



[2024] JMSC Civ 191

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU 2019 CV 00023**

<b>BETWEEN</b>	<b>RYAN WALKER</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>BRAHAMS EQUIPMENT LIMITED</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Jason Jones was instructed by Jason Jones Legal, Attorneys-at-Law for the Claimant.**

**Mr Duncan Roye instructed William Mckoy and Palmer for the Defendant.**

**Heard: December 20, 2023, January 26<sup>th</sup> 2024 and February 6, 2024**

**Assessment of Damages**

**M. JACKSON, J (AG.)**

**INTRODUCTION**

**[1]** The claimant, Ryan Walker, was employed by the defendant, Brahams Equipment Limited, as a "handyman." On September 22, 2017, while performing his duties, he fractured his wrist. His medical report indicated that the injury has resulted in a 5% whole-person impairment (WPI), which could increase to 7% if it progresses to a wrist fusion.

**[2]** Despite being served with the claim form and other initiating documents, the defendant failed to file its defence within the timeframe specified by rule 10.3 (1)

of the Civil Procedure Rules (CPR). Consequently, the claimant successfully applied for and obtained a judgment in default of a defence. After an unsuccessful attempt to set aside the default judgment, the defendant filed a Form 8A pursuant to rule 16(4) of the CPR to be heard at this hearing.

**[3]** For the injury sustained, the claimant sought the amounts specified below in relation to the following categories of damages:

- Pain and suffering \$5,000,000.00
- Special Damages \$65,000.00
- Loss of income \$1,144,000.00
- Handicap on the labour market \$3,055,172.41
- Interests
- Costs

**[4]** Apart from the \$65,000 for special damages, the defendant wholly opposed the awards for loss of income and handicap in the labour market, contending that a reasonable award for general damages, considering all the circumstances, should not exceed \$1,300,000.00.

**[5]** In concluding the matter, the court rendered the following awards:

1. General Damages awarded for **\$4,500,000.00** to the claimant against the Defendant at an interest of 3% per annum from January 14, 2019, to February 6, 2024.
2. Loss of Income awarded to the claimant in the amount of **\$800,000.00**
3. Special Damages are awarded to the claimant in the amount of **\$65,000.00** at a rate of 3% per annum from the date of injury (September 22, 2017) to February 6, 2024.
4. Handicap on the labour market of **\$1,500,000.00**
5. Costs to the claimant to be taxed if not agreed.

[6] The court will now discuss the reasons for the orders in paragraph 5. However, before proceeding, it is necessary to summarise and review the factual background of the circumstances that led to the filing of the claim.

### **The Factual Background**

[7] The claimant's two witness statements, filed on 14 March and 12 June 2023, served as the foundation for his evidence concerning the injury he characterised as life-altering. Both statements were permitted to stand as his evidence-in-chief.

[8] The claimant stated that a supervisor informed him two weeks before the incident that the defendant had secured a contract with the Canadian Army to clear trenches and debris along the airport road. He was advised that he might be required to assist, and another supervisor subsequently confirmed that his assistance would be necessary.

[9] He described the events leading to his injury on that day as follows:

*“5. .... We had completed making the trenches, and so it was time to prepare the surface to install the copper lighting rods.*

*6. My co-worker and I were given a machine to operate by the name of “Hogger”. The Hogger required the balance and strength of two men and so me and my co-worker, Solo, was assigned that duty. Solo and I had no prior experience or training as to how to properly use the machine. The Spindle/blade for the machine is approximately thirteen (13ft.) feet long and so we were elevated by the bucket of the tractor. While we were operating the machine, digging the holes into the ground I heard my co-worker, Solo crying out saying, “Look out”. Solo had let go of his side of the machine causing it to snapped my wrist. It pulled me out of the bucket of the tractor, and I fell twelve feet (12ft.) on the edge of a concrete slab.*

*I tried to get up, but I realised that my wrist was bent into an unusual shape. I was disoriented and was in a lot of pain. The Canadian Soldiers assisted me by*

*taking me from the concrete slab into one of the army vehicles that transported me to the hospital.*

*8. I was taken to the Kingston Public Hospital, where I was seen and treated for my injuries. My treatment was continued by Dr Rory Dixon at the Winchester Medical Centre.”*

### **The Medical Evidence**

[10] The claimant relied on two medical reports, one from Dr Sheena McClean and another from Dr Rory Dixon, to support the awards sought. Both were admitted into evidence without objection from the defendant. Dr McClean treated him at Kingston Public Hospital, while Dr Dixon, an orthopaedic surgeon, attended to him following his discharge. The court appointed Dr Dixon as an expert, and his medical report was also certified as an expert report.

[11] The two reports detailed the nature of the injury he sustained and the treatment he received. A summary of the injury is as follows:

- Fracture of the distal right radius with joint involvement and had to be in a cast for three months.
- Deformity of the right wrist
- Discomfort, including tenderness, swelling, pain and muscle spasms in the right hand
- Decreased mobility of the wrist
- Shortening and mild protrusion of the distal ulna
- Significant prominence in the right ulnar styloid process compared to the left
- Treated with a right wrist backslap (plaster cast) and admitted to the Orthopaedic ward on presentation to the hospital.
- Healed fracture of the distal radius with some shortening and mild protrusion of the distal ulna
- Residual arthritic changes of the distal radio-ulnar joint

- Likely progression of arthritis of the right wrist in the future
- May develop severe pain over time, which may require a fusion of the right wrist.
- Lifting very heavy weights or using pneumatic machinery will affect the wrist.
- The impairment attributed to the right wrist fracture is 5% of the whole person, and if it progresses to wrist fusion, it will be 7% of the Whole Person.

## Special Damages

### *(a) Medical and Transportation*

[12] The claimant has asked to be compensated for expenses related to transportation, medical costs, and loss of earnings. A receipt for \$50,000.00 from the Winchester Medical Centre was provided as evidence of his medical expenses. However, there were no receipts for transportation costs. The claimant testified that he visited the doctor's and lawyer's offices several times to treat the injuries and prepare his case. Together, he stated that he spent around \$15,000.00.

[13] Judicial pronouncements concerning claims for special damages are now well established. The law requires that this category of damages must be specifically pleaded and substantiated. A court may, however, relax this rule under certain circumstances. The court often draws on its experience to determine a fair award, provided the amount sought is reasonable. Useful guidance regarding the law in this respect can be found in the following cases: **Owen Thomas v Constable Foster and Anor** CL—T 095 of 1999, judgment delivered on 6 January 2006; **Attorney General of Jamaica v Tanya Clarke (née Tyrell)**, SCCA No.109/2002; **Desmond Walters v Carlene Mitchell** [1992] 29 JLR 173.

[14] The claimant testified that he had visited his doctor more than eleven times for treatment and had attended his lawyer's office on several occasions. The court

acknowledges that these trips would undoubtedly incur costs for him. The sum of \$15,000.00 is reasonable. Additionally, the defendant did not object to the claimed amount.

(b) Loss of income

[15] In his evidence, the claimant stated:

*“Due to the nature of the work that I do, which is manual labour, obtaining employment was a challenge with one hand. With no skills and limited qualifications, no one wanted to hire me. The injury affected my ability to find employment.....*

*I was out of work for approximately four (4) years, and I lost income in excess of \$1,344,000.00.”*

[16] As previously noted, this aspect of special damages was vigorously disputed. The defendant argued that the claimant's evidence lacked credibility. The court was asked to examine the discrepancies between his evidence and Dr Dixon's medical report.

[17] The challenges were framed as follows:

(a) The claimant avers that he was out of work for approximately four (4) years.

(b) However, on the claimant's own evidence and that of Dr Dixon, who saw the claimant approximately two and a half (2 1/2) years after the accident where the doctor states: “Mr Walker works at a printery and reported that he returned to work three (3) months after the accident”.

(c) This directly contradicts the claimant's own evidence that he was out of work for approximately four (4) years.

- (d) Further, the report of Dr Dixon shows that the claimant was able and was actually working three (3) months after the injury.
- (e) The claimant had not indicated when he stopped working or started working at his new job at the printery, or if he has, when he stopped working or even if he is working now.
- (f) Further, the medical report shows that the claimant's injuries did not prevent him from seeking employment, as he was able to find work more than two (2) years after the accident.

[18] In his medical report dated March 23, 2020, Dr Dixon, among other things, noted as follows:

*“..Activities and Daily Living:*

***Ryan Walker works in a printery and reported that he returned to work three months after the incident. He reported that he had discomfort in the right forearm when he used the right hand and would get muscle spasms; he is right-handed.....”*** (My emphasis).

[19] Both under cross-examination and in response to questions from this court regarding the discrepancy, the claimant stated as follows:

*“I returned to work, that is, the Defendant's place, three (3) months after removing my cast. I was not given any work due to the injury and the pain I was feeling. No one paid me any mind there, and after two (2) weeks, I was told to leave, and I left the job. When I went to the doctor, I was not working at Duke Street, at the printery.” I did not find work until 2021, in the middle of the third year, into the fourth year, when I managed to get a job.” I started working at the printery in 2021.*

[20] He acknowledged that Dr Dixon's medical report indicated he was examined on March 23, 2020, but insisted that he was not employed at the printery then. He

stated that he had visited several places, searching for jobs, but could not secure any due to his injury.

- [21]** By way of observation, the medical report indicated that the claimant consulted Dr Dixon on March 23 2020; this evidence is irrefutable. I have no evidence to dispute it. The medical report also stated that the cast was on his hands for three months. It further noted that he works in a printery and returned to work three months after the accident.
- [22]** There are discrepancies between Dr Dixon's report and the claimant's evidence. As expected, I must take them into account. In considering these discrepancies, the court accepted that they should be resolved before determining an appropriate award under this heading. I had the opportunity to observe the witness while he provided his testimony and the explanation he offered. I do find the discrepancies to be material. They are not saying different things, per se; rather, it is a matter of how Dr Dixon writes the information received.
- [23]** In the court's assessment, he shows a low level of intellect. Based on the medical evidence, I accept that his hand was in a cast for three months, and I also find that he returned to the defendant's workplace three months after the cast was removed, as he clarified. However, I note that the defendant's workplace is not a printery.
- [24]** Moreover, resuming work would be deemed natural from the court's perspective. Accordingly, in the court's view, the doctor's report indicating that he "returned to work" related to the defendant's place of employment. It was never disputed that he walked off the job or was instructed to leave. Furthermore, there is nothing to contradict his evidence, nor was there any suggestion of hostile relations before or after his return to work. Additionally, there is no evidence of any animosity that would prevent him from returning to work after the cast was removed. Despite the thorough cross-examination, it was never suggested that he did not return to the defendant's company. On the contrary, his testimony indicated that he



returned to work, but due to his injury, he was not assigned any tasks and was subsequently instructed to leave. This evidence went unchallenged. I also accept that the claimant bears the burden of proof.

**[25]** The court found that circumstances had changed upon his return. I also regard him as a credible witness regarding his claim that he was not given any work due to his injury and was unable to work. The claimant's assertion concerning loss of earnings was not a recent development; he had maintained it from the outset. He also relied on a job letter outlining his weekly wages. His evidence remained unchallenged. Furthermore, there is no evidence to indicate that the defendant made him redundant or dismissed him.

**[26]** I have reminded myself of the need to exercise caution because the doctor's report affects the hearsay rule. Nevertheless, I regard its contents as vital in evaluating the claimant's credibility and the explanation provided.

**[27]** The overall evidence showed that the injury occurred on September 22, 2017, and his hand was in a cast for three (3) months. Therefore, the claimant would have returned to work in or around January 2018 and stayed for about two weeks before being asked to leave.

**[28]** Based on the doctor's report, I am prepared to accept that he would have obtained the job at the printery by March 2020. In the court's view, the doctor would not have known about his association with a printery unless he had been told.

**[29]** Accordingly, as he later clarified and based on the court's own calculation, which he has accepted, the claimant would have been out of work for over two years, rather than four, as previously stated. Given this evidence, he would have returned to work with the defendant sometime in January 2018 and would have remained employed for approximately two weeks, or at least until the third week of January 2018, when he ultimately departed. This meant that he was out of work from January 2018 until September 2020.

- [30] The job letter from the defendant, which was admitted into evidence without objection and was also served with the claim form, indicated that the claimant was paid \$1,300.00 daily. This amounted to \$6,500.00 weekly for five (5) days and \$26,000.00 monthly. Between February 2018 and December 2018, the total loss was \$286,000.00, in addition to one (1) week in January 2018 (\$1,300.00).
- [31] This brought the overall total to \$287,300.00. For 2019, the amount was \$312,000.00, and from January 2020 to September 2020, it was \$234,000.00. Therefore, according to this court's calculation, the total loss is \$833,300.00. I have rounded this off to \$800,000.00 and will award a loss of income in the amount of \$800,000.00 for two (2) years.

### **The handicap on the labour market**

- [32] The claimant stated that he was employed as a handyman in August 2017. He noted that his daily job description was limited to maintaining the company's tractors, changing hydraulic oils, filling the tanks with petrol, sweeping the compound, and ensuring that the premises' surroundings were kept clean and tidy at all times. This evidence clearly shows that the claimant must use his hands for the job. His right hand, which was damaged, is his dominant hand.
- [33] At the time of the injury, he was 33 years old; he is now 40. Dr Dixon notes that his WPI is 5% due to the injury, which may increase to 7%. There is no dispute that he has a partial disability. He has indicated that he has been experiencing significant pain in his hand, which sometimes prevents him from gripping or holding objects. Dr Dixon's medical report states that he has residual discomfort when performing his tasks.
- [34] In his evidence, nearly six years after his injury, the claimant stated the following:

*"My life has changed since the accident. I have constant pain in my hand. I had none of these issues prior to the accident. As a result of the injuries, I am unable to lift things over 50 lbs. The accident has seriously affected my ability to work and do my daily activities. I have to take pain medication regularly.*

*The doctor had advised me that I would subsequently develop arthritis from the injury. Lately, I have been experiencing pains in my right hand, which goes straight to my lower back. There are times I get a cramp in the hand, which prevents me from gripping anything, or if I am holding anything in the hand, I have to release it from my grip due to cramps.*

*Due to the nature of the work that I do, which is manual labour, obtaining employment was a challenge with one hand. With no skills and limited qualifications, no one wanted to hire me. The injury affected my ability to find employment. The injury had turned my life upside down... The injuries severely affected my ability to attend to my domestic chores and attend to personal needs. It has also impacted the things I usually enjoy, like playing sports. Painkillers are how I am able to cope at times.*

*The pain was so bad, I had to be visiting my doctor regularly to see if something was wrong with my treatment”.*

- [35]** During cross-examination, it was suggested that the injury had not affected him, as he would have the court believe. In response, he denied this suggestion and asserted that the injury continues to impact him even to this day. He demonstrated to the court how his fingers would inexplicably fold together at unexpected moments, even in his current job.
- [36]** Without any significant challenge to this fact, apart from mere suggestions based on his medical evidence, it is clear that the claimant suffers from a residual deformity resulting in a shortening of the distal radius. His testimony before this court indicates that discomfort arises from the injury and occasionally affects him when he undertakes tasks.
- [37]** The medical report revealed that he may potentially develop arthritis in the wrist in the future; however, this progression could be very gradual, as it is a non-weight-bearing joint. Dr Dixon suggested that it would not significantly incapacitate him throughout his lifetime, although this could vary depending on the machinery he uses or whether he lifts heavy weights. The most severe

potential consequence of the injury, as further noted by the doctor, would be intense pain necessitating a fusion of the wrist.

- [38]** The indisputable facts are that the medical report was prepared approximately three (3) years ago, and the injury sustained is now six (6) years old. The doctor's report indicated that there may be instances of excessive pain, which could necessitate a wrist fusion. The claimant provided evidence of experiencing pain at times. Nevertheless, based on his own account and the medical evidence, the court must now consider how the injury will affect him in the future.
- [39]** I have given careful consideration to the nature of the claimant's work. As a handyman, the use of his hands is essential. He was using his hands while working with the defendant. He worked as a handyman in the defendant's Repair and Maintenance Department.
- [40]** The claimant must now refrain from lifting heavy objects weighing 50 pounds or more, and it is anticipated that he will develop progressive arthritis. Consequently, his ability to maintain employment as a labourer or handyman is likely to be restricted due to a diagnosis of progressive arthritis. This limitation is expected to become even more pronounced as he ages. He is forty (40) years old and still has a significant working life ahead of him.
- [41]** His right hand is essential for his job, and the injury has impacted this dominant hand. He currently has a 5% WPI, which may increase to 7% if the pain worsens. Although it was suggested during cross-examination that he was exaggerating the severity of the injury, the doctor's assessment, conducted in March 2020, supports the claimant's assertions concerning his injuries and what he is currently experiencing. Therefore, I find no evidence that he is exaggerating the extent of his injury in any manner.
- [42]** In his report, Dr Dixon further noted as follows:

*“He also reported that the right wrist was painful when the temperature was cold. He reported no significant limitation of activities of self-care and was still able to play football.”*

[43] It must be noted that the report did not say the injury was without limitations but rather that there was no “significant” limitation. This indicates some limitations, but not any that would affect the claimant’s ability to play sports like football and self-care. Additionally, this court notes that football is not a hands-on sport, and self-care has to be contextualised.

[44] Furthermore, the doctor’s report to this court, alongside having had the opportunity to observe the impact of the injury first-hand, demonstrated by the claimant as he testified. He demonstrated this by folding his hand in a flexed position, which aided the court.

[45] In **Angeleta Brown v Petroleum Company of Jamaica Limited and Juici Beef Limited**, 2004 HCV 1061, McDonald Bishop J, as she was then, at paragraph 40, relying on the well-known case of **Moeliker v A. Reyrolle & Co Ltd** [1977] 1 W.L.R. 132, outlines the law regarding handicap in the labour market and loss of earning capacity. The learned judge opined that:

*“This principle forms the core of the principle later enunciated in **Moeliker v A. Reyrolle & Co Ltd** [1977] 1 W.L.R. 132, which has been followed in this jurisdiction. I am so guided by those principles that the court can only make an award for loss of earning capacity or handicap on the labour market if there is a substantial or real and not merely a fanciful risk that the claimant will lose her present employment at some time before the estimated end of her working life.”*  
*(My emphasis).*

[46] The learned judge went on to state at paragraph 41 that:

*“In **Tyne v Wear County Council** [1986] 1 All ER 567, Lloyd, LJ stated that a more concise assessment of the risks that a judge would have to assess in examining the question of loss of earning capacity are of two kinds: first, the*

*court would have to consider whether the claimant would be more likely to lose their present job due to her disability and, second, whether the claimant would be less likely to get another job on account of her disability should she lose her present job for whatever reason.”*

[47] From the foregoing, I deduced that this head of damages should be considered in two stages. Firstly, is there a "substantial" or "real" risk that a claimant will lose his current job sometime before the estimated end of his working life? Secondly, if there is (but not otherwise), the court must assess and quantify the present value of the risk of financial damage that the claimant will suffer if that risk materialises. Considering the degree of the risk, the time it may materialise, and the factors—both favourable and unfavourable—that, in a particular case, will or may affect the claimant’s chances of obtaining a job at all or an equally well-paid position, it is impossible to suggest a formula for resolving the extremely difficult problems involved in stage two of the assessment. As a judge, I must examine all the relevant factors in a particular case and make the best decision that fits the circumstances of the case.

[48] It is necessary to add that, though not applicable to this case, an award of damages for handicap on the labour market or loss of earning capacity does not only arise when the injured person was employed at the trial date. In **Cook v Consolidated Fisheries Ltd** [1977] I.C.R. 635.640, Browne L.J, corrected himself in respect of his decision in **Moeliker v A. Reyrolle & Co Ltd**, by stating that an award of damages for loss of earning capacity did not arise only when the injured person was employed at the date of trial. At page 640, he stated that:

*“In my view, it does not make any difference in the circumstances of this case that the plaintiff was not actually in work at the time of the trial...In Moeliker’s case at p. 261 of the report in [1976] I.C.R, I said, ‘ This head of damage only arise where a plaintiff is at the time of trial in employment. On second thoughts, I realize that was wrong... and when I came to correct the proof in the report, in the All England Reports, I altered the word ‘only’ to ‘generally’ and that appears at [1977] 1All E.R 915.” (Emphasis added)*

[49] In **United Dairy Farmers Ltd & Anor v Gouldbourne (by next friend Williams)** [Unreported] SCCA 65/81 dated 27<sup>th</sup> January 1984, Carberry J.A at page 5 of the judgment said in relation to the awards:

*“Awards must be based on evidence. A plaintiff seeking to secure to secure an award for any of the recognised heads of damage must offer some evidence directed to that head, however tenuous it may be”*

[50] Further, in the **Attorney General of Jamaica v Ann Davis**, SCCA 114/2004 del. Feb 5,6 & Nov 9, 2007, Harrison P (as he then was) said:

*“14. In matters concerning damages for handicap on the labour market, the court must assess the plaintiff’s reduced eligibility for employment or the risk of the future financial loss. Evidence must therefore be adduced in order to prove the loss even though in arriving at an award under this head of damages there has to be some amount of speculation.”*

[51] After reviewing all of the claimant’s evidence and in accordance with the law, I consider this risk to the claimant to be a real concern rather than a fanciful one. I took into account the nature of his position in the job market as a labourer, his limited qualifications and work history, and the fact that he will have to cope with this injury for the whole of his working life.

[52] The claimant noted that he gets muscle spasms in his right hand, has discomfort, has constant pains and cramps in the hand, is unable to lift things over 50 lbs, is unable to hold or grip objects and sometimes has to release a grip due to the cramps. Although he is currently employed, there is no guarantee that he will retain employment throughout his career. Regarding damages, I find it fitting to award a lump sum of **\$1,500,000.00**.

## **General Damages**

### *Pain and Suffering and Loss of Amenities*

[53] In **Cornelliac v. St Louis Court**, 7 WIR 491, the principles were identified and established to assist a court in determining the appropriate award for pain and suffering. It was established that the court must consider the nature and extent of the injuries sustained, the nature and gravity of the resulting physical disability, the pain and suffering endured, the loss of amenities suffered, and the extent to which, as a result, the plaintiff's financial prospects have been materially affected.

[54] The claimant's medical history showed no history of ill health before the accident. In addition to the evidence outlined above, the claimant stated that:

*"..I continue to suffer as a result of the injuries I sustained on the day of the injury, as I am in constant pain, especially at night. The doctor had advised me at the time that I would subsequently develop arthritis from the injury. Since lately, I have experiencing sever pains in my right hand which goes straight down to my lower back. This makes sleeping unbearable for me. This has caused me sleepless nights. There are times I get a cramp in the hand, which prevents me from gripping anything, or if I am holding anything in the hand, I have to release it from my grip due to the cramps. ..."*

[55] The court was asked to consider the following cases presented before it: **Jermaine Jerome Newman v Marva Andrea Chambers and others**, 2009 HCV034860; **Trevor Davis v Kenburn Gordon and others**, 2014 HCV04428; and **Joyce Hays v Vincent Williams and others**, 2009 HCV01277.

[56] In **Jermaine Jerome Newman v Marva Andrea Chambers and others**, the claimant suffered a distal radius fracture in his right wrist, similar to the present case. However, unlike the claimant, Mr Newman's fracture was non-displaced. He received an injection and a plaster cast, and his fracture completely healed within two to three months. Upon final examination, the medical report indicated that he had a good range of motion with no overall impairment. At that time, the claimant was thirteen (13) years old. The court awarded \$1,200,000, which is now equivalent to \$1,944,878.



- [57] In submissions presented before this court, Mr. Duncan Roye placed considerable emphasis on the case of **Jermaine Jerome Newman v Marva Andrea Chambers and others**. He urged the court to adopt a similar approach. He argued that the significant age difference between the claimant and Mr Newman should be given considerable weight when determining an appropriate award. He proposed that the court award the claimant a sum of \$1,300,000.
- [58] Regrettably, the court cannot agree with Counsel's submission. I find Newman's case to be incomparable, as the circumstances differ significantly. The claimant's injury is considerably more severe than that of Mr Newman, who notably experienced no pain after three months and maintained a good range of movement following his complete recovery.
- [59] Furthermore, there are no impairments affecting the whole person. In this context, even if the court were to consider **Jermaine Jerome Newman v Marva Andrea Chambers and others**, the claimant would warrant a substantial increase. It is important to note that Mr Roye has requested the court grant an award lower than the current consumer price index.
- [60] In the case of **Trevor Davis v Kenburn Gordon and others, consolidated with 2014HCV04572**, the claimant, Najeem McDonald, sustained a fracture of the right distal radius. At the time of the incident, he was thirteen years old and had his hand in a cast. He was unable to play football for three weeks. The doctor's report noted that his right wrist displayed swelling and bruising, necessitating the use of a splint.
- [61] Although the swelling had subsided and he had regained full range of motion along with good grip strength, the doctor indicated that his injuries were not fully healed and that he continued to experience pain. Furthermore, the doctor observed that the claimant had not received adequate treatment and had not achieved maximum medical improvement, concluding that he could not be assigned a permanent partial disability.

- [62] Considering the circumstances, the court, relying on the limited information available, awarded \$1,750,000, which, when adjusted for inflation today, equates to \$2,192,035.82. The claimant's case is exceptional and merits a higher award. Mr. McDonald did not sustain a displaced radius or permanent impairment; however, the claimant, Mr. Walker, not only experienced a displaced radius but also faced a 5% whole-person impairment.
- [63] In **Joyce Haye v Vincent Williams and Jermaine Griffiths [2017] JMSC Civ. 83**, the claimant was involved in an accident. Upon examination, her injuries included pain in the right shoulder, paraesthesia (a tingling or numb sensation) radiating down her arm, and back spasms. She also sustained abrasions on both knees and had a swollen and tender right shoulder, accompanied by a fracture of the greater tuberosity of the humerus, which required the application of a U-slab and sling. She was diagnosed with an unhealed fracture of the proximal right humerus, leading to limited motion in her shoulder.
- [64] Regarding her prognosis, the doctor stated that she was healed and had regained movement in her shoulder. However, she continues to experience persistent pain in her right shoulder, likely due to osteoarthritis of the acromioclavicular joint, which was exacerbated by the accident. She has also undergone physiotherapy.
- [65] Her doctor classified her in Class 1 of the Shoulder Regional Grid, indicating a 3% impairment of the upper extremity, which corresponds to a 2% whole-person impairment. In June 2017, she was awarded **\$2,800,000.00** for pain and suffering and loss of amenities. Adjusting this amount using the CPI of 140.7 (August 2024), it is updated to **\$4,263,636.36**.
- [66] The claimant's injuries and those of Miss Haye have affected their dominant hands, specifically the right hand. The injuries are somewhat similar, as both individuals sustained damage to their dominant hand. The claimant's injury impacted his lower hand, while **Joyce Haye suffered injuries to her** upper hand

and shoulder. Both individuals had their hands immobilised for three months. Initially, Miss Haye's hand was in a cast, but later, it was placed in a sling due to persistent pain. She remained in the sling for two to three months. Although her fracture healed and she demonstrated a good range of motion, this was not the case for the claimant.

**[67]** Both individuals are saddled with persistent pain. The claimant has a permanent disability, and his overall impairment is nearly three times greater than that of Miss Haye. The doctor remarked as follows:

*“.. He still has residual discomfort of the wrist when performing tasks, Mr Walker may have progression of arthritis of the right wrist in the the future but being a non-weight bearing joint e progression may be very slow and not significantly incapacitate him in his life time. This can change if his work changes to involves use of pneumatic machinery or lifting very heavy weight. The worst possible outcome would be severe requiring a fusion of the right wrist.”*

**[68]** In evidence, the claimant testified about his pain and indicated that his hand would often seize up while he was working. He further stated that he cannot lift items weighing 50 pounds or more.

**[69]** After reviewing the submitted cases and relevant laws, this court concludes that the claimant should be awarded \$4,500,000.00 for pain, suffering, and loss of amenities.

### **Final Disposition**

**[70]** The order detailed in paragraph 5 above reflects the court's total award for damages to the claimant in the final resolution of this matter.

**Maxine Jackson**  
**Puisine Judge (Ag.)**