



[2020] JMSC Civ 109

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 05748

**BETWEEN
AND**

**LLOYD ANDERSON
GENERAL SATELLITE NETWORK
COMPANY LIMITED**

**CLAIMANT
DEFENDANT**

IN OPEN COURT

Sean Kinghorn and Danielle Archer instructed by Messrs. Kinghorn and Kinghorn for the claimant

Jeromha Crossbourne instructed by Scott-Bhoorasingh and Bonnick for the defendant

Heard 13 April, 14 April, 22 April 2016 and 29 May 2020

**EMPLOYER'S LIABILITY – BREACH OF DUTY OF CARE - BREACH OF CONTRACT OF SERVICE -
CAUSATION – SAFE SYSTEM OF WORK - ADEQUATE AND SUITABLE EQUIPMENT**

Stamp J.

Introduction

[1] This is an employer's liability claim in which the claimant seeks damages from the defendant for personal injuries, loss and expense alleged to have been sustained by him as a result of an accident on November 18 2009. The defendant company was engaged in the business of supplying cable television services to consumers in May Pen and its surrounding areas in Clarendon. By agreement between the

defendant company and the Jamaica Public Service Company (“JPSCo”), the defendant was permitted to attach its equipment and run its cables on the utility poles of the JPSCo. The claimant, who was employed to the defendant as a cable technician under a contract of service, sustained injuries, broken left tibia and fibula in the region of the ankle, when he fell from a ladder that he had used to climb one of these JPSCo utility poles.

[2] The claimant said that he fell when, acting in the course of his employment, he climbed up the JPSCo utility pole using the defendant’s ladder and a safety belt to carry out repairs to the defendant’s cable equipment which were attached to the utility pole. He held on to one of the defendant’s cables and was electrocuted by electricity being conveyed through it. This caused him fall to the ground. It is not disputed that the claimant fell from the defendant’s ladder. However, the defendant strongly challenged assertion that its cable conveyed or had in it any electrical current or that this was or could have been the cause of the fall. The question of whether electrocution caused the fall was the central factual issue and main focus at all times during the trial as reflected in the evidence adduced on behalf of the parties, the cross-examination of the witnesses and the arguments addressed to the Court.

[3] By way of his Amended Claim Form and Amended Particulars of Claim filed October 29 2015, the claimant averred that the injuries resulted from a) the defendant’s breach of its duty as an employer and b) the defendant’s breach of its contract of service with the claimant. Both heads of liability, employer’s liability at common law and breach of the contract of employment, rest on the ground of the defendant’s negligence or failure to take reasonable care resulting in the claimant being electrocuted and falling from the ladder. As regards the claim for employer’s liability, the claimant averred that his injuries were a consequence of the negligent manner in which the defendant executed its operations in the course of its trade. Alternatively, as regards claim for breach of the contract of employment, he averred that it was a term of the contract that the defendant would take all reasonable care to execute its operations in such a manner so as not to subject him to reasonably foreseeable risk of injury and that his injuries resulted from the

defendant's breach of this term. The evidence in respect to both heads is the same. I take the view that on the facts of this case there is no difference in the duty and obligations imposed under either head. The claimant's case is grounded on the duty of care that was owed by the defendant employer to the claimant, and the central issue in the case is whether this duty of care was breached by the defendant and, if so, did the breach result in the injuries suffered and losses and expenses incurred by the claimant.

- [4] It is not necessary to reproduce the particulars of negligence or failure to take reasonable care as itemised in the pleadings, just those in relation to which there was some evidence. The claimant averred that the defendant was negligent because, among other things, it had failed to provide or to employ a safe system of work. In particular, it had failed to provide adequate and suitable equipment to climb the utility pole to carry out his work on the defendant's equipment attached to the utility pole; further, it had maintained the cable wires in a dangerous and unsafe state. It was also said in submissions that the defendant had provided the claimant with inadequate gloves for his work and the provision of a ladder and a safety belt was insufficient and unsafe.
- [5] The claimant also relied on the doctrine of *res ipsa loquitur*. He argued that the presence of electricity in the cable would not have occurred in the ordinary course of operations without negligence on the part of the defendant. Thus in the absence of an explanation, the defendant's liability can be presumed if the fall from the ladder and consequent injuries were caused by electricity in the cable. Success based on this doctrine would of course depend on a finding that there was in fact electricity in the defendant's cable, and that it was this electricity that caused the fall.
- [6] In its Defence, the defendant pleaded that it operated a safe system of work, ensured that its cable wires were maintained in a safe state and had provided adequate and suitable safety gear and equipment for climbing and working on the cables. In particular, the defendant averred that the claimant was not electrocuted by electricity being conveyed in its cables. The accident was either wholly caused, or contributed to, by the claimant's own negligence.

The Factual Background

- [7] I shall first describe the system employed for the provision of cable television services by the defendant from that part of the evidence which is not in dispute before I move on to the evidence of the accident.
- [8] The cable signal is distributed from a control centre located in Palmer's Cross in the May Pen area. The signal is transmitted in fibre optic cables (known in the trade as coaxial cables that are of different sizes, designated 500 or 750) from that control centre to nodes, which are "collection points" from which the signal is further split in different directions for distribution. Where the signal travels over a long distance, estimated to be 1200 to 2000 feet, it becomes too weak for the purpose. To rectify this, amplifiers are placed at appropriate points along the cable distribution circuit to amplify the strength of the signal to the location where it is delivered to individual consumers.
- [9] The cables were attached to JPSCo utility poles at least three feet below the lowest JPSCo secondary electric power line. The system required electric power that was obtained from the JPSCo power line and conveyed via coaxial cables connected to transformers installed at several points in the cable distribution system. This, as indicated earlier, was with the agreement of the JPSCo.
- [10] Some cables conveyed electricity only, some cables conveyed signal only and some both electricity and signal. At the utility pole at the Jacob's Hut area of May Pen where the claimant fell, there was a 500 coaxial cable designed to transmit signal only, a 750 coaxial cable that conveyed electricity and a third cable conveying signal only. As they ran from utility pole to utility pole these three cables were tied or banded together, using what is called a "lashing" wire. There was also a metal wire "strand" that was "lashed" together with this band of cables for the purpose of supporting their weight from one utility pole to the next. The strand was required to be properly grounded, apparently because, unlike the cables, the wire of the strand was not insulated.
- [11] A length of a 500 coaxial cable was brought to and used in court for demonstration purposes. Viewed in cross section, it is composed of several layers. There is a

copper wire at the centre that conveys the cable signal or electricity, or both. A foam layer insulates this copper wire and around the foam there is an aluminium fibre coating that is covered by a thick black insulating outer jacket. Thus, if one held on to the cable by the outer jacket, one would not receive an electric shock even if wires within conveyed electricity. However, at the end of the cable where it is cut in order to attach it to any of the devices used in the system, (for example, the amplifiers or transformers) the copper wire at the centre would extend and be exposed to approximately a quarter inch which is required for connection to the device. The claimant said that he was electrocuted when he held on to the end of the 500 coaxial cable and touched the exposed copper wire. This cable he said, served the dual purpose of conveying electricity and sending signals. The defendant's witness said that the 500 coaxial there conveyed signal only and no electrical current was or could have been present in that cable.

- [12]** The defendant furnished safety belts as well as gloves to each worker, including the claimant, who was required to climb utility poles. The claimant, during his testimony, demonstrated the manner of use of the safety belt.
- [13]** The safety belt is a contraption used to prevent a worker from falling from the ladder or utility pole while working with both hands. The belt is buckled around the waist to secure it to his body much like an ordinary apparel belt. A strap with one end connected to the front of the belt is put around the pole and the other end is then hooked to the front of the belt. The worker having ascended the ladder would lean back in the belt so that his weight against the strap around the pole kept him in position and prevented his fall while his hands were free to work.
- [14]** The gloves provided were not insulated from electricity.
- [15]** The ladder used was a standard fibreglass 40 foot ladder. However, a ladder is not the only means by which one could ascend a JPSCo utility pole to work on the defendant's cables. They could also be reached by using a "bucket truck". This is a truck with a bucket attached that can be elevated to the height of the defendant's cables with the worker being carried in it. The defendant company owned such a bucket truck, but on the day of the accident it was being used for its operations at

another location. It is not disputed that the use of a bucket truck is a safer method than the safety belt for a worker to perform his tasks in elevated positions.

[16] I now turn to the evidence. There were three witnesses of fact. The evidence of each of them was adduced by both written statements and oral testimony.

The Claimant's Evidence

[17] The claimant said that the accident occurred while he was carrying out routine maintenance work on the defendant's cables. This required him to remove and replace amplifiers along the cable lines. He had with him his safety belt as well as his gloves. At about 3:00 p.m., he climbed on the ladder up a JPSCo utility pole at Jacob's Hut and proceeded to remove an amplifier from the 500 cable. To do this he had to disconnect the cables from the amplifier leaving open the two ends of cable that had been attached to the amplifier with the innermost copper wire at the ends exposed. He descended the ladder, handed the amplifier to a co-worker and then climbed back up on the ladder to continue his work. The cable that he had disconnected was hanging down in a position that obstructed him from throwing the strap around the pole so he held on to it to move it out of the way in order to deploy the strap. In doing so, he touched the end of the wire with his right hand and felt an electric shock the intensity of which caused him to fall from the ladder.

[18] The claimant was adamant that he was electrocuted when he held on to the exposed end of the cable. He is uncertain as to how it is that electricity would have gotten into the cable line. At paragraph 31 of his witness statement which stood as his evidence-in-chief he states that the defendant's cable lines at that location were not grounded and suggests that the electricity could have gotten into these lines if it came into contact with one of the JPSCo power lines. However, in his evidence, he posited the view that the electricity could have passed through the cable lines from the transformer. In any event, and this will be analysed later, there is no direct evidence of how electricity got into the line.

[19] There was no other witness in support of the claimant's case, in particular no expert evidence on how, if at all, electricity could have entered the 500 coaxial cable.

Mr. Trevor Witter's Evidence

- [20]** Mr. Trevor Witter was the general manager of the defendant. He had seen the claimant at the utility pole sometime before the accident that day and saluted him. He left to attend to business elsewhere and did not witness the accident. However, he was equally adamant that there was no electricity running through the 500 coaxial cable that the claimant said electrocuted him. He explained that the only cable in that location which conducted electricity was the 750 coaxial cable but it ran from the JPS Co power supply directly to another device, not an amplifier.
- [21]** In any case, he said, on that day the claimant was tasked to do general maintenance and not to remove amplifiers so there was no situation in which he could have come into contact with the disconnected cable end as he described. There was no amplifier on the utility pole from which the claimant fell as there was an amplifier at Jacob's Hut, only 200 feet away.
- [22]** According to Mr. Witter, there was no other possibility that the claimant could have come into contact with electricity in the ordinary course of his work. The coaxial cables were well insulated and ran no less than three feet below the JPSCo power lines. The strand, which was lashed together with the cables, was properly grounded so that if any electrical current from the JPSCo power lines came in contact with it or the cables, they would have burnt immediately at the spot and not conducted any electricity onwards. This was a standard safety feature.
- [23]** Mr. Witter also stated that he visited the site of the accident the next day and the defendant's cable lines were still intact. There was no burn damage to them, and there was no indication that any JPSCo electric power line was loose or had been in contact with the defendant's cable lines. In addition, there was no evidence that the insulation on any of the defendant's cable lines was damaged. In those circumstances he said, there was no way that the claimant could have been electrocuted by touching any of the defendant's cables.
- [24]** Mr. Witter said that he had been a JPSCo contractor since about 1992 and he utilised the knowledge and experience gained there as well as the JPSCo safety guidelines and implemented these systems in the operations of the defendant

company. He would personally teach the employees, including the claimant, proper safety procedures.

[25] He said that the claimant had been instructed on the use of the safety belt, including that he was not to start any work before he was properly belted up on the utility pole. Had he used his safety belt properly in accordance with these instructions and his own experience then, even if he had received an electric shock, he would not have fallen to the ground.

[26] Mr. Witter also testified that the gloves that he provided to the claimant and his workers were similar to those used by JPSCo, that is, construction gloves that were not insulated from electricity. When they were required to work on electric power lines the safety precaution was to shut down the electricity.

[27] According to Mr. Witter, when he first spoke to the claimant after the accident, he said that the accident occurred when he had climbed up the utility pole and held on to a strand from which he received a shock and he then jumped from the pole. He had not yet started to do any work.

Mr. Abner Mellad's Evidence

[28] At the time of the accident, Mr. Mellad was employed to the defendant as a supervisor. He was no longer working there at the time he gave his statement and testified in this matter. He said that he was not an electrician, nor was he a cable technician. His job was to check to see what the workers were doing and to look after the general well-being of the company. He was the supervisor of the claimant and was well acquainted with him. He said in his statement that on the day of the accident he arrived on the scene within fifteen minutes of hearing of the accident and saw and spoke to some of the claimant's colleagues. He observed that there was a ladder against the utility pole but saw no signs of work being done or damage to the defendant's cable lines. They were intact. He could not recall if he saw any amplifier or loose cable at the scene but maintained that there was no sign that an amplifier had been removed. Neither was there any evidence of any loose or

damaged JPSCo power line that could have come into contact with the defendant's equipment. He did not see any illegal connections nor any signs of any work being done on the utility pole from which the claimant fell. He thereafter attended May Pen Hospital where he spoke to the claimant.

[29] In answer to the Court, Mr. Mellad said that later that afternoon at the hospital the claimant told him that the accident occurred when he climbed the utility pole and was checking to see if it was safe, touched a wire and fell.

Submissions

[30] I am grateful to counsel on both sides for the industry they displayed in presenting extensive submissions both on the facts and on the relevant law to be applied. The extent to which the legal submissions are applicable to this case will, of course, depend on the factual findings. If I do not refer to all of the submissions, it does not mean that I have not considered them.

[31] There is no issue in this case that a duty of care was owed to the claimant by the defendant company both at common law as his employer and also under his contract of service.

[32] Counsel for the claimant submitted that the defendant owes a peculiar and higher duty of care in respect of its use of a dangerous article, namely electricity. He cited ***Jamaica Public Service Co. Ltd. v Winston Barr and Bryad Engineering Co. Ltd. et al*** SCCA 45 and 48/85. The claimant also submitted that the applicable common law principle relating to dangerous articles was enunciated in ***Northwestern Utilities Ltd v London Guarantee and Accident Company*** [1936] AC 108. The starting point therefore in applying the principle is a determination of whether the claimant was electrocuted by electricity in the defendant's cables.

[33] Counsel for the claimant further submitted that the common law duty of care owed by an employer to an employee includes not only a duty to organize a safe system of work but also to ensure, as far as possible, that the system of work is adhered to. In support, he cited ***Speed v Thomas Swift and Company Ltd.*** [1943] KB 557

and ***Novelett Bish v Leathercraft Ltd***. [1975] 24 WIR 351. Relying on the celebrated case of ***General Cleaning Contractors v Christmas*** [1953] AC 180, counsel submitted that leaving it to individual workers to take precautions against an obvious danger was a failure to discharge the employer's duty to provide a reasonably safe system of work. Further, an employer, in establishing a safe system of work must have in mind and take account of the fact that workers are sometimes heedless of their own safety and may, out of repetition, make errors or cause accidents in the work environment. He cited in support ***Garth Burton v the Jamaica Biscuit Company Ltd*** 2008HCV04637. These principles, it was argued, should be applied in assessing the circumstances in which the claimant fell from the ladder.

[34] While accepting that in addition to the general duty of care the defendant owed a particular duty of care to the claimant as his employee, counsel for the defendant emphasised that the extent of the duty of care is not an absolute one, but it is to take *reasonable* care. In support, she cited ***Davie v New Merton Board Mills Ltd. and Others***. [1959] 1 All ER 346, and ***Wilson and Clyde Coal Company Ltd v English*** [1938] AC 57. Furthermore, the fact that there is some risk of injury does not mean that the system is unsafe. The law does not require the employer to provide a perfect system of safety but a reasonably satisfactory one. Neither does the law impose a duty on the employer to provide the safest system or method possible or available (citing ***Stokes v GKN (Bolts and Nuts) Ltd*** [1968] 1 WLR 1776). The question therefore was whether the equipment, in this case, the gloves, the ladder and safety belt, is adequate and safe, not whether the system is perfect or whether there is a safer method.

[35] In answer to the claimant's contention that the JPSCo wires may have come into contact with the defendant's cable wires, the defendant urged that the applicable principle is that where the danger created is one that is transient, the employer ought not to be held liable. She cited the following passage from ***O'Reilly v The National Rail and Tramway Appliances Ltd*** [1966] 1 All ER 499, 502:

“... if a place of work becomes unsatisfactory or unsafe by reason of some temporary, transient, or exceptional condition or there is some danger which is temporarily and casually present, then it may be, on a full consideration of all the circumstances, that the court may take the view that there has been no breach by the employers of a common duty.”

- [36] Regarding causation, it was submitted that the claimant would not meet the burden of proof if he merely proves that he had an unexplained accident whilst in the employ of the defendant. Neither is it sufficient for the claimant to prove that the defendant was generally in breach of his duty as an employer of the claimant. The claimant must show that it was this breach of duty that caused the accident and the consequent injuries: ***Minnie Ann McKenzie v the Corporation of the Township of Chilliwack*** [1912] A.C. 888.

Analysis of the Evidence and Findings

- [37] The claimant pleaded in paragraph 5 of his amended Particulars of Claim that he was “electrocuted by electricity being conveyed in one of the defendant’s cable, causing and/or permitting him to fall to the ground.” At paragraph 6, he claimed that he was injured “when due to the defendant failing to take reasonable care the Claimant was electrocuted causing and/or permitting the Claimant to fall off the ladder.” His evidence was that he was electrocuted when he held on to the defendant’s cable that had electric current running through it. That is the gravamen of his case and was strongly challenged. The defendant averred that this did not happen and could not have happened having regard to all the circumstances.
- [38] The first question that I must confront is whether the claimant was injured in the manner that he alleges. In other words, whether the claimant has established on a preponderance of probability that he received an electric shock from electricity being conveyed in the defendant’s 500 coaxial cable and, if so, was this electric shock the proximate cause of his fall from the ladder. If that is established, the following question would be whether this was a consequence of the defendant’s breach of its duty of care.

- [39]** In a case such as this, the most important factor is, I think, the assessment which the court makes of the witnesses. The veracity of the claimant's evidence was attacked predominantly on the basis that his account of the cause of the fall, electrocution, did not accord with technical aspects of the defendant's cable system. Although he is not obliged to produce expert evidence, his account of the presence of electricity in the cable was based entirely on his evidence. Having had the opportunity to observe closely the claimant during his testimony over two days, I came to the conclusion that much weight cannot be accorded to his evidence about the circumstances in which he fell and sustained the injuries. My impression of him when he testified was that he was uncertain and confused when questioned about these circumstances. At times, he seemed to be offering up self-serving evidence about technical matters that he knew little or nothing about instead of forthrightly stating what he knew and observed and refraining from conjecture. For example, in his witness statement he described the gloves used by JPSCo power linemen as "thick rubber gloves" that "would provide protection from electrical shock as they would act as insulation against such shocks" (para. 30). Yet on cross-examination he said that they were gloves made of canvas that are not meant to protect from electric shock depending on "the type of voltage."
- [40]** Furthermore, I found a great deal of exaggeration in the claimant's description of the impact of his injury on his daily life. He entered the courtroom walking very gingerly on crutches and was provided with a chair at the commencement of his testimony because it was said that his injured leg could not bear his weight. However, I noticed that on two occasions when he became animated in expressing himself, he sprang to his feet with very impressive athleticism.
- [41]** Added to this, there are in my view two very serious inconsistencies between his evidence and his report on the day of the accident that remain unexplained. I will return to this later.
- [42]** I also observed Mr. Witter very closely when he testified. I thought for the most part he did so truthfully even though there was some exaggeration. I was impressed with his expertise and knowledge of the technical aspects of the cable system and

its interconnectedness with the JPSCo power supply. He had long experience in these matters and, indeed, spoke so authoritatively that he was scarcely if at all challenged on them during cross-examination. I accept from his evidence the essential technical exposition of the system of operations.

[43] There was a matter which did give me cause for concern. This was the issue of his training of the employees. He said that he was the safety manager of the defendant, that he himself taught the employees appropriate safety procedures. He said further that, apart from a hiatus of about seven months, he would consistently give refresher courses to the employees every three weeks. I concluded he was exaggerating and misleading the court on this issue because the supervisor, Mr. Mellad, whose evidence I accept, said he did not know of briefings on safety procedures held every three weeks or at all. It is inconceivable to me that if these briefings did take place in a company of the scale of the defendant with eight employees on the road and a supervisor, that the supervisor could be unaware of them.

[44] I am satisfied that Mr. Mellad was a truthful witness who did not indulge in prevarication, invention or exaggeration. He testified in a forthright manner that did not betray any interest in either side of the case. He readily accepted his limitations, that he was neither an electrician nor a cable technician so that he could not say for sure whether or not the cable lines could permit electricity to come into contact with a worker, and he made no attempt to conceal that he was unaware of safety procedures being taught at the defendant company.

[45] Having carefully considered the credibility of witnesses and all the other evidence in this trial, I do not accept on a balance of probabilities the claimant's evidence that a) there was electricity in the defendant's 500 coaxial cable and b) that he was electrocuted when he touched it. Neither do I accept his evidence that prior to his fall, he had removed an amplifier from the cable which exposed the wire at the end of the disconnected cable that electrocuted him. Having rejected his account on these principal areas of his case, it is impossible for me to say what caused the fall. I have formed the view on the evidence that *if* he was electrocuted he must

have touched the JPSCo power lines that were three feet above the defendant's cables but there is no evidence of any the reason for him to ascend to that level.

[46] Firstly, was there electricity in the cable? There is no evidence from the claimant or elsewhere as to how electricity came to be in the 500 coaxial cable. The claimant admitted that he does not know. He proffers two theories. At paragraph 31 of his statement he said that the line he worked on that day was not grounded so "Any touching of that line with any of the Jamaica Public Service lines would therefore send a surge of electricity through the cable lines." On the other hand his testimony was that the cable line was one that conveyed electricity.

[47] He said that when he had first ascended the JPSCo utility pole and removed the amplifier there was no electricity in the cable. This was because the fuse on the cable line had been disconnected stopping the flow of electricity. He said he descended the pole to hand off the amplifier to a colleague and when he climbed back up to the cable and held on to it there was electricity it. How did it get there? His response was that one of his colleagues "fuse it up", that is, reconnected the fuse, thereby reactivating the passage of electricity through the cable. However, when he was pressed further about the possibility that his colleague workers had reconnected the fuse, he said that no one was present on the line, which was very close to him, to reconnect it. So, if the fuse was not reconnected the question remains of how electricity got there if there was none at the start. The claimant also suggested that it was possible that the work one of his colleagues was doing nearby may have caused a "capacitor leak" which caused an electrical surge that may have bypassed the deactivated fuse. I cannot accept this. My understanding of the claimant's previous evidence was that once the fuse was removed, it was not possible for any electricity to pass through. This was also Mr. Witter's evidence that was not challenged. Indeed, the very purpose of a fuse is to make it impossible for electricity to pass through a circuit when it is removed. According to Mr. Witter, if major work was to be done on a line conveying electricity, the worker would simply take out the fuse so there could be no exposure to electricity.

- [48] The other hypothesis which formed a significant part of the claimant's submissions is that it was possible that there was some touching of the defendant's cable with the JPSCo power lines and this could have sent a surge of electricity through the cable. However, this is mere conjecture not supported by any evidence, expert or otherwise, and cannot form the basis of any substantial finding.
- [49] In addition, the evidence in rebuttal of Mr. Witter was that the lines were grounded and if there had been touching with the JPSCo power lines, there would have been significant burn damage to them. I accept the evidence of Mr. Mellad, who went to the scene shortly after the accident, that there was no damage to the defendant's cable and no loose or damaged JPSCo power line that could have come into contact with the defendant's cables. All were intact.
- [50] I find that electricity did not enter the defendant's cable line from touching with JPSCo power lines.
- [51] Even if there was this touching there is nothing to indicate that the defendant would be at fault. I agree with the submission of the defendant's counsel that there is no evidence that this would have been anything more than a transient or exceptional occurrence that the defendant could not have reasonably foreseen and taken steps to prevent. Thus, the defendant employer was not in breach of its common law duty.
- [52] **Did the claimant remove an amplifier thereby exposing the wire that electrocuted him?** As I indicated before, I accept Mr. Mellad's evidence that he did not see any of the defendant's cables that were not intact. He arrived at the scene fifteen minutes after receiving the report of the accident and did not see any signs of work being done on the utility pole from which the claimant fell.
- [53] Mr. Mellad went to the hospital and spoke with the claimant who told him that he had climbed the pole, was checking to see whether it was safe and touched a wire and fell. According to Mr. Witter when he spoke to the claimant later that day he said that he had climbed up the pole, held on to a strand received a shock and then jumped from the pole. He told him that he had not yet started to do any work.

I accept the evidence of both Mr. Mellad and Mr. Witter of what the claimant said to them. These two statements which are the claimant's earliest reports made almost contemporaneously with the accident amount, in my view, to very serious inconsistencies with his evidence to the court and they gravely undermine his credibility regarding the circumstances of his fall. It seems to me all too probable that in the hours after the accident the claimant felt compelled for some reason to invent an explanation for the fall.

[54] As regards the three versions, the only consistent element of any significance is that an electric shock caused the fall. As regards the two previous statements made on the day of the accident, the consistent element of significance is that he

had not started any work before the accident occurred, that is, had not removed an amplifier. This is consistent with Mr. Mellad's evidence that there was no sign that any work had yet been done on the utility pole from which he fell, thus no sign that an amplifier had been removed. The claimant said that after the fall the cable lines were left open as he was rushed to the hospital. Mr. Mellad arrived there shortly after. There is no evidence and I do not find it plausible that anyone climbed the pole and closed the line before Mr. Mellad arrived. I find that immediately prior to the fall the claimant did not remove an amplifier at that utility pole. Therefore, he had not disconnected any cables leaving any wire exposed that electrocuted him.

[55] The claimant has failed to prove on a balance of probabilities that there was electricity in the defendant's cable and that this caused the accident. This disposes of the issue of causation and the doctrine of *res ipsa loquitur*. This finding also disposes of the claimant's submissions and arguments in respect to the alleged use by the defendant of a dangerous article, that is, electricity. I also note, that although there was a considerable amount of argument in respect to the alleged use of a dangerous article, this was not properly pleaded as part of the claimant's case.

[56] Did the defendant provide a safe system of work and adequate equipment?

The claimant pleaded that the defendant company failed to provide a safe system of work and failed to provide adequate and suitable equipment to climb the utility

pole to carry out his tasks. Counsel submitted that the defendant breached its duty to the claimant by providing him with inadequate gloves for his work and providing him with a ladder with a safety belt instead of a bucket truck. He also submitted that the supervision, training and warnings given to the claimant in respect to proper safety techniques were insufficient.

[57] The claimant has not adduced any or sufficient evidence to support these averments and submissions for me to make any finding in his favour.

[58] He did not himself say that any of the equipment was unsafe or that his fall resulted from lack of adequate training or the enforcement of safety procedures. There is no evidence, expert or otherwise, that the equipment provided to the claimant by the defendant company were unsafe or fell below the requisite or appropriate standard. He was quite uncertain about these matters. At one stage he said that the gloves provided were not the rubber gloves like those provided to JPSCo linesmen. In cross-examination, he said that the gloves provided to JPSCo linesmen were made from canvas. Not only is he uncertain about what he is describing and what is required, there is no evidence from him to indicate what would be appropriate gloves for the job.

[59] There was no gainsaying Mr. Witter's evidence that the gloves that the defendant's workers were furnished with were the same type as those used by the JPSCo linesmen. These are construction gloves that are not designed to insulate against electricity. The protection from electricity is by "killing" the line. His evidence, which I accept, was based on his long experience in this sphere of work including a period as a contractor with the JPSCo from 1992.

[60] The defendant company was in possession of a bucket truck that was not made available to the claimant for the purposes of his work that day. It was not contested that this was a safer method to ascend a JPSCo utility pole than the use of the ladder and safety belt. That however is not evidence that the use of the ladder and safety belt method was not reasonably safe. Neither was this the claimant's evidence. Moreover, he was able to demonstrate the use of the safety belt to the court, and the sense and understanding that I gleaned from his testimony and

demonstration was that the belt, if used properly, was indeed a safe method of working on the utility pole.

[61] I agree with the submissions made in regard to the gloves, the ladder and safety belt that there is no obligation on the defendant to provide the safest possible system or equipment but to provide a system and equipment that are reasonably adequate and safe in the prevailing circumstances. There is no evidence to counter this.

[62] As regards the issue of training, the claimant did not attribute the cause of the accident to a lack of supervision or inadequate training. Neither did he refer to any additional safety measures which may have prevented his fall. That was not his case. His case was that he fell because he was electrocuted by electricity in the defendant's cable, which he has failed to prove.

[63] There will be judgment for the defendant against the claimant with costs to be taxed if not agreed.

[64] A draft of this judgment had been prepared shortly after the delivery of submissions but due to oversight on my part it was not finalised in a timely manner. In addition, there was a period of time after that when the relevant notes could not be located. I deeply regret the delay and the undue inconvenience caused to the parties and sincerely apologise to them.

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Chester Stamp
Puisne Judge