

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2022/0277

BETWEEN:

ERROL HARRIS

Claimant

And

MOUNT JOY DEVELOPMENT SERVICES LTD

Defendant

Appearances:

Mr. Lawrence Daniels for the Claimant

Ms. Mandi Thomas and K Nicholson for the Defendant

2025: July 17th

July 31st (Submissions)

September 1st

ORAL DECISION

- [1] **BYER, J.:** This claim concerns the obligations between an employee and his employer.
- [2] The claimant is a former employee of the defendant company having worked with them as a carpenter from in or about 2016 to 2021. The claimant claims in negligence, damages for injuries allegedly sustained during work from the use of a jackhammer in May 2020 and May to September 2021.
- [3] In particular, the claimant claims the following particulars of negligence:

- a) failure to provide a safe system of work
- b) failure to equip the claimant with protective gear
- c) failure to provide the claimant with protective garment
- d) exposing the claimant to the persistent danger and use of the jack hammer
- e) failure to take any adequate care for the safety of the claimant while the claimant was at work
- f) exposing the claimant to a foreseeable and unnecessary risk when the defendant knew or ought to have known that it would be dangerous for the claimant to work
- g) failing to develop and/or implement a safe system of work to as to alert, obviate and/or minimise the risk of injuries to the claimant
- h) failing in all the circumstances to take any and any adequate duty to care for the protection and safety of the claimant
- i) exposing the claimant to risk of harm which resulted in the claimant suffering personal injuries while working for the defendant

[4] The matter proceeded to trial on the sole issue of liability and whether the defendant as the employer of the claimant, had breached their duty to the claimant as an employee and is thereby liable in negligence.

Is the Defendant as the Employer of the Claimant liable to the Claimant in Negligence?

[5] Having assessed the particulars of negligence this court must first consider whether there was any duty owed by the defendant to the claimant as their employee and whether they breached that duty in the manner as averred by the claimant.

[6] At common law, the test as to an employer's liability has long been settled. In **Stokes v GKN (Bolts and Nuts) Ltd** ¹ Swanwick J put it this way, " ...the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in light of what he knows or ought to know.....He must weigh up the risk in terms of the likelihood of injury

¹ [1968] 1 WLR 1776 at 1783

occurring and the potential consequences if it does and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected as a reasonable and prudent employer in these respects, he is negligent.”

- [7] Thus, it is the duty of the employer to take reasonable care for the safety of its employees in all the circumstances so as not to expose the employee to an unnecessary risk. “An employer’s duty is to take reasonable care to carry on his operations so as not to subject his employees to unnecessary risks, is a single and continuing duty applicable in all circumstances and includes the duty to take reasonable care to provide and maintain a reasonably safe place of work for his employees and reasonably safe access to it.”² An employer must therefore ensure that they have provided a competent staff of men, adequate plant and equipment, a safe system of working with effective supervision and a safe place of work.³
- [8] Therefore, what can be extrapolated from the duty owed is governed by the words ‘reasonable care’, “but what reasonable care demands in each case will no doubt vary”⁴ and the obligation is discharged once the employer has exercised due care and skill at the operative time.
- [9] It is therefore clear that there is no absolute obligation on an employer at common law and the court is mandated to consider whether an employer has done all that is reasonable or that he took reasonable care for the safety of his employees. This therefore requires an assessment of the circumstances that operated at the time of the incident or incidents that led to the injuries as complained of by the claimant.
- [10] It was clear from the evidence of both the claimant and the witnesses that gave evidence on behalf of the defendant (namely Mr. Justin Knoblauch and Mr. Ickford Joseph) that the claimant was hired by the defendant to undertake carpentry duties. In those duties, again a fact not disputed by the parties, the claimant was primarily responsible for the construction of “form work” in the construction of foundations in the new buildings that the defendant built. Where the evidence departed from each other was in the assignment of additional tasks and the period when any such additional tasks were performed. Indeed, the nub of the claimant’s case was that during two distinct periods in May 2020 and again in May to September 2021, he continuously used a jack hammer as part of his duties and as such received the injuries he now suffers from,

² **Cheryl Malone v AMS Financial Services Limited** BVIHCV2013/0241 per Ellis J at paragraph 51

³ Commonwealth Caribbean Tort Law Gilbert Kodilinye (5th ed.) at 160

⁴ **Wilson v Tyneside Window Cleaning Co.** [1958] QB 110 at 124

from that usage. This is vigorously disputed by the defendant, although both witnesses did accept on cross examination that the claimant may have used a jack hammer intermittently and for specific reasons but not for an extended period of time and certainly not as a required part of his duties as an employee of the defendant.

[11] This court in considering the respective cases of the parties, and the evidence of the claimant and the defendant in support of those pleadings, finds on a balance of probabilities that the case and the evidence of the defendant is preferred for the following reasons:

- a) The claimant was employed as a seasonal worker with the defendant generally for the period May to September, when he worked primarily as a carpenter.
- b) That during the periods that he did not work with the defendant, he worked on other private jobs but no details as to those jobs and what those jobs entailed were given to the court
- c) In 2020, when the claimant states that he worked with a jackhammer from June to November 2020, he never gave any details as to that corrective work, he could not remember the correct name of the building site and he never made a complaint to anyone that he needed protective wear nor did he give evidence at trial that he had not in fact worn protective wear.
- d) In May to September 2021 when the claimant said he used the jack hammer for those 5 consecutive months; no details were given as to the reason he did so. In fact at trial he accepted that the defendant had hired an excavator on that same project to excavate the foundation and finally made no complaint to anyone that he required protective wear or that he was not given any such protective wear while using the jack hammer.
- e) The first time that the claimant took medical leave was in August and September 2021, but the medical leave certificates submitted did not refer to the complaint as being work related. The first time that a medical leave certificate was issued claiming the connection to employment was in January

2022 after the claimant ceased working with the defendant some 4 months prior.⁵

[12] It is pellucid that the obligation lies on the claimant to prove his case. While this court accepts that the defendant owed the claimant a duty of care as an employer to use reasonable care to ensure that the claimant was not injured while carrying out his work, this court does not find that the claimant has proven that there was any breach of that duty by the defendant to the claimant.

[13] It was unfortunate that the claimant has now suffered a disability to his earning capacity, but this court cannot find on the evidence that was presented, that the claimant has made out any of the particulars of negligence as pleaded. It was for the claimant to show clearly to the court the nature of acts or omissions of the defendant that led to them having breached their obligation to him. In this court's mind, the mere assertion by the claimant as to the nature and extent that he used the jack hammer without more, cannot impose an obligation on an employer where there has not been any evidence that that employer has subjected their employee to unnecessary risk.⁶

[14] This court accepts on a balance of probability that the claimant did not use the jack hammer in the way or manner alleged and as such the defendant is not liable in negligence to him or at all.

[15] For completeness I also wish to make it clear, that even if the claimant had proven on a balance of probabilities that he had used the jackhammer in the way and manner in which he alleged he had, the claimant failed to show to the court that such usage would have in fact led to the injury of which he is currently suffering. Indeed, for this court to have found liability against the defendant, not only would the claimant have had to show that the defendant breached their duty to him, which this court has found they have not, but also that the injury suffered would have been the type that would have occurred as a result of the breach. Again the claimant has not shown any such evidence to the court since the only medical report relied on was by the expert Dr Gaekward who was never presented at court to give evidence and in any event nowhere contained in his report did he make the finding that the injuries of the claimant were linked or could have been linked to the "continuous" use of the jackhammer.

[16] The order of the court is therefore as follows:

1. The claimant's claim is dismissed with costs to the Defendant.

⁵Entered as exhibit JK 3 during the examination in chief of the witness for the defendant Justin Knoblauch at trial of the matter held on the 17/7/2025

⁶ **De Verteuil v The Bank of Nova Scotia Trinidad and Tobago** TT2002 HC 85

2. The court also taking note of the unfortunate circumstances of the claimant as a result of the injury to his hand however it may have been caused, and the court's indication at pre-trial review of the clear deficiencies of the claim as filed and the matter proceeding to trial, this court orders that the costs to the defendant are to be assessed if not agreed within 21 days of today's date.

Nicola Byer

High Court Judge



By The Court

Registrar