it was sporadic, I find it should be included as it represents earning capacity and the fact that the claimant is able to earn from more than one type of employment. Accordingly, the multiplicand should be the

difference by way of diminution between his pre and post-accident earnings which is $4,858.00.

[81] Regarding the multiplier, it was submitted on behalf of the claimant that the multiplier should be 10 and on behalf of the defendant company that the multiplier should be 3. Two cases were relied on by counsel for the claimant in which the court had to consider the appropriate multiplier for claimants who do labour intensive work. In ***Lincoln Nembhard v Wayne Sinclair and Linton Harriott*** where the claimant was a carpenter and mason aged 31 who suffered electrical burns on the job a multiplier of 10 years was assigned by the court. A multiplier of 10 years was also used in the case of ***Winston Pusey v Pumps and Irrigation Limited and JPS*** where the claimant was a linesman aged 25 at trial. As the claimant in this matter was aged 37 at trial, and being 23 years from the retirement age of 60 a multiplier of 7 years seems appropriate.

SPECIAL DAMAGES

Loss of earnings

[82] The claimant has claimed the sum of $447,870.00 for loss of earnings for the period June 2013 when the claimant stopped receiving his salary from the defendant company and September 2014 when he commenced working on motor vehicles. No suggestion was made that the claimant abandoned his job, and the medical evidence has established that as a result of the injuries sustained in the accident the claimant was unable to do the work he used to do. There is also no evidence that any alternative position or job was offered to the claimant by the defendant company.

[83] While it is commendable that the defendant company continued paying the claimant, as was its responsibility up to May 2013, it was not entitled to summarily cease paying him in June 2013, which seems to have coincided with the service of this claim by the claimant upon the company. In all the circumstances it is manifest that the claimant is entitled to loss of earnings for the period claimed.

As the loss would not have commenced at the time of the incident given that the defendant company continued to pay him for over two years afterwards, it is only fair that the period of interest in relation to this head of damage should commence at the month of the default, and not at the date of the accident.

Medical Expenses

[84] The sum of $380,957.28 claimed for medical expenses has been proven by the receipts and invoices tendered as exhibits, and will be awarded by the court.

Transportation Costs

[85] In respect of the transportation costs, I accept the pleaded amount of $36,180.00 despite the absence of receipts. The cases of ***Ezekiel Barclay and Another v Kirk Mitchell*** Suit No. C.L.B 241/2000 (jud. del. July 13, 2001) and ***Desmond Walters v Carlene Mitchell*** (1992) 29 JLR 173 (CA) clearly establish that satisfactory proof of some types of expenditure in particular circumstances, may be achieved without documentary evidence. This is one such type of expenditure and the circumstances are appropriate in this case. Given the nature of the injuries suffered by the claimant and the extent of medical treatment he has received, I find the amount claimed for travelling to be quite reasonable.

CONCLUSION

[86] For the reasons stated in the analysis in relation to liability, I have found that the defendant company was negligent and wholly liable for the claimant's injuries sustained on November 8, 2010. Given the nature of the injuries, loss and damage suffered by the claimant, the award of damages is as follows:

i) Special Damages are awarded in the sum of $865,007.28 –

(1) In respect of the sum of $417,137.28 *(for medical expenses and transportation costs)*, interest shall be paid thereon at the rate of 3% per annum from November 8, 2010 to April 1, 2020.

(2) In respect of the sum of $447,870.00 *(for loss of earnings)*, interest shall be paid thereon at the rate of 3% per annum from June 30, 2013 to April 1, 2020.

ii) General Damages are awarded in the sum of $6,908,072.00 *($6.5M for pain and suffering and loss of amenities and $408,072.00 for handicap on the labour market)* with interest thereon at the rate of 3% per annum from June 7, 2013 to April 1, 2020.

iii) Costs to the claimant to be agreed or taxed.