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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/J-024

BETWEEN SAMUEL JOHNSON PLAINTIFF
A N D ALCAN JAMAICA COMPANY DEFENDANT

Carol Davis for Plaintiff

Michele Champagnie and Nadine Amos for the Defendant instructed
by Myers, Fletcher and Gordon

Heard: March 11, 12, 13, 14, 15, 20, 2002, April 22, 25, 2002 and
March 18, 2005

Rattray, J.

Samuel Johnson's employment with Alcan Jamaica Company commenced at the level of a casual worker. The primary duty of an employee taken on in that capacity was to sweep up any bauxite which may have spilled from buckets carrying the bauxite as they passed through the stations at Alcan and to ensure that the station to which such employee was assigned was kept clean. Such a worker was only employed on a part time or casual basis for a six to eight month period each year.

In 1996, Samuel Johnson was promoted to the position of Assistant Ropeway Operator. This post was also of a temporary

nature, but a worker so engaged enjoyed a longer period of employment with the Company not exceeding one year.

An integral part of Alcan's bauxite mining operations in Jamaica was its use of the aerial ropeway system of transporting bauxite from the mines at Swallenburg in the parish of St. Ann to its processing plant at Ewarton in the parish of St. Catherine. Under that system, buckets were loaded with bauxite at Station 1 from the mines and transported to the plant through the various stations utilizing the ropeway system, eventually emptying their contents at the end of the journey at the plant at Station 6.

The stations along the ropeway each had their own drive motors and pulleys. The loaded buckets were dispatched from Station 1 every 17 seconds and were spaced between 30 to 40 feet apart. Once the bucket, then weighing approximately one (1) ton got to the next station, the haul rope was released and it "free wheeled" through the station, thereby allowing the operators to manually space the buckets in the event that they were too close or where two had "locked" on to each other. Only one bucket could go through the locking frame at the station at a time.

In the instances where a bucket caught up with another on the ropeway and became "locked", it could tilt or turn over or derail

causing spillage of bauxite and the cessation of the operations of the ropeway, until the mishap had been cleared up. The issue of the spacing of buckets, which took place at Stations 1 through 5, was therefore one of the ingredients essential to the success of the mining operations of Alcan.

On the 24th May, 1996, Samuel Johnson was at work at Alcan at Station 5 to which he had been assigned. He was a few months into his new post as Assistant Ropeway Operator, having been previously employed on and off for years at Alcan as a casual worker.

On being promoted, he was initially placed at Station 1 where his duties included clearing the pan feeder. This was a piece of equipment through which bauxite was pushed by a tractor on to a conveyor belt which moved the bauxite along. Whenever there was a blockage of the holes of the pan feeder, Mr. Johnson would use a sledge or air hose to push the bauxite through the pan feeder.

He testified that after about a month at Station 1, his supervisor Mr. Maxwell moved him to Station 5 to replace another worker who was coming to Station 1 for training. He however did not get any training in what he was to do at Station 5. Mr. William Perriel was the operator at that station and he (Mr. Johnson) was Mr. Perriel's assistant.

Information over the intercom alerted both men that “two (2) near buckets” were approaching their station. Samuel Johnson testified that when the buckets came in, they were “near to locked” and he was instructed by William Perriel to hold back one of the buckets, while he, Mr. Perriel held on to the front one. To prevent them from locking, William Perriel pushed his bucket forward into the locking frame while Samuel Johnson held his own back so that it almost came to a stop. He then started pushing his bucket forward before another entered the station, as part of the process of spacing. However, when he started pushing, some wet bauxite fell out of the bucket onto the floor of the station. As he was pushing, Mr. Johnson said he found himself slipping over and over in the wet bauxite as he tried to get his balance.

While this was going on, he heard Mr. Perriel call to him to look out, but by the time he turned, another bucket filled with bauxite which had entered the station struck him in his face and body. The impact hurled him into the bucket he was pushing, causing him to sustain severe and extensive personal injuries, to be hospitalized for a lengthy period, and to incur financial loss and expense.

Samuel Johnson's complaint is that the soles of his boots were worn, he having had them at that time for about a year, and when you

have to hold back buckets, the "boots rub out on the floor". He also stated that he spoke to the safety officer Michael Harris when he got his safety induction in 1996 requesting a new pair of boots, but was advised that he should wear them some more.

He gave evidence that the floor inside the station was too smooth, thereby rendering it difficult for him to get a grip when carrying out his duties of manually holding back one (1) ton bauxite buckets, to effect proper spacing of these loaded carriers. He further testified that a wheel conveyor is now in place at Alcan, which mechanically spaces the buckets and provides a safer system of work than previously existed in 1996, when manpower was being relied on.

It is as a consequence of this unfortunate incident that legal proceedings were instituted by Samuel Johnson, claiming damages for negligence and / or breach of duty by Alcan in failing to provide a safe system of work for its employees.

In the Amended Statement of Claim filed on his behalf, Mr. Johnson relied on the following particulars in support of his allegations of negligence and / or breach of duty:-

- "a. Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged upon the work.

- b. Exposing the Plaintiff to a risk of damage or injury of which they knew or ought reasonably to have known.
- c. Failing to provide a safe place of work for the Plaintiff.
- d. Failing to provide any or any suitable or industrial boots and /or other safety equipment for the Plaintiff to wear while carrying out the said work.
- e. Causing or permitting water to be and/or to remain upon the floor.
- f. Causing or permitting the path to be and/or to become and/or to remain in a wet and slippery state and in an unsafe and dangerous condition and by reason of such state and condition to be and/or to become and/or to remain a danger and a trap to the Plaintiff.
- g. Failing to take any or any adequate necessary measures, whether by drying the floor and/or by laying a non skid surface on the said floor or otherwise to prevent the said floor from being unsafe and dangerous to the Plaintiff to use.
- h. Failing to maintain and/or to properly maintain the pulley system along which the bucket was conveyed.
- i. Failing to give the Plaintiff any or any adequate warning of the approach or presence of the incoming bucket.
- j. Providing an unsafe plant and/or equipment for the Plaintiff to use.
- k. Failing to provide any or any safe or proper system of work and/or failing to provide the Plaintiff with any or any proper instructions on how to follow and/or to use the system.

- I. Failing to provide any or any proper training to the Plaintiff for the work he was instructed to do.”

Mr. Johnson's contentions can be distilled into the following issues:

- (1) Whether Mr. Johnson was exposed to adequate, sufficient and/or proper training for the job he was instructed to carry out
- (2) Whether proper or suitable safety equipment was provided
- (3) Whether Alcan failed to provide a safe system and/or, place of work

Evidence was given on Alcan's behalf by Mr. Michael Harris, who in 1996 was the Safety Officer of works inclusive of mines at the Ewarton Plant. He gave detailed testimony as to the procedures of the Company and the steps implemented once a worker was taken on. Before any employee can proceed to work, they must undergo a safety or general induction, which in 1996 was the responsibility of this witness. That process involved informing the temporary employee of all requirements of the rules and regulations relating to safety within the organization and the specific sections of the plant. This included a video presentation of the overall plant, broken down into sections and the safety requirements for each section, followed

by a verbal presentation, with the employees participating to demonstrate that they understood the process.

In addition, safety gear was provided to the employees and each checked individually to ensure that the gear was in good order. For the Assistant Ropeway Operator, the safety gear included high top leather boots, safety helmet, safety glasses, leather gloves and hearing protection. Michael Harris confirmed that in early 1996, Mr. Johnson participated in such a general / safety induction programme.

Michael Harris went on to describe localized or local induction, which took place after the completion of the general induction. This was the process whereby the employee reported to the area supervisor of the section to which he was assigned. That supervisor or his nominee would again take the employee through all phases of activity in that section, to confirm that he was aware and informed of the accepted safety procedures and standards and that the employee came to the section appropriately attired for the job. Mr. Harris agreed that localised induction was intended to be specialized to the specific areas to which the employee was assigned. He also agreed that although his responsibilities did not include the localised induction, on occasions he would attend these sessions. However, he did not attend the training session for Samuel Johnson.

This witness also gave evidence as to the position in which an employee should stand, who was required to handle buckets coming into the station. Mr. Harris explained that such an employee, whether he was going to push or hold back an incoming bucket, should stand to the left of the bucket facing the same direction in which the bucket was proceeding and using his right hand, grasp the bucket at the left back corner, at the edge of the bucket.

Michael Harris also described the handle on the bucket, identifying it as a piece of metal going from one side of the bucket to the other side, from front to back, which was not to be held by the employee. The distance between the bucket and the outer edge of the handle was between 12 to 14 inches. He stated that even if the employee was not standing in the authorised position, but was to the left of the middle of the bucket he was handling, it was unlikely that he would have been hit by an incoming bucket. His evidence is that the two buckets cannot hit each other as the handles would make contact, with there being a space of between 24 to 28 inches between the buckets. According to Mr. Harris, to be hit the employee would have had to be standing by the middle of the bucket or over to the right, where he ought not to have been.

This information as to the position in which an employee ought to stand when handling incoming buckets was corroborated by the next witness for Alcan, Mr. Canute Francis. He was the Ropeway Operations Coordinator, who in 1996 was the Ropeway Supervisor. He stated that once you are dealing with moving machines and moving buckets, you should not get into their path. He further stated that the Senior Ropeway Operator would show the new operator the safe way of handling incoming buckets, which was for the operator to put the right side of his body to the left side of the incoming bucket and make certain that his body remained on the outside of the bucket. Once in that position, this witness testified that the operator could not get hurt if another bucket came up on him, as there was a space of one foot between the bucket itself and the handle that went over it.

Under cross-examination, the following exchange took place between Canute Francis and Counsel for Samuel Johnson, Ms. Davis

“Q Is it your recommendation that an operator turn his back (backs) on incoming buckets?

A. There's no other way.

- operator must glance behind sometimes

Q. Is it not his duty to keep a constant eye on incoming buckets?

A. Not all the while

Q. Is it not his duty to judge the distance of incoming buckets from him?

A. Yes it is his duty

Q. If he must back buckets, how can he judge the distance of incoming buckets where he has his back to them?

A. He must judge the distance by glancing from time to time.

The regular spacing of buckets is every 15 to 17 seconds. In some instances buckets get closer than they should be - sometimes 5 seconds apart.

Q. If the bucket is 5 seconds away, the operator must turn his back on it?

A. If he follows the safety rules – he can turn his back”

Canute Francis also gave evidence as to the local induction exercise for which he was responsible in 1996, after the employee had undergone the safety or general induction. He stated that he would inspect the worker's safety gear to see that they were in proper working condition and were the right ones for the job he was supposed to do. He further stated that he would give a short talk about safety, reminding the worker that safety gear was to be used on the job at all times. He would then physically walk the worker to

Station 1, which was the head of operations. There, after being introduced to fellow workers, the new employee was shown the operations of Station 1 and all safety devices and switches and instructed on how to use them.

In the case of a ropeway operator, Mr. Francis' evidence is that after the inspection, tour and introduction, he would present the new employee to the Senior Operator. Canute Francis testified that with respect to Samuel Johnson, he was able to say that Mr. Johnson received the training which he had outlined to the Court.

The final witness for Alcan was Mr. Glendon Johnson, Employee and Community Relations Officer, who in 1996 was its Personnel Officer. He testified that once an individual is employed, that person would be issued with a store requisition which would be used to collect safety gear. On the issuance of such a requisition, which would normally be approved by this witness, the Personnel Officer would record in a register the date and the type of gear being issued.

A page extracted from the Personnel Register of Alcan was tendered through this witness as an exhibit. That document listed the names of employees and the dates they were last issued safety equipment, in particular helmets, boots, goggles and glasses.

Glendon Johnson gave evidence that based on this document, Samuel Johnson was registered as being issued with safety boots on January 2, 1996. He further gave evidence that as Alcan had modernized the ropeway operations by the use of wheel conveyors, the number of persons employed on the ropeway was reduced and that only two (2) of the, six (6) stations now had persons manning them.

That was the extent of the via voce evidence given in this matter. The obligation of this Court is to assess the totality of the evidence presented, to consider the demeanour of the witnesses and to determine whether, on the balance of probabilities, the Claimant has satisfied this Court of his entitlement to the Judgment sought. The burden then rests on Samuel Johnson to lead sufficient evidence to prove, to the standard the law requires, that which he has alleged in his pleadings.

1. **Whether Samuel Johnson was exposed to adequate, sufficient and / or proper training for the job he was instructed to carry out.**

There was no challenge to the evidence of Samuel Johnson that upon being appointed Assistant Ropeway Operator in 1996, he was assigned to work at Station 1. Nor is there any disagreement

with respect to the Claimant's evidence as to his duties at Station 1 or the time he spent there. His duties were to clear the pan feeder and he was at Station 1 for approximately 5 weeks. It was at that Station that bauxite was loaded into buckets which transported the ore by way of the aerial ropeway eventually to the plant at Station 6.

The issue of the spacing of the buckets after they were loaded with bauxite was of some importance at Station 1, as this was the start of the journey for the movement of the bauxite: Every 17 seconds, buckets piled high with bauxite extending above the rim of the bucket in the shape of a cone and uncovered would depart Station 1.

No buckets filled with bauxite came into Station 1. There was therefore no necessity for operators or assistant operators at Station 1 to be concerned about incoming bauxite-laden near buckets approaching that station. Nor did they have to devise any strategy as to which operator would handle which loaded bucket as it "free-wheeled" into that station.

The witnesses for Alcan gave detailed evidence as to the customary safety procedures in place and the training programmes implemented for its different categories of employees. The Safety Officer, Michael Harris gave evidence of the safety or general

induction which all employees had to undergo and for which he was responsible. He also gave evidence of the local induction an employee would get when he reported to the section of the plant to which he was assigned. That training was specific to that area.

Michael Harris admitted that he did not do the localised induction for Samuel Johnson. That was not his function, and although he sometimes attended local inductions, he did not attend any involving Mr. Johnson. He also admitted that the responsibility for the training of Mr. Johnson rested with Mr. Mark Harty, the operator in charge of Station 1. Such training he stated, would be on the job training and would be in respect of empty buckets at Station 1.

The evidence of the Ropeway Operator Coordinator, Canute Francis spoke generally as to the local induction process. This witness stated that "I am able to say he (Mr. Johnson) received the training I just described", without indicating whether this was done at Station 5, and if so, when and by whom. He however admitted that he did Mr. Johnson's induction as a Ropeway Operator when the Claimant was assigned to Station 1 and that the operator in charge was Mark Harty, who at the time of trial had migrated.

Throughout this case, Samuel Johnson maintained that apart from the general safety induction, he received no training from Alcan

to equip him for the duties required of him at Station 5. In particular he was not instructed as to the specific steps to take to handle incoming buckets, and where to stand when doing so. Under cross-examination however, Mr. Johnson admitted that in positioning himself to hold back the bucket on the day of the unfortunate incident, he was following what he saw the operator of Station 5, William Perriell do and that he put himself in the position that he was told by Mr. Perriell, indicating some on the job instructions.

Alcan, through its witness Michael Harris alleged that Samuel Johnson has been assigned to Station 3, the clear inference being that he would have received training handling incoming buckets of bauxite at that station. This posting was strenuously denied by Mr. Johnson, who testified that he was moved from Station 1 to Station 5 on a temporary basis by his supervisor Mr. Maxwell, who drove him in the jeep with his clothes and lunch to Station 5. This was not challenged by Alcan. That supervisor was the person responsible for judging Mr. Johnson's performance in the job. He was actively involved in the Claimant's move to Station 5 and at the time of trial was still employed to Alcan. However, he was not called as a witness, nor was any explanation given as to why this was not done.

On the question of whether Samuel Johnson was provided with proper or adequate training, I find that the evidence of Michael Harris and Canute Francis painted a global picture of all the training procedures at Alcan, but fell short as it related specifically to Mr. Johnson. At best, that evidence spoke to the training he would or should have received at Station 1.

The procedure to be adopted when spacing incoming bauxite-laden near buckets was not a task with which employees would have had to deal at Station 1. Localized training was specific to the station to which the employee was assigned. Mr. Johnson stated he received no instructions to stand at the left side of the incoming bucket and that he followed what he saw the operator William Perriell doing at Station 5.

The credibility of the Claimant was questioned by Counsel for Alcan as she pointed out inconsistencies in his evidence as to when he was first employed to Alcan. Initially he stated that it was May, 1991, but later agreed with her that it was in fact April, 1993. Counsel also highlighted Mr. Johnson's evidence that he was appointed Assistant Ropeway Operator in March, 1996, a date he later agreed to be January, 1996.

I find these inconsistencies to be minor and note that the evidence of Alcan's own witness Canute Francis featured similar inconsistencies. He stated that Mr. Johnson's employment with Alcan started in or about 1991, as he recalled inspecting his gear at that time. He further stated in his capacity as Ropeway Supervisor, that Mr. Johnson was in his new job as Assistant Ropeway Operator for about a year, while in fact it was approximately 5 months.

In looking at and considering all the evidence on this issue, I accept and find that Samuel Johnson was not provided proper training for the job he was instructed to carry out at Station 5. I also accept his evidence and find that he was not assigned to Station 3 as alleged by the witness Michael Harris.

2. **Whether proper or suitable safety equipment was provided**

Samuel Johnson's evidence that his boots were worn and his complaints to Michael Harris about their condition ignored was denied by that witness. Glendon Johnson tendered in evidence a page from the Personnel Register of Alcan which suggested that the Claimant received new boots in January, 1996.

Under cross examination, this witness admitted that he did not prepare this document himself, that he did not have actual custody of the Register, that the document was neither seen nor signed by the

employee Samuel Johnson, nor was there any reference in the document to gloves or glasses ever being issued to Samuel Johnson.

It is strange that this exhibit, which details safety equipment issued to employees from as far back as 1977, makes no mention of gloves or glasses ever being issued to Samuel Johnson, but only speaks to the issue of boots in January 1996. Michael Harris testified that boots, helmet, safety glasses, hearing protection and gloves were all issued to the Claimant. Yet no information as to the date of issuance of those items, save and except the boots is reflected in the exhibit.

Mr. Harris also testified that when new boots were issued to an employee, he had to sign on receiving them. No such evidence was presented by Alcan nor any explanation given for its absence. I therefore accept Mr. Johnson's evidence as to the state and condition of his boots and I find his testimony on this issue more credible than that given by the witnesses for Alcan. I find therefore that Samuel Johnson was not provided with proper or suitable safety equipment, with particulars reference to the boots he was wearing at the time of the incident.

3. **Whether or not Alcan provided a safe system and / or place of work**

The movement of bauxite from the mines at Swallenburg to the plant at Ewarton by way of an aerial ropeway was a critical feature of Alcan's operations.

The primary duty of Samuel Johnson as Assistant Ropeway Operator at Station 5 was to space buckets which were coming into the station. In addition, he was responsible for the cleaning of the station when any spillage occurred.

It is true that not all buckets approached the station "nearly locked" or close enough to each other to require spacing. However, in the instances where such separation was called for, careful manoeuvring was required by the operators. Only one bucket could enter the locking frame at a time. The customary and accepted practice of the Company required one of the operators to push the first bucket forward, while the other operator held back with his right hand a bucket of bauxite weighing approximately one (1) ton. This bucket was no longer attached to the ropeway system, but at this stage was "free- wheeling" through the station.

The second operator was to stand so that he placed the right side of his body to the left side of the incoming bucket, while facing the direction in which the bucket was travelling. While in that position, it was his job to grasp the edge of the left back corner of the buckets

with his right hand, thereby holding that bucket back to allow sufficient spacing between the two to be effected. There were no markings on the bucket as to where it should be held.

The position in which the operator was required to stand required of necessity placed him in a situation where the incoming loaded bucket was approaching him from behind. While engaged in the procedures required for restraint, the accepted evidence before this Court is that buckets come into the station every 17 seconds. In fact, the evidence of Canute Francis was that in some instances buckets get even closer, as little as 5 seconds apart.

Those loaded buckets came into the station uncovered and piled high with bauxite above the rim, in the shape of a cone. Spillage of bauxite and / or water occasionally occurred in the station. Alcan's Safety Officer, Michael Harris testified that clean up operations for the station took place at the end of the shift when the ropeway had stopped. He further testified that it would have been unsafe for any such cleaning up to have been effected in the 17 seconds or less between incoming buckets.

I find that the timetable for cleaning up the station and the schedule of incoming bauxite carriers, in and of themselves left the

employee at risk of being unable to maintain his balance while manually restraining the said carriers.

It was admitted in evidence that the floor of Station 5 was made of concrete, but was not covered with any non-skid material. It was also admitted that there was no guard rail or any other such barrier to afford the operator any form of protection from, or to assist in the restraint of the bucket.

I cannot and do not accept as safe a system which:

- (i) called for the one-handed manual restraint of buckets filled with bauxite weighing about a ton;
- (ii) required the operator to stand in such a position that the incoming laden buckets approached him from behind.
- (iii) did not have any clear markings on the buckets as to where it should be held or provide any manual as to the handling of buckets.
- (iv) permitted the "free" wheeling" inflow of such buckets of such a weight to the station at intervals of 17 seconds or less.
- (v) allowed the bauxite to be piled over the height of the rim of the bucket in the shape of a cone and remain uncovered as it "free-wheeled" into the station.
- (vi) failed to provide a non skid surface in the station where it was not uncommon for bauxite and / or water to spill or drip on the floor.
- (vii) did not take into consideration a regular maintenance or cleaning schedule for the station, possibly by an additional employee, while the ropeway was in operation.

- (viii) made no provision for the protection of employees handling buckets by way of a guard rail or other protective barrier.

The cumulative effect of the evidence before this court leads me to find that the system of work at Alcan on May 24, 1996 was unsafe, on the balance of probabilities.

In weighing and assessing the evidence presented, I accept the testimony of Samuel Johnson as to how this accident occurred. I find that the witnesses for Alcan spoke only generally of a system of work, but provided little evidence to counter what Mr. Johnson says actually took place on the day in question.

I find that Samuel Johnson was not properly trained for the job as Assistant Ropeway Operator at Station 5 and I accept that he did not receive the instructions as to the proper position in which to stand and / or the steps to take when dealing with incoming near buckets. I find that any training Mr. Johnson received at Station 5 was as a consequence of watching what was being done by the operator there, Mr. William Perriel, whose actions he emulated. There is no evidence that the safety procedures described by Messrs Harris and Francis as to the handling of buckets were ever imparted to him.

I therefore find in favour of the Claimant Samuel Johnson against Alcan on the issue of liability in this matter.

As a consequence of this most distressing incident, Samuel Johnson was admitted to the Medical Associates Hospital where he was treated for the following injuries.

- (i) Bilateral fractures of the Zygomatic Arches.
- (ii) Bilateral Compound fractures of the maxillary sinuses (lateral and interior walls).
- (iii) Fracture of the right mandible with displacement of the fragment and associated malocclusion.
- (iv) Displaced fracture of the nose.
- (v) Fracture of the right clavicle with protrusion of bony fragments in the overlying skin.
- (vi) Undisplaced fractures of his first ribs as well as a small Apical right pneumothorax, the latter requiring under seal drainage.
- (vii) Laceration of the right pinna
- (viii) Lacerations to the lower gingiva anteriorly, with loss of upper and lower dentition.
- (ix) Pains in the heads of the mandible (jawbone) which interfere with chewing of food.

He was discharged from the hospital on the 5th June, 1996. Subsequently over the next five years, he was treated by several doctors including Dr. Stephen Chang E.N.T. Surgeon, whose four (4) Medical Reports were tendered in evidence, as well as Dr. Grantel Dundas, Orthopaedic Surgeon.

Samuel Johnson was also examined by Dr. Charles Lyn E.N.T. Consultant Surgeon and Dr. A. Ali Consultant Physician and Neurologist, on behalf of Alcan and their Medical Reports were also tendered in evidence in this matter.

The severe injuries sustained by Mr. Johnson required him to undergo several operations. He gave evidence that apart from his hospitalisation at the Medical Associates Hospital, he was also admitted to St. Josephs Hospital for approximately two (2) to three (3) weeks, where he was treated by Drs. Chang and Dundas. In Dr. Chang's report dated January 6, 1999, when dealing with the steps taken to assist in this patient's recovery, he stated:

"He required multiple procedures to correct his facial features and repair his gingiva in order to achieve mucosal coverage of exposed bony fragments. His pinna lacerations were also repaired and his right clavicle was reduced and fixed. The clavicle was repaired by orthopedic surgeon, Dr. Grantel Dundas."

Despite being examined and treated by his doctors, in the period after the accident, Mr. Johnson up to the time of trial indicated that he was still suffering as a result of the injuries sustained in the accident in 1996. These continuing disabilities were outlined in his Statement of Claim as follows:

- (1) Decreased hearing
- (2) Bilateral tinnitus

- (3) Recurrent giddiness
- (4) Persistent headaches
- (5) Pains in heads of mandible (jaw bone) and difficulty chewing
- (6) Difficulty concentrating

Having cleared the first hurdle of liability, the Claimant now has to lead evidence to satisfy the Court as to the quantum of damages which ought to be awarded for the injuries suffered.

Special Damages

Under this category of damages Samuel Johnson is obliged not only to itemise his alleged loss, but also to specifically prove such loss.

In the Medical Report dated November 12, 1997, Dr. Chang was of the view that in light of the severity of his injuries, it was unlikely that Mr. Johnson would be able to return to work at Alcan and suggested that he be offered medical redundancy.

Mr. Johnson therefore claims compensation for loss of earnings, at the level he would have earned as Assistant Ropeway Operator had he continued to work with Alcan up to the date of trial.

In support of this claim, he relies on the hourly wage rate schedule utilized by Alcan, which was tendered in evidence and

which set out the changes in the hourly rate for an Assistant Ropeway Operator, from the time of the accident to October 2000. While this Court is prepared to accept the hourly rate relied on by Samuel Johnson, I do not however agree with the number of hours claimed. When this Court bears in mind the temporary nature of Mr. Johnson's employment, the modernization process in place at Alcan as it related to the mechanisation of the ropeway system and the consequent reduction in employment, as well as the lack of any evidence as to the certainty or regularity of overtime work or that such overtime was guaranteed, I find that a 40 hour work week is the proper starting point for any calculation of loss of earnings.

I accept that the Claimant was paid his salary by Alcan up to October 17, 1997. The cheques tendered in evidence show payments to Mr. Johnson totaling \$288,907.25. I also accept that those cheques did not reflect all payments made to him by Alcan, as stated in evidence by its witness Glendon Johnson.

On the evidence before me, I am satisfied that Samuel Johnson is entitled to an award for Loss of Earnings as follows:

October 17, 1997 to	-	41 weeks at	
July 31, 1998		\$7,400.80 per week	- \$303,432.80

August 1, 1998 to December 31, 1999	- 74 weeks at \$7,918.80 per week	\$585,991.20
January 1, 2000 to September 30, 2000	39 weeks at \$8,314.80 per week	<u>\$324,277.20</u>
October 1, 2000 to April 22, 2002	81 weeks at \$8,557.20 per week	\$693,133.20
		<u>\$1,906,834.40</u>
	Less taxes etc. 25%	<u>476,708.60</u>
		\$1,430,125.80
	Less Injury Benefits	<u>48,242.00</u>
		\$1,381,883.80

Medical Expenses

In support of this item of damages, two (2) receipts were tendered in evidence – one for a medical report in the sum of \$8000.00 and the other for an x-ray of \$3000.00. I am satisfied that this expense was incurred and award \$11,000.00 for medical expenses as claimed.

Transportation to and from Doctor

The total claim in this regard amounts to \$287,000.00 being –		
1998	- 24 trips at \$3,500.00 per trip	- \$84,000.00
1999 to May 2001	- 52 trips at \$3,500 per trip	- <u>203,000.00</u>
		\$287,000.00

Before dealing with this item of Mr. Johnson's claim, let me point out a correction in the calculation for the expense alleged between 1999 to May 2001. That sum ought to read \$182,000.00 and not \$203,000.00.

The evidence led on this aspect of the claim was at best vague and uncertain. While Mr. Johnson stated that he paid for transportation to the doctor for the period 1999 to 2001, he could not recall whether it was Alcan or himself who paid that expense in 1998. Further, he was not able to say how often he made visits to the doctor on a monthly basis in 1999, as it could have been either one or two times per month. Mr. Johnson also testified that he could not recall how often he saw the doctor in 2001.

He did admit that he paid \$3,500.00 per trip to charter a car to go to the doctor, but failed to identify the person from whom the vehicle was chartered or to present any receipts for his claim, which if proved would amount to \$266,000.00. This surely is an example of figures being thrown at the Court without any attempt to substantiate them.

The Claimant in this instance has failed to specifically prove this alleged expense and I make no award with respect to this aspect of the claim.

General Damages

Pain and Suffering and Loss of Amenities

There is no question that Samuel Johnson suffered serious injuries on being hit on the upper part of his body by the bucket carrying bauxite. According to his evidence his face was swollen to twice its normal size, and he was bleeding from his nose and throat. He lost about 10 teeth, which were chopped out from the gums and his collar bone was broken. A tube was inserted through his nostril down to his stomach, as his mouth was wired shut and he could not eat. Any food given to him had to be blended and put in a syringe. When discharged from the hospital, he was sent home still being fed from the tube. He was confined to bed and was in severe pain.

He gave evidence that he had to do further surgery pertaining to his collarbone which was protruding, and he was admitted to St. Joseph's Hospital for that operation. When he was discharged after 2 to 3 weeks, he said he remained in bed for about 6 to 8 months, being able to get out of bed, sometime in 1997. When he first got out of bed he was drowsy and dizzy. He had terrible headaches and felt a lot of pain in his collarbone.

Dr. Chang in his medical report dated January 6, 1999, indicated that Mr. Johnson's facial fractures have healed well.

However he had several complaints including hearing loss, ringing in his ears, dizziness with persistent headaches, blackouts, pain in his mandible which affected his chewing of hard foods. At trial, Mr. Johnson raised these same complaints as lingering disabilities due to his injuries sustained on the job.

It should be noted that in that same medical report, Dr. Chang advised that X-rays of the mandibular heads revealed normal appearances.

Investigations by way of audiograms carried out by Dr. Chang, as to Mr. Johnson's decreased hearing revealed in February, 1997, bilateral moderate hearing losses of 50-55db. This increased to 55-60db by February, 2001, as disclosed by a repeat audiogram. When examined by Alcan's medical representative, Dr. Charles Lyn, his report dated November 30, 2001 indicated that audiograms done showed "a profound hearing loss of 80-100db on the left side and 80db loss throughout all the frequencies on the right." Dr. Lyn went on to opine that as the subjective results in the hearing tests were not compatible with his clinical impressions, Mr. Johnson was sent to an Audiologist at the Jamaica Association for the Deaf for an objective hearing test. The results of these tests showed Samuel Johnson having normal hearing thresholds in both ears. Dr. Lyn concluded

that Mr. Johnson was malingering as far as his hearing was concerned.

Bearing in mind the referral by Dr. Lyn to the specialized association dealing with the hearing impaired and the results of the objective tests conducted on Mr. Johnson, I accept the evidence of Dr. Lyn and I find that Mr. Johnson's claims for hearing loss were fabricated. I must also add that in giving his evidence before this Court, at no time did I observe Mr. Johnson having any difficulty hearing the questions asked of him.

In his testimony Mr. Johnson stated that since the accident he cannot play football and cricket, neither can he lift his children nor do any lifting generally. He is in pain and becomes dizzy when he runs. His nose is not straight and one side of his face is swollen most of the time. Because of the shape of his face since the accident, he has grown a beard and people refer to him as "Bin Laden".

Compensation under this head of General Damages is usually awarded by reviewing cases with comparable injuries and updating such awards by the use of the Consumer Prices Index.

Of the cases cited by both counsel I have been directed to the two ends of the spectrum in the cases of :-

(a) **Calvin Stewart vs. Roul Isaacs** reported in Mrs. Khan's Recent Personal Injuries Awards at, Volume 3 page 57, cited by Ms. Davis and

(b) **Errol Butler vs. Lionel McDowell and the Attorney**

General also found in Mrs. Khan's Recent Personal Injuries Awards, Volume 3 page 183 cited by Mrs. Champagne.

In the **Calvin Stewart** case, the injuries suffered by Mr. Stewart were far more serious and included multiple bruises and abrasions, multiple fractures of mandible and maxilla, compound comminuted fracture of left femur, compound comminuted fracture of left fibula and tibia, fracture of left patella with dislocation of knee and compound fracture of left radius and ulna near wrist.

The Claimant there was hospitalized for three (3) months, his jaws were wired shut and a pin placed in his leg. He walks with a limp, was unable to chew with his mouth wired and lost 20% permanent partial disability of the left leg. He can no longer play cricket or dance and is unable to run or stand for long and has difficulty climbing. The award of One Hundred Thousand Dollars (\$100,000.00) for Pain and Suffering and Loss of Amenities converted to today's rate amounts to approximately \$2,100,000.00

The injuries suffered by **Errol Butler** indicated depressed right malomaxillary fracture, bilateral mandibular fractures, loss of lower pre-molars bilaterally and fracture of the medial malleolus. He was hospitalized for a total period of fourteen (14) days. He had facial deformity, periodontal disease, was unable to open his mouth properly and his ability to chew was compromised.

Mr. Butler was awarded Thirty Thousand Dollars (\$30,000.00) for Pain and Suffering and Loss of Amenities in January, 1987, which converts at today's rate to approximately Six Hundred and Seventy Thousand Dollars (\$670,000.00). As Samuel Johnson's injuries are admittedly more serious this award would have to be increased.

The case of **George Dawkins vs. The Jamaica Railway Corporation** at page 233 of Mrs. Khan's Recent Personal Injuries Awards was also examined. There, a sum equivalent to Nine Hundred Thousand Dollars (\$900,000.00) was awarded for Pain and Suffering and Loss of Amenities for fractures of his upper and lower jaw, some unconsciousness and fractures of inferior orbital area on the left side of the face.

When perusing these authorities and comparing the injuries cited therein with those of Samuel Johnson, I am of the view that the sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00)

would be reasonable compensation for Pain and Suffering and Loss of Amenities in this matter.

Loss of Earning Capacity

Samuel Johnson has not been employed for any length of time since this unfortunate accident. His doctor was of the opinion that because of his injuries he was unable to return to work at Alcan. He has made several attempts to find employment to no avail.

Interestingly, having full knowledge of his disabilities, such as being unable to lift heavy objects or grip items with his fingers, he has constantly sought employment at places where these skills are required. Four such places which Mr. Johnson approached for employment were Marble House Restaurant, B. & B. Jerk Centre and Bar, Ewarton Texaco and Harris Grain and Hardware. Mr. Johnson testified that at all four businesses, he was unable to lift various objects and in addition, due to his alleged hearing problem was unable to obtain or keep a job. As late as January, 2002, Mr. Johnson went to a woodwork shop for a job. While there he tried to lift a dresser which fell from his hands and broke and he was told not to return.

He also tried to get employment as an Assistant Teacher at the Jericho Baptist Basic School, but was unsuccessful because of

his alleged hearing disability. It is curious to note that on his own evidence, Mr. Johnson admitted leaving school without passing any subjects. How then would he have thought himself qualified to apply for a teaching post at a Basic School. The letter from the school refusing his application did so on the basis of his hearing problem.

The accident at Alcan on 24th May, 1996, was undoubtedly tragic and forever changed Samuel Johnson's life. Since that time, he has sought to portray himself, as a consequence of the severe and extensive injuries he sustained, as being unemployable. The evidence before this court does not support such a conclusion.

I am not satisfied on the material before me that the steps taken to obtain employment by Mr. Johnson were genuine attempts. He has produced in this Court letters from potential employers, which have been tendered in evidence setting out reasons why they could not favourably consider his requests for employment. All these letters he says were unsolicited and are being used to bolster his case.

I have already stated my findings with respect to his alleged hearing loss, which I reject. I also find that he has made no realistic attempt to find employment since the accident on the evidence before me. It would take no stretch of the imagination to infer that the steps

taken were carefully orchestrated to lead to the conclusion that he would never be able to work again.

In giving evidence before this Court, Mr. Johnson stated that while employed at Alcan he used to do farming, cultivating food stuff and he raised pigs and chickens. This is an avenue of employment still open to him, if not on his own then jointly with others.

I am however still mindful of the nature and gravity of Mr. Johnson's injuries, which would have some bearing on his chances of obtaining suitable employment. In the circumstances I am of the view that an award of \$100,000.00 would be appropriate in all the circumstances under this head of damages.

There will therefore be Judgment for the Claimant Samuel Johnson against Alcan in the sum of \$2,892,883.80 being

Special Damages -	\$1,392,883.80
General Damages	
Pain and Suffering and Loss of Amenities -	\$1,400,000.00
Loss of Earning Capacity	<u>\$ 100,000.00</u>
	<u>\$2,892,883.80</u>

Interest is awarded on the Special Damages at 6% per annum from 24th May, 1996 to the date hereof.

Interest is awarded on the General Damages of \$1,400,000.00 at the rate of 6% per annum from 29th March, 1999, to date hereof. Costs to the Claimant to be agreed or taxed. Stay of execution granted for four (4) weeks.