



[2016] JMSC Civ. 97

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2011 HCV05095**

<b>BETWEEN</b>	<b>LORENZO WARD</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>PALM ROSE COMMODITY LIMITED</b>	<b>DEFENDANT</b>

Ms. Christine Hudson and Ms. Renae Baker instructed by K. Churchill Neita & Company for the Claimant.

Mr. Weiden Daley and Ms. Gillian Burgess instructed by Hart Muirhead Fatta for the Defendant.

Heard: 4<sup>th</sup>, 5<sup>th</sup> February, 3<sup>rd</sup>, June, 2015 & 17<sup>th</sup> June, 2016.

***Negligence - Factories Act – Injury to Finger.***

**CAROL LAWRENCE BESWICK J.**

[1] The Claimant, Mr. Lorenzo Ward has brought this claim against the Defendant Company Palm Rose Commodity Limited (“Palm Rose”) seeking damages for an injury to his finger which he alleges resulted from negligence and/or Breach of Statutory Duty under the Factories Act and Regulations

**BACKGROUND**

[2] On or around May 2010 Mr. Ward commenced working at Palm Rose, whose address is Newport West, Kingston 13 in the parish of Saint Andrew. He was employed as a warehouse assistant to work in the warehouse but sometimes he worked on the truck.

- [3] **Mr. Ward's evidence** is that some 2 months later, on the 9<sup>th</sup> July 2010, at about noon, while working in the warehouse, he was instructed by Ms. Carline McFarlane, whom he describes as the General Manager, to cut up meat in the meat shop adjoining the warehouse. He would have to use the band saw machine for that purpose. That machine contains a cutting blade which, according to him, was fully exposed with no fence or guard on it.
- [4] At no time was Mr. Ward trained to use the said machine and, according to him, he asked Ms. McFarlane twice if she were sure she wanted him to operate it. He alleges that Ms. McFarlane repeated that he should cut up the meat and she gave him a pair of plastic gloves to use while cutting up the meat. Mr. Ward's evidence is that he did not protest as he had just started working there and he wanted to ensure he did not lose his job.
- [5] Ms. McFarlane denied having given him such instructions and he, for his part, denied that it was he who had interfered with the machine out of curiosity.
- [6] Mr. Ward's evidence is that while he was operating the machine, suddenly and without warning, what he described as a round piece of iron at the top of the machine dropped and hit his right hand, and his finger bounced into the blade resulting in significant injury to his right index finger.
- [7] He testified that it was not until about an hour after the incident that a supervisor eventually took him to the Newport Medical Centre. There he was examined and treated by Dr. Dilini deSilva-Chen. X-rays showed that there was damage to the tendons of his right index finger.
- [8] On the 20<sup>th</sup> day of July 2010 Dr. deSilva-Chen removed the splint and the sutures which had been put on his finger. His finger was still very tender and could not be bent. Mr. Ward's evidence is that he completed eight (8) sessions of physiotherapy at the Nuttall Memorial Hospital, but his finger did not significantly improve.

- [9] On the 13<sup>th</sup> day of August 2010, after another visit to Dr. deSilva-Chen, Mr. Ward was referred to Dr. Emran Ali, an Orthopedic Surgeon whom he consulted in September 2010.
- [10] He resumed working at the Defendant company in September 2010. According to him, he could only do light duties, as he could not firmly grip anything with his right hand. Ms. McFarlane subsequently terminated his services in April 2011. It is his view that the termination occurred because she was dissatisfied with his refusal to resume his original duties.
- [11] Two years later, in 2012, he was examined by another orthopaedic specialist, Dr. Dundas and in 2014 he was again examined by Dr. Ali.
- [12] Mr. Ward's evidence is that he is still experiencing pain in his finger and he is unable to carry out his usual household duties, hold small objects or even dress himself without difficulty.
- [13] Mr. **Leonard Blake** testified on behalf of the defendant that at the time of the incident he was the assistant meat cutter at Palm Rose. He also would sweep the meat cutting room and the premises. On the morning of the incident he had cut some meat in the meat cutting room because the person who was the main meat cutter had left for awhile and he was therefore continuing the job in his absence. As he was leaving the room to go to the cold room, according to him, he observed Mr. Ward standing outside of the meat cutting room and he warned him not to enter as the meat cutting machine could cut him.
- [14] Mr. Blake then continued to the cold room which was about 15 feet in front of the meat cutting room, to place some cut meat there and to get more meat for cutting. By the time he came out of the room he saw Mr. Ward holding his hand which was by then cut. His evidence further was that Mr. Ward was swiftly taken to a Doctor's office for treatment.

- [15] Mr. Blake's evidence continued that after the incident he himself resumed working on the machine and that all was well with it. He did not tell Ms. McFarlane about that encounter with Mr. Ward in which he had warned him not to enter the meat cutting room. However, the evidence of Mr. Ward, the claimant, was that he never knew of Mr. Blake being an assistant meat cutter and he never saw Mr. Blake that day.
- [16] Mr. **Richard Taylor** gave evidence on behalf of the defendant company, he has worked at Palm Rose since 1999 and is the worker employed there for the longest period. He testified that he and Mr. Ward, who was his friend, had been unloading a container on the morning in question when Mr. Ward suddenly disappeared. About five minutes later he saw Mr. Ward with his hand wrapped, complaining about a cut. Mr. Ward himself had earlier testified that it was while he was unloading a container with Mr. Taylor that Ms. McFarlane called him away to cut the meat. Mr. Taylor's evidence is that while unloading the container that day with the claimant he heard no conversation between Ms. McFarlane and him about cutting meat.
- [17] According to Mr. Taylor, when he saw Mr. Ward with the cut, he became upset and he asked Mr. Ward if he did not know that he should not have touched the meat cutting machine. According to him, Mr. Ward said that it was his own fault why he was injured. Mr. Taylor's evidence is that he did not tell Ms. McFarlane that Mr. Ward had disappeared from their unloading assignment immediately before the incident.
- [18] Ms. **McFarlane** gave evidence on behalf of the defendant that the meat cutting machine was in good working condition that day. She had given no instruction to Mr. Ward to cut meat. Indeed the meat cutter and his assistant were both at work so that there would be no need for Mr. Ward to cut meat. As warehouse manager, it is she who had the discretion to assign duties for the warehouse staff.

- [19] She testified that when she interviews persons, including Mr. Ward, for jobs there, she warns them about not entering the meat cutting room. According to her, she would warn that the room is sterile, that only two persons are authorized to enter the meat cutting room to cut meat and that meat cutting is a specialized job.
- [20] She testified further that the defendant does not however train staff in the meat cutting expertise. Potential meat cutters are tested to ascertain the level of the skill which they bring to the job. Indeed, the assistant meat cutter's skill had been acquired as a woodwork cutter. His expertise was tested by giving him a box of meat to cut.
- [21] As it concerns the incident, Ms. McFarlane's evidence initially was that she could not recall if Mr. Blake, the assistant meat cutter, had reported anything to her about it but she later testified that both Mr. Blake and Mr. Taylor, had given her a verbal report about it. However, both Mr. Blake and Mr. Taylor have denied having told her of the incident.
- [22] Ms. McFarlane acknowledged that she regarded it as important to report any accident to the managing director of the Company, Mr. May, but she also could not recall if she had informed him about this occurrence. She had authorized payments for the medical bills in this matter but she would not necessarily have to explain to Mr. May the circumstances in which those expenses were incurred. She does however, know that Mr. May was aware that Mr. Ward was injured.

### **The Issues**

- [23] The issues to be determined are
- (a) whether or not the claimant had been directed to use the machine
  - (b) if so, was the claimant trained to use the machine
  - (c) if not, under what circumstances was he using the machine

- (d) did the defendant have a duty to prevent him from using the machine
- (e) did the defendant breach any duty of care to the claimant.
- (f) If there were a breach, did injury ensue and if so, what damages resulted.
- (g) the credibility of the witnesses

### **Claimant's submissions**

- [24]** Ms. Hudson, Counsel for the claimant, submitted that the credibility of the witnesses is central to the issue of liability and that the defence is based on falsehoods.
- [25]** She argued that the defence which was filed on November 30, 2011 did not refer to an extensive system of warnings given to employees and the claimant, nor did it state that the claimant had not been trained to work in the meat room and that his actions were unauthorized. Indeed, she added, that defence referred to the claimant failing to operate the machine in accordance with training the defendant provided to the claimant.
- [26]** Counsel argued that the defendant significantly amended the defence on 25<sup>th</sup> November 2013, some years after the incident, pleading in the amended defence that meat cutting was a specialized job and that there was a designated meat cutter. That amended defence stated that the claimant had not been authorized or instructed to cut the meat and that the defendant was unaware that he was interfering with the meat. The submission therefore was that the amended defence is a sham.
- [27]** Ms. Hudson argued that the defendant proved its unreliability when it provided evidence that Mr. Theophilus Blake is the designated meat cutter but his evidence was that he had no previous meat cutting experience and had worked before this job as a wood cutter. His evidence was that although there is

similarity between wood cutting machines and meat cutting machines, before the job at the defendant's company, he had never seen a machine of that type.

- [28]** Counsel's submissions were based primarily on the argument that the defendant's witnesses were untrue and should not be relied on. Counsel highlighted that Ms. McFarlane's evidence had been that she had received a report from Mr. Blake concerning the circumstances in which the claimant was injured. However, Mr. Blake himself had testified that he had given no report of the incident or of circumstances existing immediately before it. His evidence was that the day he gave evidence in the court would have been the first time that Ms. McFarlane would have heard his account. Counsel described this as "a rather strange omission" by Mr. Blake.
- [29]** In seeking to place further doubt on the veracity of the evidence of defence witness Blake, Ms. Hudson referred to his evidence of having seen the claimant standing outside the meat cutting room and observing that he looked as if he were about to go into the meat cutting room and warning the claimant not to do so. There was no explanation as to what precipitated the issuing of that warning. She urged the court to regard Mr. Blake as a Fortune Teller and to dismiss his evidence as lacking credibility.
- [30]** Counsel also submitted that the evidence of defence witness Mr. Taylor should not be accepted as true. She stated that when the witness testified in Court he stated that he could not remember what the claimant had said to him after the incident although he was able to recall other details. However, Counsel observed, the witness statement of Mr. Taylor has great details about the claimant's response to Mr. Taylor about the cut.
- [31]** Ms. Hudson's submission therefore is that the evidence of the defence is contrived to support the defence that the claimant had been warned repeatedly not to use the machine. Counsel argued that the case for the defence is so unreliable that on a balance of probabilities the claimant's case should be

accepted as true. She urged the court to accept that the claimant's witnesses have spoken truthfully in saying that Ms. McFarlane instructed Mr. Ward to operate the machine and that she gave him gloves for that purpose. Counsel Ms. Hudson further asked that the court accept that he was not trained in using the machine and that the system of work was not safe.

**[32]** The claimant she argued, was truthful and had withstood cross examination. The crux of the matter, she submitted, was the lack of credibility of the defence witnesses.

### **Defendant's submissions**

**[33]** Counsel Mr. Daley submitted that the evidence showed clearly that the claimant was not authorized to even touch the band saw machine and that he was well aware of that restriction. There was an employee designated to use the machine and that designated employee had an assistant, both of whom were at work at the time of the incident.

**[34]** He urged the court to recognize that the evidence of the claimant was fanciful. It was quite unlikely, he submitted, that from all the employees Ms. McFarlane would have chosen the claimant to use the machine unsupervised when it was he who had recently joined the staff, and who was not permitted to use the machine,

**[35]** Mr. Daley further argued that it required skill and training to use the machine and there was no practice of rotating workers to the meat cutting room. In addition, submitted Counsel, the claimant had been unloading a container with Richard Taylor that morning.

**[36]** Counsel attacked the credibility of the claimant pointing out that in Court, he had held a pen and had in fact drawn an object with it on a paper provided in the witness box yet he had stated in his witness statement that he had difficulty holding small objects like a pen.



**[37]** Mr. Daley referred to what he regarded as an inconsistency in the claimant's case. According to him, the claimant stated in the initial Particulars of Claim that he had permanent scarring to his right thumb and right thigh. He certified the truth of that in that document as well as in the Amended and also Further Amended Particulars of Claim but no medical evidence supports that. Mr. Daley argued that this showed the claimant lacks credibility. The claimant's counsel had invited the court to view it as a typographical error.

**[38]** Mr. Daley submitted that although the defence which was filed on November 30, 2011 states that Mr. Ward was trained to operate the machine the amended defence of November 25, 2013 supersedes it and states that he was not so trained. In any event, he concludes, the parties are ad idem in that regard, that Mr. Ward was not trained.

**[39]** Counsel urged the court to accept the defence witnesses as being truthful. He submitted that the court should reject the evidence of the claimant because:

- (i) The claimant pleaded in his documents that the guide strip fell on his hand yet he testified that he did not know what a guide strip is
- (ii) In his witness statement he spoke of a "round piece of iron" but drew a diagram which was admitted into evidence and which he agreed showed an item that was not round.
- (iii) Mr. Blake testified that no part of the machine had fallen off and that he had used that machine without incident later that day.
- (iv) The evidence was that the object that fell was on top of the machine and the claimant's evidence defied the laws of science as it would have had to have fallen from left to right in order to push the right finger into the blade.

- [40] It is also the submission for the defence that the claimant became a trespasser when he entered the meat room<sup>1</sup>. Consequently the defendant would not have any duty of care to the claimant and the negligence claim would fail.
- [41] As it concerns the claim for breach of statutory duty Mr. Daley argues that the claimant has not proved that the defendant is a factory within the meaning of the Factories Act, nor that the band saw machine is “machinery” under the Act.
- [42] Counsel argues that Palm Rose took all reasonable precautions to ensure the safety of its employees. In addition Mr. Ward could not say what guards or guides were in place or ought to have been in place or indeed what steps ought to have been taken to ensure safety of the machine. According to him the evidence of the defence witnesses should be preferred to that of the claimant as they demonstrated a familiarity with the machine and the presence of the guides and guards. If the claimant were a trespasser, then he contributed to his injuries<sup>2</sup>. Judgment should be entered for the defendant.

## Damages

- [43] As it concerns general damages, counsel for Mr. Ward submitted that the injured finger remains stiff despite the appropriate treatment.
- [44] The unchallenged evidence is that Mr. Ward was examined by Dr. Grantel Dundas, consultant orthopaedic surgeon, 18 months after the injury. He reported that he saw
- (a) scarring to the affected area
  - (b) reduced range of movement of the affected hand
  - (c) extension block of the affected finger

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<sup>1</sup> Hillen and Pettigrew v ICI (Alkali) Ltd. [1935] All E.R. 555; Westwood and another v Post Office [1973] 3 WLR 287

<sup>2</sup> Morris v Seanem Fixtures Ltd (1976) 11Bard L.R.104

(d) reduced sensation of the tip of the affected finger

[45] Dr. Dundas' diagnosis was that there was a cut to the nerve of the finger. He assessed the injury as resulting in the claimant having 60% disability of the digit and 10% of the hand, resulting in 6% disability of the whole person. It was Dr. Dundas' opinion that with surgery the claimant would be able to have some functionality restored to his hand, thereby reducing his disability.

[46] Closer to the trial date, some 4 years after the injury, on November 25, 2014 Dr. Amza Ali, another consultant orthopaedic surgeon, examined Mr. Ward. At that time, he observed that Mr. Ward had.

(a) flexion deformity of the affected finger

(b) pain with the passive and active movement of the affected finger

(c) 0 degree extension at p.p.i. with diminished sensation in the tip of the scar on the radial scar.

[47] Dr. Ali opined that an injury of this nature invariably leaves a deformity of the finger despite conservative and surgical management. Dr. Dundas also remarked that discontinuation of recommended physiotherapy, which might have occurred here, would have very little impact on the final result as it would not have addressed the difficulty with extending the finger and also it would not have altered the sensation loss which Mr. Ward suffered.

[48] In a later examination of Mr. Ward, Dr. Dundas opined that surgery could address the tendon lesion but stood a negligible chance of addressing the sensory loss due to the nerve injury.

[49] Counsel Ms. Hudson thus submitted as to what she regarded as the appropriate award for damages to 6% disability to the whole person. She relied on **Michael**

**Jolly v. Jones Paper Co. Ltd**<sup>3</sup>. Counsel admitted that the injuries in **Jolly** were more severe than those suffered by Mr. Ward. She argued however, that the residual effects of the injuries were similar although **Jolly's** were less severe as he experienced pain only at night and only after work. She submitted that the discounted award of \$2.3 to \$2.5 million would be an appropriate award in this matter.

[50] As it concerns handicap on the labour market, counsel submitted that the claimant should be compensated with an amount of \$500,000.00 for loss of his competitiveness on the open labour market.

[51] On the other hand, Defence Counsel argued that in the event that the court finds that damages should be paid it should not exceed \$400,000. He relied on **Jermaine Butler v Hugh**<sup>4</sup> and **Wayne Griffiths v. Detectives Duncan, Beckford and Attorney-General**<sup>5</sup> and also argued that the claimant should be found contributorily negligent in the amount of 90% resulting in an award of \$40,000.

### **Special Damages**

[52] Counsel for the defence argued that in the absence of documentary proof of the special damages claimed there should be no award made under that head. Counsel for the claimant submitted that the Court should award a reasonable sum for extra help and transportation despite the absence of documentary proof because even if the service rendered is voluntary it translates into a monetary value.

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<sup>3</sup>Khan's Recent Personal Injury Awards Vol. 5, page 120.

<sup>4</sup> Khan 5 at p.114

<sup>5</sup> Khan 3 at p 114

## **Discussion**

### **Training of staff**

[53] The attitude of the defendant toward training staff to use the machine is quite clear. It provides no training. The prospective meat cutter employee must satisfy the defendant's interviewer of his ability to use the defendant's meat cutting machine. Here the uncontradicted evidence of the assistant meat cutter, Mr. Blake, is that his knowledge of the use of the machine was gleaned from a previous job where he used a band saw machine to cut wood. It was not the same model as the one he had been employed to use at the defendant's premises and he had never cut meat with one, nor seen one, prior to this job. The evidence causes me to conclude that the defendant did not require persons who operated the meat cutting machine to be trained in the use of that particular machine.

### **Notices**

[54] There were no notices or notification of the prohibition of persons other than the authorized meat cutter entering the meat cutting room.

### **Responsible approach**

[55] In my opinion the defendants did not approach use of the cutting machine in a responsible manner. Their actions show that they did not regard training as being an integral or essential part of being authorized to use the machine nor did they seek to notify or remind unauthorized persons to stay away from the machine.

### **Amended defence**

[56] The defendant's original defence stated that the claimant had failed to use the machine in the manner in which he had been trained. Years elapsed then it filed an amended defence which referred to the claimant being unauthorised to enter

the meat cutting room. There is no evidence seeking to explain why this amended defence was filed, reflecting a defence so different from the original defence.

### **Reporting of the incident**

[57] The evidence of the reporting of the incident sheds more light on the credibility of the witnesses. Ms. McFarlane's evidence contradicts the evidence of the other defence witnesses who stated that they did not report the incident to her whereas she had eventually testified that they did. The evidence of the reporting is thus clearly unreliable.

### **Warning to the claimant**

[58] The evidence pertaining to the warning by the defence witness to the claimant not to go into the room also lacks credibility. There is nothing to explain why the assistant meat cutter would suddenly deem it necessary to warn the claimant of dangers of the room, especially when he would only be leaving the room to do some small tasks in a room 15 feet away.

### **Further credibility of witnesses**

[59] The evidence of the defence witness, Ms. Carlene McFarlane, was intriguing. She testified that as warehouse manager she reports to Mr. Rudolph May, the managing director of the company and that it is important to report to Mr. May any accident that occurs. However, she could not recall if she had brought this accident to his attention. Yet nonetheless she was sure that Mr. May was aware that Mr. Ward was injured.

[60] To my mind, an accident such as this, which, according to her evidence, required the payment of the defendant's money for various bills that the claimant accrued, is so important that the likely probability is that a manager would make a report of it to the director. I do not accept as true Ms. McFarlane's evidence that she could not recall informing Mr. May.

- [61] To my mind, the evidence of the defence witnesses lacks credibility. Some of the witnesses contradict each other and some of the evidence relates highly improbable occurrences.
- [62] On the other hand, In my view, Mr. Ward's demeanour is that of an uncomplicated witness, not capable of contriving the details surrounding the circumstances under which he alleges he was cut.
- [63] He did not speak only of the cutting blade being unguarded, but he also referred to a piece of iron at the top of the machine dropping down. The witness whom I saw did not present himself to me as being sufficiently astute as to fabricate the details of the presence of the iron on top of the machine and further to contrive that it fell and bounced his hand into the blade.
- [64] The precise motion of the finger being pushed into the blade is not as clear as it could be, but there is no issue joined with Mr. Ward having been cut by the blade. The issue is as to the circumstances under which he came to be using the machine

### **Finding of facts**

- [65] I accept on a balance of probabilities that Ms. McFarlane, warehouse manager of Palm Rose, instructed Mr. Ward to operate the machine and that she gave him gloves for that purpose. He was not trained in using the machine and the system of work was not safe. Through no fault of his own, his finger was cut whilst he was cutting meat in accordance with his instructions from Ms. McFarlane.

### **Negligence**

- [66] As it concerns the submission that Mr. Ward is a trespasser, there were no pleadings in that regard and counsel for the claimant indicates that she was taken entirely by surprise. In my view, it is too late to introduce the defence of the claimant being a trespasser when closing submissions are being made, after the evidence has been heard and the respective cases closed.

## **Factories Act**

- [67] There are 17 types of premises which fall to be defined as a factory within s. 2(1) of the Factories Act. There is no evidence of the defendant's premises fitting any such definition. Any claim under the Factories Act fails.
- [68] In my view, in accordance with the discussion above, the defendant is completely liable for the injuries suffered by the claimant.

## **General Damages**

- [69] The injury caused damage to the nerves of the hand resulting in an estimated 6% impairment to his whole person. That is the evidence of 2 consultant orthopaedic surgeons and I accept that evidence as being true. Uncontroverted is Mr. Ward's evidence that now, 4 years after having been injured, he still feels pain in the finger and he only gains relief from medication. The pain awakens him from his slumber and is more severe when the weather becomes cold.
- [70] It is also unchallenged that Mr. Ward is unable to make a complete fist and is restricted in performing some self-care activities such as buttoning his shirt or zipping his zipper. He did in fact use his hand to make a drawing which became an exhibit. In my view that does not affect his credibility concerning his injury. The evidence is that he has difficulty using the hand, not that it is paralysed and further, an independent doctor has supported his description of his restricted movement.
- [71] His loss of sensation means that he is at risk of injuring himself more so that the injury is to his dominant hand.
- [72] In **Michael Jolly**<sup>6</sup> the claimant suffered

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<sup>6</sup> Supra



(a) Laceration along the forearm

(b) Laceration of right forearm and hand

(c) Severed extensor tendons of right, middle, ring and little fingers

[73] Mr. Jolly (age unknown but young) underwent 2 surgeries, and physiotherapy. Due to financial constraints he could not comply with further recommended physiotherapy. He was assessed with 7% whole person disability and 12% permanent partial disability. He had reduced sensation along the forearm, a 2 cm deficit in the circumference of the forearm, reduced flexion in the wrist and joints, reduced power in the hand and scars of varying lengths on the forearm and wrist.

[74] In 1998 he was awarded \$800,000 for general damages for pain and suffering and loss of amenities. With the Consumer price Index in May 2015 being 224.2 and being 48.82 in November 1998, the current value would be \$3,673,904.13

[75] In the **Butler** case, the claimant was awarded an upgraded amount of \$455,477.80 where his thumb was cut off and his finger was swollen and infected resulting in his inability to work for three to four months. The medical evidence did not give information of the resulting disability.

[76] In the **Griffiths**<sup>7</sup> case the claimant was awarded the upgraded amount of \$660,412.574 having lost the phalanx of his finger, suffered a laceration to the foot, injuries to the elbow, back and jaw. However the report does not state the degree of the impairment. Further there is no reference as to whether there was resulting limitation of movement or scarring or any residual injuries.

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<sup>7</sup> supra

[77] The authorities on which Counsel relied showed a great range in awards made for injuries to the hand and arm, I regard the **Jolly** case as reflecting reasonable damages in its circumstances. The injuries in the case at bar are less than are the injuries in **Jolly**. However the damage to Mr. Ward's nerves which resulted in his inability to feel cannot be remedied by surgery. He is limited in his ability to hold smaller objects but there is no evidence of the amount of future expenses which he will incur from his inability to perform daily activities because of that limitation.

[78] I therefore make what I regard as an appropriate adjustment to the damages there as I seek to determine the correct award in this case.

[79] I do not regard the claimant as having contributed to his injury. The evidence is that he checked with the manager as to his instructions then did what he had been told, having only been on the job for a few weeks and not wishing to lose his employment by disobeying her.

[80] As it concerns handicap on the labour market, the evidence shows that the claimant's prospects for employment lie in a field requiring physical labour. He now has an impediment and will be competing with persons of whole body. In my view he has a handicap on the labour market and should be awarded the standard amount in that regard being \$500,000.00.

## **Special Damages**

### **Household help**

[81] In his witness statement Mr. Ward showed while he was recovering from the incident he was not able to wash his clothes for himself and had to use the services of his family and of hired help in that regard. He provided no documentary proof of the amount he paid and referred in the evidence only to needing those services after the accident until his finger "got better." His witness

statement referred to paying the helper “\$700 to \$1000”, without indicating with more accuracy the time period for which he made that payment.

**[82]** Although there is no documentary evidence of the amount paid for his household help there is evidence that he required that help because of his injuries. There is no doubt in my mind that a person wearing a splint, as is the evidence, would not be able to do his laundry by hand.

**[83]** In the absence of the precise documents to support a claim, I consider that there is proven damage to the finger and also proof of the need for household help. I therefore use minimum wage amounts to compute a fair award for household help.

**[84]** I take judicial notice of the fact that the minimum amount which could lawfully be paid for household help in 2010 was \$4,070.00 per week for a forty hour workweek which is approximately \$100 per hour.<sup>8</sup> I regard an award of \$500 per day as reasonable, once weekly and for the period of 2 months, i.e. 8 weeks, between July 2010 when the injury occurred and September 2010 when he returned to work.

### **Transportation**

**[85]** The statement as to the cost of transportation is also not supported by documentary evidence. However, bearing in mind that I accept Mr. Ward as a witness of truth, I accept on a balance of probabilities that it is true when he states that he paid the amount of \$7000 for 14 round trips to physiotherapy and to the doctor.

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<sup>8</sup> HHHHHHHHHH

## **Conclusion**

**[86]** Mr. Ward was employed to Palm Rose and whilst so employed he was asked by its manager to cut meat. Palm Rose breached the duty of care which it owed to Mr. Ward. He obeyed the instructions which he received from the manager at Palm Rose and consequently suffered injury and must be awarded damages.

**[87]** Having considered the evidence and the authorities submitted, it is my view that the appropriate finding is:

### **Judgment for the claimant. Damages assessed and awarded as:**

#### **General Damages**

(a) \$1.75 million dollars for pain and suffering with interest of 3% per annum from the date of the service of the claim form on September 12, 2011 until date of judgment

(b) \$500,000.00 for handicap on the labour market.

#### **Special Damages**

(a) \$4000 for household help

(b) \$7000 for transportation

Interest on special damages at 3% per annum from the date of the accident on July 9, 2010, until judgment.

Costs to the claimant to be agreed or taxed.