



[2024] JMSC Civ 143

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

**CIVIL DIVISION**

**CLAIM NO. 2016HCV04524**

<b>BETWEEN</b>	<b>ANTHONY JOHNSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>BETWEEN</b>	<b>THEODORE PARKER</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

Ms. Christine Mae Hudson instructed by K. Churchill Neita and Company for the Claimant

Miss Krista-Leigh Cole and Mr. Stephen McCreath instructed by the Director of State Proceedings for the Defendants

**Heard: September 23 and November 7, 2024**

**Assessment of Damages – General Damages - Pain and Suffering and Loss of Amenities – The Cost for Post Surgery**

**TRACEY-ANN JOHNSON, J (AG.)**

**INTRODUCTION**

[1] The Claimant, Mr. Anthony Johnson, a 45-year-old member of the Jamaica Constabulary Force filed a claim against the Defendants on October 28, 2016 seeking to recover damages for injuries he sustained as a result of an incident which occurred on December 25, 2012. The Claimant averred that while he was

attending a social gathering at the Bloomfield Great House in the parish of Manchester, due to the negligent handling of a firearm by the 2<sup>nd</sup> Defendant, Theodore Parker, a member of the Jamaica Constabulary Force, who was acting as a servant and/or agent of the 1<sup>st</sup> Defendant, he was shot and injured. The Defendants admitted liability to the claim and filed a Defence Limited to Quantum on May 31, 2017. Judgment on admission was entered on June 5, 2017. The claim has now come up for Assessment of Damages. The Court now has to determine the quantum of damages to be awarded to the Claimant for his pain and suffering and loss of amenities and pecuniary and/or future pecuniary losses.

**[2]** The following items were agreed between the parties:

- 1) Special Damages in the sum of Two Hundred and Thirty-Two Thousand, Seven Hundred and Seventy-Six Dollars and Ten Cents (\$232,776.10).
- 2) The cost of future corrective surgery in the amount of One Million, Four Hundred and Thirty-Three Thousand dollars (\$1,433,000.00).
- 3) The sum of Four Hundred Thousand Dollars (\$400,000.00) for Handicap on the Labour Market.

**[3]** The matters that remain in dispute between the parties are general damages for pain and suffering and the estimated cost for post-surgery.

### **THE CLAIMANT'S EVIDENCE**

**[4]** The Claimant gave evidence at trial and his Witness Statement dated the 15<sup>th</sup> July 2022 and his Supplemental Witness Statement dated September 18, 2023 were permitted to stand as his evidence-in-chief. His evidence is that on December 25, 2012, he attended a social gathering at the Bloomfield Great House in Mandeville in the parish of Manchester. While at the party, at approximately 4:20 a.m., he observed patrons moving around in a hurried manner. Approximately three minutes (3) later, he heard a loud explosion and immediately felt excruciating pain to his right arm and groin. He then noticed that he was bleeding from his right wrist

and groin. He was assisted to his motor vehicle and he drove himself to the Mandeville Regional Hospital.

- [5] At the hospital he observed that he had a large, gaping wound which ran completely across his groin area from left to right. He further observed smaller separate wounds to both of his thighs. All three wounds were on the similar vertical height of his body. He also observed a wound to his right wrist in the vicinity of his thumb. The wound to his groin was stitched and the wound to his wrist was bandaged. He had an x-ray done on his wrist and realized that several bones in his wrist were fractured and that a bullet was lodged in it. During this period, he experienced excruciating pain for which he received pain medication intravenously and orally which were only effective periodically. He spent two (2) nights at the hospital and was later discharged.
- [6] On January 1, 2013, due to severe pain in his wrist he sought assistance at the May Pen Hospital where he spent two (2) days and received frequent and repeated intravenous pain killers and antibiotics. He also spent two (2) days at the University Hospital of the West Indies in Kingston after leaving the May Pen Hospital. He was later transferred to Nuttall Hospital to be treated by Dr. Neil, an Orthopaedic Surgeon. On January 4, 2013, he underwent surgery on his wrist at the Nuttall Hospital under the care of Dr. Neil. Afterwards, he experienced extreme pain and was unable to move his finger. Upon the recommendation of Dr. Neil, he did physiotherapy to restore movement in his fingers. He was discharged from the hospital twenty (20) days after the surgery.
- [7] He continued to experience pain and significant emotional and physical distress. He was unable to use his right hand at all as it felt very heavy and was weighing his shoulder down. He had to rely on the assistance of his grandmother and then lady friend. He continued to be treated by Dr. Neil and to do physiotherapy. However, his wrist remained stiff, and the progress of restoring movement to his fingers was slow. He later observed a prominent set of scarring, bulging and deformity of the regions in and around the injured area of his wrist. He went back

to Dr. Neil for a second surgery in October 2013 to remove some of the metal pins from his injured hand. After the surgery, he continued to experience severe and chronic pain in the wounded wrist. He continued to do physiotherapy which came with other painful procedures aimed at achieving range of movement to the affected area. He also experienced emotional stress owing to lack of functionality due to his injuries. As healing progressed, he eventually had limited range of movement in his hand and wrist. His physical activities are also restricted and he is unable to do strenuous tasks.

**[8]** On May 5, 2015, he also sought treatment at the office of Dr. Steve Mullings, an Orthopaedic Surgeon in Mandeville, Manchester. He was examined by Dr. Mullings who sent him to do x-rays and explained some things to him. He saw Dr. Melton Douglas, an Orthopaedic Surgeon on May 13, 2022 who examined him, reviewed the x-rays and explained the findings of a scan which he had previously done at the request of Dr. Steve Mullings. The Claimant asserts that he would like to do a surgery that would reduce the pain and improve the mobility of his wrist, an option which was explained to him by Dr. Douglas. He is disappointed that this corrective surgery would leave him with a stiff wrist but he is grateful that he will be pain free.

**[9]** The following medical reports were agreed and admitted into evidence:

- 1) Exhibit 1 – Medical Report from the Mandeville Regional Hospital dated April 10, 2015;
- 2) Exhibit 2 – Medical Report from the May Pen Hospital dated August 19, 2015;
- 3) Exhibit 3 – Medical Report prepared by Dr. Steve Mullings dated May 31, 2016;
- 4) Exhibit 4A – Medical Report prepared by Dr. Melton Douglas dated June 1, 2022;

- 5) Exhibit 4B – Addendum Medical Report prepared by Dr. Melton Douglas dated June 1, 2022; and
- 6) Exhibit 5 – Second Addendum Medical Report prepared by Dr. Melton Douglas dated September 29, 2022.

**[10]** The Claimant's further evidence is that he is seeking to recover the costs for thirty (30) physiotherapy visits as recommended by Dr. Douglas. He relies on the invoice of Tresia-Ann Rose dated September 8, 2023. This invoice was agreed and admitted into evidence as Exhibit 6. He also stated that based on the report of Dr, Douglas, he will be totally disabled for six (6) weeks and partially disabled for four and a half (4 ½) months. During this period, he will need assistance to take care of his needs and as such he is seeking to recover the sum of seven thousand dollars (\$7,000.00) per week for this period. This was outlined in his Further Amended Particulars of Claim filed on March 1, 2024 as follows:

**"33. ESTIMATED COST FOR POST SURGERY**

*Based on the findings of Dr. Douglas, the Claimant requires physiotherapy and occupational therapy for 3 months as follows:*

<i>(i) 18 visits for 6 weeks @ \$6,000.00 per session</i>	<i>\$108,000.00</i>
<i>(ii) 12 visits for 6 weeks @ \$6,000.00 per session</i>	<i>\$72,000.00</i>
<i>(iii) Transportation cost estimated @</i>	<i>\$30,000.00</i>
<i>(iv) Extra Help for 5 months @ minimum wage of \$9,000 per week</i>	<i><u>\$180,000.00</u></i>

TOTAL

**\$390,000.00”**

[11] He stated later in his evidence that he continues to have pain and numbness in his hand. Sometimes the pain is prolonged. It mostly affects him at nights and with strenuous activities. He also has difficulty doing some regular work related activities using his firearm. The Claimant’s further evidence is that when he stated that he would need assistance during the period that Dr. Douglas opined that he would be disabled, the assistance is related to his two (2) boys, that is, to drop them off to school when he is scheduled to do so. He stated that his children live about 2 kilometres from where he lives and about 5 kilometres from school. In cross-examination, he stated that his children live with their mother and that when he is not scheduled to take them to school, a taxi take them to school.

#### **THE MEDICAL EVIDENCE**

[12] By Order dated the 20th July 2023, the Honourable Mrs. Justice N. Hart-Hines certified Dr. Steve Davis and Dr. Melton Douglas as expert witnesses and their reports were certified as expert reports.

[13] In the Medical Report from the Mandeville Regional Hospital dated April 10, 2015, (**Exhibit 1**), it reads:

“Diagnosis: Multiple gunshot (sic) wound – pubic region and right forearm.  
Fracture distal right radius and ulna.

Treatment: Suturing of wound  
Observation in hospital  
Analgesics  
Antibiotics”

[14] In the Medical Report from the May Pen Hospital dated August 19, 2015, (**Exhibit 2**), it indicates that the Claimant was treated on January 1, 2013. He was

diagnosed as having “fracture of distal right radius”. He was treated with intravenous antibiotics, dressings and a broad arm sling.

**[15]** In the expert report of Dr. Steve Mullings dated May 31, 2016 (**Exhibit 3**), Dr. Mullings, Consultant Orthopaedic Surgeon, he made the following findings:

- i. Right forearm 2 cm smaller than the left;
- ii. Mild deformity of the right wrist;
- iii. Range of motion in right wrist decreased compared to the left
  - a) Extension 20°
  - b) Flexion 40°
  - c) Radial deviation 20°
  - Minimal ulna deviation
- iv. Range of motion of the elbow was mildly decreased –
  - a) 10-15° loss of extension
  - b) Pronation and supination decreased by approximately 10°
  - c) Grip strength – 37lb force for the right hand and 120lb for the left hand (patient left hand dominant)

**[16]** Radiographs were ordered and done at the Mandeville Regional Hospital on the 12<sup>th</sup> May 2015, which showed:

- i. No implants in situ
- ii. Malunited fracture distal radius
- iii. Positive ulna variance at wrist
- iv. Severely narrowed radiocarpal joint space

**[17]** The Claimant was assessed as having a 28% impairment of the right upper limb and 17% whole person impairment. He stated that it was quite likely that the degenerative disease would progress resulting in chronic pain involving the wrist.

Range of motion was also likely to decrease with progressive degenerative disease.

**[18]** In the Medical Report and Addendum Medical Report of Dr. Melton Douglas, Consultant Orthopaedic Surgeon both dated June 1, 2022 (**Exhibits 4A and 4B**) and the Second Addendum Medical Report dated September 29, 2022 (**Exhibit 5**), he made the following findings:

- i. Longitudinal midline 6 cm linear surgical scar over the volar wrist ending just 1 cm proximal to the wrist crease;
- ii. Longitudinal linear scar just radial to the midline over the ulna measuring 5 cm ending just 1 cm proximal to the ulnar styloid process;
- iii. Longitudinal linear scar just medial to the midline over the ulna measuring 5 cm ending just 1 cm proximal to the ulnar styloid process;
- iv. Small scars in total 4 representing the site of the external fixator pins located over the 2nd metacarpal bone and the mid forearm.

**[19]** In relation to the range of motion of the wrist, he made the following findings:

- i. 35° Volar Flexion to the right compared to 75° Volar Flexion to the left;
- ii. 31° Dorsiflexion to the right compared to 25° Dorsiflexion to the left;
- iii. 5° Ulnar Flexion to the right compared to 25° Ulnar Flexion to the left;
- iv. 15° Radial Flexion to the right compared to 60° Radial Flexion to the left;
- v. 42° Supination to the right compared to 88° Supination to the left;
- vi. 40° Pronation to the right compared to 85° Pronation to the left;
- vii. 20lb force grip strength to the right compared to 129lb force grip strength to the left.

**[20]** Plain radiographs of the wrist done on May 13, 2022 revealed the following:

- a. Gross deformity of the joint surface of radius with absent joint space of the radiocarpal joint;
- b. Distal radioulnar joint irregularity and deformity;
- c. Shortened radius relative to the ulna.

**[21]** The Claimant was diagnosed with post traumatic arthritis of the right radiocarpal joint. The total wrist impairment is 17% upper extremity impairment which is equivalent to 10% whole person impairment. Dr. Douglas' assessment and prognosis is that the Claimant's wrist *"is at the end stage of post traumatic arthritis due to severe damage to the joint caused by the bullet. There is no surgical solution to return the wrist to normal function. Attention has to be turned to management of the pain. There are two options of treatment to address the resolution of his wrist pain. The first of the two options is to retain the mobility of the joint at the expense of a weak wrist joint. The second is to have a strong wrist but accompanied by a stiff joint. The Claimant is left hand dominant and with this dominance would be able to do most activities of daily living. As for using his firearm the left hand would be able to discharge his firearm, but the right hand affected would hinder or slow the speed and reduce his efficiency in his handling skill"*.

**[22]** The first option would be a proximal row carpectomy and the second would be a radiocarpal fusion with or without an excision of the distal end of the ulna. The cost of both procedures are similar and would be as follows: Professional fees \$1.1 million, hospital fees \$400,000. Following surgery, he would be temporarily totally disabled for 6 weeks and temporarily partially disabled for 4.5 months. He would require physical and occupational therapy in the immediate post-surgery period and continued for the subsequent 3 months. For the first 6 weeks he would require 3 visit per week and for the second six weeks, 2 visits per week. He further stated that the cost of physiotherapy averages \$6000 per session.

**[23]** He stated that following radiocarpal fusion, the Claimant's impairment would be revised to a new rating of 30% of the upper extremity that would be equivalent to 18% of the whole person. He stated that the decision whether or not to undergo surgery is that of the patient. If the patient in his judgment thinks that he is functional and the pain experienced is tolerated well enough, he has the right to carry on without the surgery. Based on the Claimant's history, he was experiencing pain in performing normal daily living activities. With successful surgery, he should be able to be pain free, at the expense of losing the ranges of flexion and extension motion in his wrist. If he prefers to postpone the surgery until the pain becomes more severe and intolerable, then there is nothing wrong with that decision.

**[24]** He further stated that the Claimant has the following symptoms and functional difficulties:

1. Cramping in the right wrist at nights intermittently.
2. Pain in the right wrist on any exertion of the wrist. Using his hand to wash, sweeping, or doing any simple mechanical tasks aggravates the pain. He cannot lift objects without experiencing pain, including a 4-gallon bucket of water.
3. Stiffness of the joint of the right wrist with loss of the normal ranges of motion in the wrist.
4. Weakness of grip in the right hand.

**[25]** He opined that with successful surgery, the pain in the wrist would be eliminated, giving the wrist the chance for recovery, rehabilitation, and functional improvement. The difference with the two (2) procedures is that the wrist fusion would result in a stronger grip and greater ability to perform more strenuous work. The flexibility of the wrist would be less and therefore there would be reduced dexterity. On the contrary, the proximal row carpectomy would result in more flexibility and dexterity, but reduced grip strength and, therefore, reduced capacity to do strenuous work.

## THE SUBMISSIONS

### Submissions on Behalf of the Claimant

[26] Counsel for the Claimant, Ms. Hudson, relied on the written submissions filed on November 6, 2023 and the written and oral submissions made on September 23, 2024. In support of the claim for general damages, Counsel asked the Court to consider the following authorities:

- 1) **Joyce Haye v. Vincent Williams** [2017] JMSC Civ 83;
- 2) **Uriel Davis v. University Hospital of the West Indies** [2020] JMSC Civ. 260;
- 3) **Thomas Crandall v. Jamaica Folly Resorts Ltd.** cited from Khan 5, page 136;
- 4) **United Dairy Farmers v. Lloyd Goulbourne**, CA 65 cited from Harrison's page 17; and
- 5) **Romarne Buddington v. JUTC & Winston Allison** [2024] JMSC Civ. 57.

[27] Counsel for the Claimant asked the Court to consider the facts of the case of **Joyce Haye v. Vincent Williams**, where the Claimant suffered fracture of the shoulder and soft tissue injury to the neck. She was hospitalized for four (4) days and was treated. She underwent twenty-three (23) sessions of therapy. She was assessed one (1) year after surgery and the fracture was deemed to have healed with full range of motion of the shoulder, occasional pain and swelling in the fingers of the right hand. She was assigned with 2% whole person impairment of the shoulder. An award of \$2.8M for general damages was awarded in June 2017 (using CPI 92.4) which now updates to \$4,263,636.36 (using CPI of 140.7)

[28] Counsel also asked the Court to consider the case of **Uriel Davis v. University Hospital of the West Indies**, where the Claimant sought medical attention one (1) week after sustaining injury to her shoulder. An x-ray done revealed the following:

- a) Mild superior subluxation of the joint;
- b) Assessed as having rotator cuff tear of the right shoulder;
- c) MRI confirmed partial thickness rotator cuff tear involving the supraspinatus.

[29] The Claimant underwent surgical repair of the tear. However, there was variance in the expert opinion as to whether the injury caused the tear or was aggravated given the degenerative changes noted on the radiographs. The Claimant was assessed with 10% upper extremity impairment or 6% whole person impairment. It was opined that the intermittent pain that the Claimant experienced was in keeping with early degenerative changes in the shoulder. An award of \$4M was made for general damages in September 2020 (using CPI 101.2) which updates to \$5,561,264.82 (using CPI of 140.7).

[30] Ms. Hudson further asked the Court to have regard to the case of **Thomas Crandall v. Jamaica Folly Resorts Ltd.**, where the Plaintiff suffered acute bicep tendon avulsion from left radius associated with severe pain. The Plaintiff was hospitalized for five (5) days and underwent surgery. Four (4) months post injury, he underwent another surgery due to heterotrophic ossification, limiting supination. He developed mild heart attack an hour after surgery. Subsequently, the Plaintiff underwent radiation and physical therapy to increase rotation of the arm which was assessed as permanent. Up to 1991, five (5) years post injury, the Plaintiff was still having restriction of the rotation of the arm. He was assessed with 20% PPD. An Award of \$1,750,000.00 was made in June 1998 (using CPI 18.3) which updates to \$13,454,918.03 (using CPI of 140.7).

[31] Counsel for the Claimant also pointed to the facts of the more recent case of **Romarne Buddington v. JUTC & Winston Allison**, where the Claimant, following a motor vehicle accident suffered traumatic injury to the wrist in the nature of fracture to the shaft of the radius. He was treated surgically by way of open reduction and internal fixation. He was assessed by Dr. Dundas with 8% whole person impairment which manifested itself in restricted range of movement and

reduced grip strength. The Claimant was awarded \$5,750,000.00 for pain and suffering in May 2024 (using CPI 134.9) which updates to \$5,997,220.16 using the CPI of 140.7. The Claimant in the case before this Court suffered more extensive and grievous injuries compared to the Claimant in the **Romarne Buddington** case. This is evidenced by the gunshot injuries resulting in multiple fractures to the left hand. The Claimant also suffered multiple gunshot injuries to the hip, a feature wholly absent in the cited case.

[32] Ms. Hudson further submitted that the Claimant in this case had to, over the last eleven (11) years, contend with significant residual effects of the injuries to include pain, loss of flexibility/stiffness and reduced/loss of grip strength. Dr. Douglas stated that *“Mr. Johnson’s wrist is at the end stage of post-traumatic arthritis due to severe damage to the joint caused by bullet...”* The Claimant has to undergo a second surgery. Surgery is expected to reduce the pain, which will result in an increased impairment rating due to stiffness, a loss which is considered of intrinsic value. Counsel submitted that this case is a base guide which supports that the award to the Claimant in this case should be substantially increased to reflect a more extensive and serious nature of the injuries, period of incapacity, treatment undergone, past pain and the final residues.

[33] Ms. Hudson conceded that the injuries suffered by the Claimant in the claim before this Court are not exactly on par with the injury suffered by the Claimants in the **Joyce Hays** and **Uriel Davis** cases. However, she submitted that the Court can consider these cases as a base and/or rudimentary guide in its assessment. She further submitted that there is a reasonable measure of similarity in the nature of the injuries suffered, in that, all the Claimants in the cited cases, like the Claimant in this case, suffered traumatic insults to the upper extremity, which healed with some residual impairment thereby forming the basis for comparison. She submitted that the **Thomas Crandall** case is the most analogous to this case, when consideration is given to the nature of the injuries sustained by the Plaintiff and the Claimant as well as the fact that up to the date of the Assessment hearing,

both the Plaintiff in the **Thomas Crandall** case and the Claimant in this case have undergone two (2) surgical procedures.

- [34] She also submitted that further similarity is evidenced by the impact of the assessed impairment rating, which manifests itself in restricted range of movement of the wrist. In the **Thomas Crandall** case, up to 1996, the elbow showed signs of the rotation of the arm and the Plaintiff was unable to rotate the wrist. In the case before the Court, Dr. Mullings post injury, documented the Claimant with restricted range of movement of the wrist and opined that same was likely to worsen with the passage of time. Dr. Douglas examined the Claimant some ten (10) years post injury and also detailed the restricted range of movement of the wrist. Dr. Douglas' finding of gross deformity of the joint surface with absent joint space of radiocarpal joint is also evidence of the restricted range of movement of the wrist. The recommended third surgical procedure would result in a stiff wrist, thereby further compromising the function of the hand.
- [35] Counsel pointed out that there are distinguishing features between the **Thomas Crandall** case and the case before the Court in that the post-surgery complication in the nature of the heart attack in the **Thomas Crandall** case is a feature that is wholly absent from the case before the Court. This would have influenced the final award, although not clear, to what extent from the judgment. However, there is no evidence to indicate that the initial injury was made worse by the inclusion of the heart attack. The weight to be placed on post-surgical complications as a distinguishing feature may be gleaned from the comments of Justice Reid at page 17 of the judgment in the case of **United Dairy Farmers v. Lloyd Goulbourne**. She further argued that the **Thomas Crandall** case is of some vintage, and that although caution is to be exercised when looking at older decisions, there is nothing which precludes or prohibits reliance on older decisions. She urged the Court to find that the **Thomas Crandall** case remains an appropriate base guide.
- [36] She argued that based on the sum total of the medical evidence, the Court has to factor into the assessment, the third surgical procedure to be done by the Claimant,

a feature which is not present in any of the cases cited. The Court also has to consider the higher impairment rating, 30% PPD or 18% whole person impairment compared to 2% whole person in the **Joyce Hays** case, the 7% whole person impairment in the **Uriel Davis** case and the **20% PPD** in the **Thomas Crandall** case. She acknowledged that the assessed impairment is not the ultimate yardstick to determine the final award but that it must account for something in the assessment process. In conclusion, she submitted that on the sum total of the medical evidence, the award to the Claimant ought properly to exceed the updated awards in the **Uriel Davis** and **Joyce Hays** cases, which are of more recent origin. She asked the Court to find that despite the antiquity of the **Thomas Crandall** case, it remains a highly persuasive authority to guide this Court. In making the necessary adjustments to include the multiple injuries to the pubic area which fortunately have healed without any complications, and balancing all the aforesaid factors, she asked the Court to find that an award within the region of \$13.5M to \$14M is appropriate.

- [37] In relation to the case of **Annette Christie v. Nutrition Products Ltd. and the Attorney General** Suit No. C.L. 1990 C 249, relied on by counsel for the Defendants, Counsel for the Claimant submitted that the Court should place no reliance on this authority because of its antiquity (it having been decided twenty-three (23) years ago and asked the Court to find that it does not represent a consensus of judicial opinion as to what is a reasonable sum for injuries of a similar nature. It has not been followed in the plethora of subsequent decisions and has lost its usefulness with the passage of time. She asked the Court to be mindful of the comments of the Judicial Committee of the Privy Council in the case of **Seepersad v Persad & Anor (Trinidad and Tobago)** [2004] UKPC 19 as to the caution the Court should adopt in looking at old cases (see paragraph 15 of the judgment). She pointed out that although the **Thomas Crandall** case was decided as far back as 1998, it was an appellate decision. She asked the Court to find that despite its antiquity, that it is more in keeping with the current trend of authorities of the Supreme Court and is persuasive. She asked the Court to be mindful that in

the **Annette Christie** case, the Court found that had Christie undergone the recommended treatment, her disability would have been reduced. The Claimant failed to mitigate her damages. The Court was silent as to what extent the award was reduced. Counsel for the Claimant asked the Court to find that the **Annette Christie** case is not an appropriate guide. In relation to the case of **Glen Syblies v. Richard Lyn and Constantine Wong** Suit No C.L. 1990/S 187 relied on by Counsel for the Defendant, it is abundantly clear that the award in this case is out of sync with the current trend of award. A foundational principle governing assessment of damages is whether the award represents the current trend of awards from the Supreme Court. The ordinary man looking on must not look at it as extravagant or mean. The award of two million plus recommended by the Defendant is suited for uncomplicated cases where the Claimant is treated conservatively for injuries suffered and has no impairment rating.

- [38] As previously stated, the future surgery is expected to eliminate or reduce the pain component, and the Claimant will be left with a stiff wrist which no doubt will compromise the functioning of his hand. Counsel for the Claimant submitted that the Claimant will have to undergo additional pain and suffering post surgery and a protracted period of rehabilitation to bring him to a stage where his pain would be less. She further submitted that it has been eleven (11) years since the Claimant has been injured and pain has been a feature of his life from then until he does the surgery. He will require extra help as he may be 'laid up' although it is not his dominant hand. She asked the Court to award even a minimum sum to assist with his rehabilitation.

#### Submissions on Behalf of the Defendants

- [39] Counsel for the Defendants relied on the written submissions filed on November 13, 2023. The following authorities were relied on:

- 1) **Annette Christie v. Nutrition Products Ltd. and the Attorney General** Suit No. C.L. 1990 C 249; and

2) **Glen Syblies v. Richard Lyn and Constantine Wong** Suit No C.L. 1990/S 187

[40] Counsel for the Defendants highlighted the facts of the case of **Annette Christie v. Nutrition Products Ltd. and the Attorney General**, where the Claimant, a 36-year-old factory worker was injured when she fell unconscious and fractured her left wrist. She was referred to Dr. Grantel Dundas, Orthopaedic Surgeon. X-rays were done which revealed the following:

- i. Misaligned fracture of distal one fourth of the left radius with backward angulation; and
- ii. Joint between the radius and wrist dislocated.

[41] Dr. Dundas recommended surgical intervention for the correction of the deformity and removal of segmental bone for the correction of the deformity, and removal of segmental bone at the head of the ulna. The Claimant complained of pain in her wrist and Dr. Dundas later diagnosed her with carpal tunnel syndrome. He also recommended surgery to relieve the carpal tunnel pressure but it was not done.

[42] The Claimant's disability was assessed at 15% of the affected extremity or 9% of the whole person and her carpal tunnel disability amounted to 20% of the affected extremity or 12% whole person. On March 30, 2001, the Claimant was awarded the sum of \$450,000.00 for pain and suffering and loss of amenities. The CPI on that date was 21.7. Using the current CPI of 132.9, the award is updated to the sum of \$2,755,990.78.

[43] Counsel also asked the Court to consider the facts of the case of **Glen Syblies v. Richard Lyn and Constantine Wong**, where the plaintiff suffered the following injuries:

- i. Anterior dislocated lunate and scaphoid of the right wrist;
- ii. Puncture wound over ulna aspect and superficial lacerations;

iii. The wrist was deformed and swollen with restrictive movement.

[44] An assessment of 14% permanent partial disability of the whole person was given. On February 27, 1992, the Claimant was awarded general damages for pain and suffering and loss of amenities in the sum of \$65,000.00. The CPI on that date was 5.4. Using the CPI of 13.29, the award is updated to the sum of \$1,599,722.22. Counsel further submitted that having regard to the aforementioned cases, that a reasonable award for pain and suffering and loss of amenities is \$2,500,000.00. In relation to 'Cost to Future Corrective Surgery', it was submitted that based on the evidence of Dr. Melton Douglas, the sum of \$1,500,000.00 claimed under this head is reasonable. Counsel submitted that the Defendants require invoices for the proposed costs for future corrective surgery and estimated costs for post-surgery.

## DISCUSSION AND ANALYSIS

### Pain and Suffering and Loss of Amenities

[45] The Claimant has claimed general damages for pain and suffering and loss of amenities. The case of **Cornilliac v St. Louis** (1965) 7 WIR 491 is instructive as to the factors that the Court should take into account in order to arrive at an appropriate award under this head of damages. The Court will adopt the guidelines formulated by Wooding CJ at page 492 of the judgment and will, therefore, consider the following:

- i. The nature and extent of the injuries sustained;
- ii. The nature and gravity of the resulting physical disability;
- iii. The pain and suffering which had to be endured;
- iv. The loss of amenities suffered; and
- v. The extent to which the Claimant's pecuniary prospects have been materially affected.

[46] The Court also bears in mind when assessing this claim, the general principle stated by Lord Blackburn in the case of **Livingstone v Rawyards Coal Co.** (1880) 5.A.C. 25 at 39), which should guide this Court when assessing damages in tort. At page 39 of the judgment, he stated as follows:

*"I do not think there is any difference of opinion as to its (sic) being a general rule that where any injury is to be compensated by damages, in settling the sum of money to be given for reparation or damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation or reparation."*

[47] The Court considered the Claimant's evidence in relation to the injuries he sustained. Based on his account, as a result of the incident on December 25, 2015, he sustained gunshot injury to his right wrist, a wound to his groin and several smaller wounds to his thighs. Additionally, his right wrist was fractured. His further evidence was that his treatment at the Mandeville Hospital was with intravenous and oral medication and that the wound to his groin was stitched. The Court notes that his evidence in this regard is consistent with the diagnosis and treatment recorded in the Medical Report from the Mandeville Hospital dated April 10, 2015 (**Exhibit 1**). The Court further notes that the Medical Report from the May Pen Hospital dated August 19, 2015 (**Exhibit 2**) also records a similar diagnosis as that stated by the doctor in the previous report and the treatment with antibiotics and painkillers accords with the evidence of the Claimant as to the reason for visiting the said hospital on January 1, 2013. The Court accepts the Claimant's unchallenged evidence and the agreed evidence contained in both medical reports in this regard.

[48] There is no medical report produced to buttress the Claimant's account in relation to having undergone a surgery which was done by Dr. Ian Neil on January 4, 2013 at the Nuttall Hospital and of receiving postoperative care from the doctor. Neither is there any medical report provided in relation to his evidence that Dr. Neil did a

second surgery to remove metal pins from his injured hand. He also gave evidence of receiving physiotherapy twice a week upon the recommendation of the said doctor. However, the Court noted that in the medical report of Dr. Mullings, he indicated that upon examination of the right upper limb, he saw scars on the wrist and “*multiple scars secondary to external fixator, two over the second metacarpal and two over the radius (mid forearm)*”. He also noted the existence of a scar on the anterolateral aspect of the right wrist secondary to the entry wound of the bullet. Dr. Douglas also made similar observations at the time of examination as recorded in the medical report dated June 1, 2022. These reports lend credence to the Claimant’s account and, therefore, the Court accepts his evidence in this regard. The Court also accepts his evidence regarding the post-operative care he received. It is not unreasonable or farfetched that, having done surgery on his wrist, he received physiotherapy, and so the Court also accepts his unchallenged evidence in this regard.

- [49] It is also noteworthy that he gave evidence of experiencing extreme pain and emotional and physical distress during the period which made him dependent on a family member and friend for assistance. He stated that his wrist remains stiff and painful and he only has a limited range of movement. When he visited Dr. Mullings on May 5, 2015, the doctor stated that he complained of “*Right wrist pain and stiffness; weak right grip and numbness of the fingers on occasions [which] ‘comes and goes’*”. He was not on any analgesic medication. It is noteworthy that in Dr. Mullings’ Report, he stated that, “*Examination revealed a middle aged man who appeared in no distress...*” There is no record that the Claimant made any indication at the time that he was seen by Dr. Mullings that he was experiencing any of the extreme pain and physical distress that he had previously complained of. There is also no indication that any medication was received by the Claimant at the time of that visit. However, Dr. Mullings’ report confirms that the range of motion in the Claimant’s right wrist is decreased, his grip force is significantly weaker in the right hand when compared to the left (37lbs force in the right and 120lbs force in the left). There is also mild decrease in the range of motion in the

elbow and loss of extension. He also stated that the Claimant has mild deformity in his right wrist. Dr. Mullings' opinion as stated at the end of his report, is noteworthy. He stated that:

*"...The patient's fractures eventually healed however with malunion. There is significant narrowing of the joint space and evidence of degenerative joint disease. Clinically, there is marked decreased range of motion of the wrist joint as well as mild decrease in pronation, supination and elbow extension. The patient is assessed as having a 28% impairment of the right upper limb and 17% whole person impairment. It is quite likely that the degenerative disease will progress resulting in chronic pain involving the wrist. Range of motion is also likely to decrease with progressive degenerative disease."*

[50] The Court accepts the unchallenged evidence of Dr. Mullings and the Claimant in this regard.

[51] Dr. Melton Douglas' report dated June 1, 2022 recorded the grip force of the right hand as 20 lbs force and the left hand as 129lbs force. This suggests a marked decrease in the grip force of the left hand when compared to the grip force of 37lbs force recorded by Dr. Mullings when the Claimant was seen by him. Dr. Douglas diagnosed the Claimant with "Post Traumatic Arthritis of the Right Radiocarpal Joint". In fact, he opined that the Claimant is at the end stage of post traumatic arthritis due to severe damage to the joint caused by the bullet. Dr. Douglas also stated that the Claimant's *"Total wrist impairment is 17% upper extremity impairment which is equivalent to whole person impairment of 10%."* Unlike Dr. Mullings' report, both of Dr. Douglas' addendum medical reports referenced the Claimant's symptoms and functional disabilities which buttressed the Claimant's account that he experiences wrist pain, stiffness of the joint and wrist, loss in the normal ranges of motion and a weak grip in relation to his right hand. However, it is noteworthy that Dr. Douglas opined that, *"[The Claimant] is left hand dominant and with this dominance would be able to do most activities of daily living."* Dr. Douglas' report suggests that it is work related task such as using his firearm that would be significantly affected. Additionally, that some of the Claimant's functional

difficulties may be mitigated by avoiding some of the referenced tasks that may aggravate his injured right wrist resulting in pain. The evidence adduced by the Claimant in this regard remains unchallenged and the Court therefore accepts it. What is evident from the reports of both Dr. Mullings and Dr. Douglas when taken together with the Claimant's evidence is that the Claimant is likely to continue to suffer chronic and persistent pain in his right wrist which will have some impact on his daily living.

- [52] The Court assessed the authorities presented on behalf of the Claimant and the Defendants. None of the authorities presented precisely reflect the injuries sustained by the Claimant in the case before the Court. The Court also noted that the cases cited are of some vintage. The Court had regard to the caution stated in the case of **Seepersad v Persad & Anor**, where at paragraph 15 of the judgment, their Lordships stated as follows:

*“15. Their Lordships entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for physical injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do more than demonstrate a trend in very rough and general terms.”*

- [53] However, there is nothing in the **Seepersad** case which stipulates that such authorities cannot be relied on but that they should be utilised with the caution and guidance given by their Lordships. While this authority is not binding on this Court, it is highly persuasive and so this Court will heed its caution and guidance.
- [54] The Court considered the case of **Annette Christie v. Nutrition Products Ltd. and the Attorney General**, a case which was decided in 2001. Similar to the Claimant in this case, the Plaintiff sustained a fractured wrist (left wrist as opposed

to right wrist in the case before this Court). She also experienced constant pain and discomfort in her left wrist. A material distinguishing feature of that case is that Dr. Dundas had recommended surgical intervention for correction of the angular deformity and removal of the segmental bone at the head of the ulna which were noted when x-rays were done. The surgery was not done and the doctor opined that her residual disability and whole person disability could have been reduced by 6% and 4% respectively had the surgery been done. He also stated in cross-examination that physiotherapy could also have assisted her in terms of her disability if she had been doing it for four (4) to six (6) months. Early removal of the plates could also have had a good chance of completely eliminating carpal tunnel syndrome with which she was diagnosed. The court considered the general rule that a Plaintiff was under a duty to mitigate his loss and the onus of proof was on the Defendant. The trial Judge found that the onus was on the Plaintiff to establish that she acted reasonably in rejecting Dr. Dundas' recommendations, and that she had failed to do so. While there is no indication as to how this affected the award, it is clear that this, having been a finding of the trial judge, had some impact on the award made. However, the extent of the impact not having been stated, this Court is unable to adequately assess the extent to which it impacted the award made especially in relation to the extent that it may have caused a reduction in the award made. Therefore, when the Court had regard to the disparity in the injuries and treatment received by the Claimant, to include surgery and physiotherapy, the Court is of the view that this is not a useful guide in terms of assessing the award that is to be made in this case.

- [55] The Court considered the cases of **Joyce Haye** and **Uriel Davis** and the Court agrees with Counsel for the Claimant that these cases are not on par with the injuries suffered by the Claimant in this case. The main similarity between those cases and the case before this Court is that all the Claimants suffered traumatic injury to the upper extremity which healed with some residual impairment. However, the Court considered that the impairment ratings in relation to the Claimants in those authorities were much less compared to the Claimant in this

case, that is 2% whole person impairment in the **Joyce Haye** case and 6% whole person impairment in the **Uriel Davis** case. In the former case, the Claimant's fracture had healed and she had full range of motion in her shoulder and only occasional pain and swelling in the fingers of the right hand. In the latter case, the Claimant's prevailing issue was intermittent pain, consistent with degenerative changes in the shoulder. In both cases, the injuries and effects of same were less aggravated than those of the Claimant in the instant case, and nonetheless, the awards were higher than the \$2,500,000.00 proposed by Counsel for the Defendant.

[56] In the **Glen Syblies** case, there was deformity of the right wrist; it was swollen with restrictive movement. There was surgical decompression of the wrist. There was physiotherapy done in relation to the wrist injury which was followed up for one (1) year and showed gradual improvement. There was permanent partial disability of 14% of the whole person. The updated award is \$1,693,611.11 (using CPI 140.7). This case bears some similarity with the Claimant in this case. However, the injuries of the Claimant in this case and the result of those injuries are far more aggravated than in the **Glen Syblies** case. Quite importantly, in the case of the Claimant before this Court, Dr. Douglas opined that there is no surgical solution that will return his wrist to normal function. The **Glen Syblies** case was decided from as far back as 1992 and so, even the updated award would be significantly inadequate to compensate the Claimant, having regard to the seriousness of his injuries and the residual effects of the said injuries.

[57] Counsel for the Claimant has placed heavy reliance on the **Thomas Crandall** case, which she stated as being most analogous to the case before this Court. However, in her later submissions, she also asked the Court to consider the more recent case of **Romarne Buddington v. JUTC & Winston Allison**. The Court noted that the injury to the Plaintiff in the **Thomas Crandall** case was to his arm, with severe pain. In that case, the Plaintiff did two (2) surgeries, he did physiotherapy to increase the mobility of his arm. However, after a long period (8 years), his symptoms were still present and his doctor concluded that they would

probably be permanent with associated discomfort and limitation of activities. The doctor also opined that some mild progression of degeneration was likely. In the Court of Appeal, the following was stated:

*“The injury in this case was painful. The consequential effect limited the enjoyment of the life of the respondent. The period over which its effect lasted and still lasts was extended” - (see Khan 5, page 139, para. 4).*

**[58]** The doctor described the effect of the injury as follows:

- (i) *“Limitation of rotation of the arm*
- (ii) *Restriction of his activities including difficulty in holding a bow for hunting – a pleasurable activity he formerly enjoyed.*
- (iii) *Difficulty with rotational activity e.g. turning a door knob or handling a screw driver.*
- (iv) *Permanent Restriction and “indicated a 20% Permanent Partial Disability as compared to an amputation”: (see Khan 5, para 5).*

**[59]** There are some similarities between the Plaintiff in the **Thomas Crandall** case and the Claimant in the case before the Court. In this case, the Claimant also did two (2) surgeries and has undergone physiotherapy. Not only has he experienced severe pain but based on the prognosis of both Dr. Mullings and Dr. Douglas, he will continue to experience chronic pain in the future. He also has decreased range of motion of the right wrist. According to Dr. Douglas, his pain will not be resolved unless he does future surgery. It is also noteworthy that as in the **Thomas Crandall** case, in the case before the Court, Dr. Douglas opined that the Claimant’s degenerative disease will progress resulting in chronic pain involving the wrist and that the range of motion will decrease with progressive degenerative disease. When the Claimant was assessed by Dr. Douglas ten (10) years later, Dr. Douglas indicated that he was at the end stage of post traumatic arthritis of the right radiocarpal joint and opined that no surgical solution will return the wrist to normal function. The functionality of the Claimant in this case has also been impacted by

his injury. His symptoms and functional difficulties were identified by Dr. Douglas as follows:

1. *“Cramping in the right wrist at nights intermittently.*
2. *Pain in the right wrist on any exertion of the wrist. Using his hand to wash, sweeping, or doing any simple mechanical tasks aggravates the pain. He cannot lift objects without experiencing pain, including a 4-gallon bucket of water.*
3. *Stiffness of the joint of the right wrist with loss of the normal ranges of motion in the wrist.*
4. *Weakness of grip in the right hand.”*

[60] However, as with cases of this nature, it is difficult to find uniformity in the nature and impact of injuries suffered by Claimants. Therefore, there is one primary distinguishing feature between the Plaintiff in the **Thomas Crandall** case and the Claimant in this case. In the **Thomas Crandall** case, the Plaintiff suffered a heart attack one hour after surgery. This was a factor which featured in the assessment of damages both at the trial and in the Court of Appeal. In the Court of Appeal, Rattray P stated in his judgment as follows:

*“When we add the heart attack which the doctor maintained was contributed to by the trauma of the injury, the award of General Damages of \$1.75M was not considered excessive (see Khan 5, page 139, para. 6).”*

[61] While the Court agrees with Counsel for the Claimant that the extent to which this would have impacted the award (made at first instance) is not stated, it is clear that it did have an impact, and further that it significantly affected the decision in the Court of Appeal to affirm the award made by the trial judge. The Claimant in this case did not have a similar experience. There is also a noted difference in the disability ratings of the Plaintiff in the **Thomas Crandall** case and the Claimant in this case. However, the Court has also taken into account that the Claimant in this case had received multiple gunshot wounds and that he stands to have a much

higher disability rating than the Plaintiff in the **Thomas Crandall** case, depending on the option he may choose to exercise, if future surgery is done on his wrist. Based on Dr. Douglas' Medical Report, there are also some additional residual effects of the injuries suffered by the Claimant in this case unlike the Plaintiff in the **Thomas Crandall** case. These were identified as follows:

- a. Gross deformity of the joint surface of radius with absent joint space of the radiocarpal joint;
- b. Distal radioulnar joint irregularity and deformity;
- c. Shortened radius relative to the ulna.

[62] When the Plaintiff in the **Thomas Crandall** case is compared to the Claimant in this case, the Plaintiff in the **Thomas Crandall** case may be said to have been more severely impacted by his injuries by virtue of the resulting heart attack. However, the physical residual effects and the impact on the functionality of the Claimant in this case, make both the Plaintiff in the **Thomas Crandall** case and the Claimant in this case highly comparable.

[63] The Court had regard to the fact that the **Thomas Crandall** case is of some vintage and, therefore, looked to the more recent authority of **Romarne Buddington v. JUTC & Winston Allison**, which Counsel for the Claimant commended to this Court for its consideration. In the latter case, the Claimant was diagnosed with open fracture radius of the right forearm. He was treated surgically by way of open reduction internal fixation and with physiotherapy. The Claimant experienced loss of range of motion of his right wrist, range of motion of his right forearm and some movements of the right thumb. He also had over-sensitivity and shock sensation in the right forearm and hand over a period of four (4) years and four (4) months. Dr. Dundas assessed the Claimant's impairment rating as 13% of the upper extremity or 8% of the whole person. Thomas J made the following observations at paragraph [125] of the judgment:

*“...In the instant case the Claimant is still having problems moving his hands freely. He is still unable to make a full fist. He has difficulty lifting objects. He is still experiencing shock sensation in his right hand, and he is unable to write properly. He is unable to exercise as he is accustomed to. I also take into consideration the fact of the reduced range of motion of the Claimant’s right wrist flexion which is significantly less than that of the left wrist that is 72 percent...”*

[64] While the Claimant in the **Romarne Buddington** case suffered similar injuries to the Claimant in the case before this Court, the Court agrees with Counsel for the Claimant, that the injuries of the Claimant in the case before this Court are more serious and aggravated than the Claimant in the **Romarne Buddington** case. The Claimant’s symptoms and functional disabilities identified by Dr. Douglas are similar to those of the Claimant in the **Romarne Buddington** case. In this case, there is noted impact on the Claimant’s daily activities and decrease in range of motion, flexibility and grip strength of the right wrist. However, unlike the Claimant in the **Romarne Buddington** case, the Claimant in the case before the Court had received multiple gunshot injuries, he has gross deformity in the joint surface of the radius, the radius is shortened, he still experiences severe/chronic pain following the gunshot injury to his right wrist and requires additional surgery. He has developed arthritis in his right wrist which is at the end stage. His impairment rating is higher than the Claimant in the **Romarne Buddington** case and this stands to substantially increase after surgery, which Dr. Douglas opined is necessary for his pain management.

[65] Having examined both the **Thomas Crandall** case and the **Romarne Buddington** case, the Court is of the view that the Claimant in this case should get an award that is significantly higher than the award made in the **Romarne Buddington** case, which using the current CPI of 140.5 now revalues to \$5,988,695.32. However, the award should be lower than the award made in the **Thomas Crandall** case which using the current CPI of 140.5 now revalues to \$13,435,792.35. The Court finds

that an award of \$10,000,000.00 for pain and suffering and loss of amenities is an appropriate award.

Estimated Cost for Post-Surgery

[66] In relation to how a claim for damages for future costs associated with medical care is to be treated by the Court, the Court was guided by the approach adopted by Straw JA in the case of **Trudy-Anne Silent Hyatt v Rohan Marley and Anor** [2023] JMCA Civ 24. At paragraph [61] of the judgment, Straw JA stated as follows:

*“The learned trial judge would also have erred in her statement that the cost of future care was an item of special damages that must be specifically pleaded and proved.” Since the appellant had made a claim for domestic assistance as a future expense and also for future medical expenses associated with the Rosomoff Centre, those aspects of the claim should have been treated separately as items of general, rather than special damages.”*

[67] Therefore, the Court will treat with this aspect of the claim which is included in the Further Amended Particulars of Claim under the head of “Estimated Cost for Post-Surgery” as an item of general damage. The issue then is, whether the Claimant has provided sufficient proof of the various costs associated with his claim for costs associated with post-surgery care to ground her entitlement to damages under this head.

[68] The Court considered the evidence contained in Dr. Douglas’ report dated June 1, 2022, regarding the anticipated disability of the Claimant immediately following surgery resulting in the need for physical and occupational therapy. The Court also considered the estimated period for which this may be required. Additionally, Dr. Douglas’ report provides adequate evidence of a link between the injuries sustained in the accident and the need for future physical and occupational therapy which would take the form of physiotherapy, and the invoice provided helps to substantiate the claim for such costs. The Court, therefore, finds that there is

sufficient evidence to justify the making of an award for the sum claimed, that is, a total sum of \$180,000.00.

[69] In relation to the estimated transportation cost for which \$30,000.00 is claimed, the Court had further regard to paragraph [68] of the **Silent Hyatt** case. In the **Silent Hyatt** case, the Claimant had made a claim for the cost of airfare to travel overseas to receive medical attention. The appellant's witness statement referred to the cost of airfare for two (2) persons at US\$1600.00. No invoice was provided to substantiate this evidence. The Court found that although no documentary evidence was provided to substantiate the cost of airfare, it may be said that it was an expenditure that would reasonably be incurred, as it was a proven fact that that it would be an attendant cost that would be reasonably incurred. The court awarded US\$800.00 (based on the evidence of US\$1600.00 which is relevant to two (2) persons) to cover airfare associated with future medical treatment which it said would be fair and reasonable.

[70] In the case before this Court, there is no indication as to how the amount claimed was arrived at and to what extent it is related to the future physical and occupational therapy required. Additionally, the Court considered the Claimant's evidence-in-chief that when he referred at paragraph 6 of his Supplemental Witness Statement to needing assistance to take care of his needs during the period that he will be disabled after surgery, this was in relation to dropping off his children to school when he is scheduled to do so. He stated that his children do not live with him and that they live about 5 kilometres from school. He further stated that he drives and that is the mode of transportation. The Court noted his further evidence that he is seeking to recover \$7,000.00 per week for this period. In cross-examination, he stated that his children live with their mother and that he might experience some difficulty when he is scheduled to bring them to school. He said that when he is not scheduled to bring them to school, they take the taxi. On the Claimant's account, we do not have any indication as to how often he is scheduled to take the children to school, whether they would go by taxi in the anticipated instances when he will be unable to take them to school or what is the estimated

taxi rate to transport them. Further, there is no indication as to the basis for his claim for \$7,000 per week and neither does this correlate to the amount claimed for transportation in the Further Amended Particulars of Claim. Unlike in the **Silent Hyatt** case, this Court is unable to find that the transportation cost is an attendant cost that would be reasonably incurred. Neither is the Court able to form an accurate and verifiable estimate of the future transportation costs associated with post-surgery.

[71] The Claimant has also included a claim for “Extra Help for 5 months @ minimum wage of **\$9,000** per week”. The total amount claimed is \$180,000. In relation to this cost, the Claimant has given no evidence to substantiate his claim for assistance/extra help. However, the Court again considered Dr. Douglas’ report dated September 29, 2022 where he indicated that, *“Following surgery he would be temporarily totally disabled for 6 weeks and temporarily partially disabled for a further 4.5 months.”* This provides some support for the need for assistance. However, while the Court can understand without more, the need for extra help or assistance in circumstances where the Claimant is totally disabled, where the Claimant is only partially disabled then there needs to be some further indication as to what is the anticipated extent of the disability and what will the Claimant be inhibited from doing, especially since his right hand is not his dominant hand. In these circumstances, this Court finds that an award to cover extra help for the period of six (6) weeks when he is expected to be totally disabled is what is fair and reasonable in all the circumstances. Therefore, the Court will award the sum of \$53,000.00 representing the cost for extra help for six (6) weeks at the rate of minimum wage of \$9,000.00 per week.

## **ORDERS**

**[72]** In all the circumstances of this case and having regard to the foregoing, damages are assessed and awarded to the Claimant against the Defendants as follows:

1. Special Damages are awarded in the sum of Two Hundred and Thirty-Two Thousand, Seven Hundred and Seventy-Six Dollars and Ten Cents (\$232,776.10) with interest at the rate of 3% per annum from the 25<sup>th</sup> December 2012 to the date of judgment.
2. General Damages are awarded as follows:
  - i. Pain and suffering and loss of amenities in the amount of Ten Million Dollars (\$10,000,000.00) with interest at the rate of 3% per annum from the 1<sup>st</sup> day of November 2016 to the date of judgment.
  - ii. The cost of future corrective surgery in the amount of One Million, Four Hundred and Thirty-Three Thousand dollars (\$1,433,000.00).
  - iii. The sum of Four Hundred Thousand Dollars (\$400,000.00) for Handicap on the Labour Market.
  - iv. The estimated cost of post-surgery in the amount of Two Hundred and Thirty-Three Thousand Dollars (\$233,000.00).
3. Costs are awarded to the Claimant to be agreed or taxed.