**IN THE SUPREME COURT OF GRENADA**
**AND THE WEST INDIES ASSOCIATED STATES**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. GDAHCV2012/0293**

**BETWEEN:**

**CALVIN REGIS**

Claimant

**and**

**E.S. DOLLAND & ASSOCIATES LTD.**

Defendant

**Appearances:**

Mr. Derick Sylvester with Ms. Cathisha Williams for the Claimant
Mr. Benjamin Hood for the Defendant

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2015: October 19

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**JUDGMENT**

[1] **AZIZ, J.:** The claimant brought proceedings against the defendant company for damages arising out of a negligence claim. The claim is for:

1. General Damages for personal injury, loss and damage including loss of future earnings arising out of an accident on 3rd June 2011.
2. Special Damages as follows:
   i. Loss of Earnings from 3rd June 2011 to 17th July 2012 at a rate of $60.00 per day and continuing (410 days x $60.00) $24,600.00
   ii. Loss of Future earnings to be calculated

**TOTAL** **$24,600.00**

3. Interest at the rate of 6% per annum and pursuant to s.27 Act no. 7 of 2009 of the Eastern Caribbean Supreme Court Act, cap 336 of the 1990 Revised

Edition of the Laws of Grenada or at such rate and for such period as the court thinks fit.

4. Such further or other relief as this Honourable Court shall deem just.
5. Costs.

**Background**

[2] The claimant born on the 6th April 1992 and residing in Requin, St. David is now 23 years old, being 20 years old at the time of the accident in which he suffered a permanent injury to his right eye while working at the Spice Basket site for the defendant company.

[3] The defendant company was duly incorporated pursuant to the Companies Act No. 35 of 1994 of the Revised Edition of the Laws of Grenada and whose place of business is situate at Petit Calivigny in the parish of St. George. This company was engaged in the business of providing architectural designs, engineering, surveying and construction services to the public. The company also manufactures timber windows.

[4] On the 3rd June 2011, the claimant was working at one of the defendant's sites known as "Spice Basket". The claimant was working as an assistant or "helper" and at the time of the accident using a grinder with a metallic blade to cut a concrete board. Whilst using the grinder the metallic blade which has a diameter of about 3.5 to 4.0 inches broke off and caused injury to the claimant's right eye.

[5] The claimant brings the action against the defendant for negligence as it is submitted that he, the claimant, was not provided with any protective eye wear and therefore the defendant was negligent by not providing a safe working environment and not providing safety equipment for the employee.

[6] The defendant in its defence set out the fact that the claimant's employment was of a temporary nature, in that the claimant was contracted to perform specific duties with respect to specific projects in which the defendants' service had been engaged. Furthermore, the defendant in their defence, set out that the claimant who was working for $60.00 per day, was employed as a "helper" on various construction works with respect to "Spice Basket". The defendant relies on the fact that the claimant used the same title "helper" on his claim for sickness benefit from the National Insurance Scheme (hereinafter referred to as NIS).

[7] The defendant denied that the claimant was using a metallic saw at the relevant time and required the claimant to prove that he had sustained the injuries pleaded, and that those injuries sustained, if proven, were as a result of a fault on the part of the defendant. The defendant's defence specifically pleaded the following:

That the claimant had worked on several projects for over thirty months and was trained in the use of the grinder for various tasks. In particular the claimant was trained to:

i. Choose the type of blade to be used on the grinder for the cutting job to be done;
ii. Carefully inspect each tool that is to be used for any task before commencing the task;
iii. Recognize when the attached blade is worn and needs to be changed;
iv. Fit the grinder with the appropriate blade for the task.

[8] The defendant also specifically pleaded that the claimant belonged to a group of workers that had been trained by the defendant and had been provided with various items of standard protective gear, including protective vests, protective helmets, and protective goggles. Each worker had been given personal custody of the protective gear and instructed to take the gear to the sites every day.

[9] The defendant asserts that the accident was caused or contributed to by the negligence of the claimant. The particulars of the negligence are set out below:

a. Failing or refusing to carry to the job site the protective gear provided for him by the defendant;
b. Failing or refusing to wear the protective gear provided by the defendant;
c. Failing or refusing to inspect properly or at all the grinder and its blade before using the tool for cutting;
d. Failing or refusing to the safe system of work that had been instituted by the defendant on its work site;
e. Failing to heed sufficiently or at all to the danger presented by performing his tasks without the requisite protective gear;
f. Failing to take any proper care for his safety while he was on the defendant's work site;
g. Failing to take care of his own safety in all the circumstances of the case.

[10] The defendant also required the claimant to prove that he had suffered the alleged or any pain, injury, loss or damage and that the pain, injury, loss or damage was as a result of the negligence of the defendant[1].

**The Evidence**

[11] Within the trial bundle, which is the bundle of documents and statements agreed between the claimant and the defendant, were statements[2] detailing the injuries suffered by the claimant and the prognosis.

[12] Dr. Elliot McGuire indicated that Mr. Calvin Regis was admitted to the Eye Ward of the General Hospital on the 3rd June 2011, where he was allegedly struck whilst using a power tool (grinder), the blade allegedly struck him on the right eye. On

[1] See Page 27, paragraph 11 of the Trial Bundle
[2] See Pages 74 to 83 of the Trial Bundle

examination on the 3rd June 2011, as far as his visual activity was concerned, the right eye – no light perception, left eye 20/20 vision. There was a penetrating wound to his right eye. Surgery was done on the right eye under general anesthetic in the Operating Theatre of the General Hospital. After surgery, a review was done and as far as visual activity was concerned there was no light perception in the right eye. Dr. McGuire was of the opinion that it was unlikely that the claimant would see out of his right eye again. He concluded that the claimant was legally blind in his right eye. Dr. Elliot McGuire also confirmed by way of letter dated 19th October 2011, that the claimant had adhesions of the conjunctiva of his right eye and those adhesions had been excised.

[13] Dr. Kwesi McGuire, an ophthalmologist, saw the claimant on the 3rd June 2011, after the claimant was brought to the ophthalmology department of the General Hospital having sustained an ocular and upper facial injury. Dr. Kwesi McGuire examined the claimant and this revealed that the claimant suffered a laceration involving his right eye, upper and lower eyelid extending to the mid forehead. The witness summary confirmed that the claimant underwent surgery and the laceration was successfully repaired, but the claimant spent seven (7) days in hospital after the procedure. Dr. Kwesi McGuire continued and confirmed that, ***"due to the nature and severity of the ocular injury the claimant will remain legally blind in the said right eye[3]."***

[14] The defendant pursued the avenue of having the claimant prove that he had received injury and that the injury had been caused by the defendant[4]. Up to the close of the claimant's case and certainly by the end of the trial, there was no challenge whatsoever about the medical evidence placed before the court. It is well worth saying that it was agreed evidence. The findings of both eye doctors were not challenged at all. It is therefore clear that the injuries were sustained and have been proved by the claimant.

[3] See page 79, paragraph 7 of the trial bundle
[4] See pages 26 and 27, paragraphs 6 & 11 of the Trial Bundle

[15] The court, upon considering the global evidence, including that of the claimant, Mr. Dolland and Mr. Douglas on behalf of the defendant, finds not only the injuries sustained, but sustained during the course of employment with the defendant at the Spice Basket site.

**Contributory negligence**

[16] It is clear from the statement of claim and the defence that the issue to be determined is whether or not there was contributory negligence. The submissions made on behalf of the defendant are that there was negligence on the part of the claimant, and as a result of that negligence the accident and resulting injury were caused. Mr. Hood, Counsel for the defendant, submitted that if the claimant had worn his protective goggles, then the extent of the injury may not have been as severe, and even possibly prevented.

[17] Counsel for the claimant, Mr. Sylvester submitted that there was no cross examination by Mr. Hood about damaged goggles, the claimant was instructed to use the grinder, duty supervisors owe a duty of care and finally that there was no contributory negligence. Mr. Sylvester further submitted that the claimant had nil experience and skill and the burden was on the employer to ensure a safe working environment through Mr. Douglas who was the supervisor of the claimant at the time of the accident. Mr. Sylvester suggested that the court take cognizance of the fact that it was plastic protective goggles versus a metallic 4-inch spinning blade.

[18] For completeness sake, I will turn briefly to the concept of negligence and contributory negligence. It is my view that negligence depends on a breach of duty, whereas contributory negligence isn't necessarily so.

[19] Contributory negligence is a man's carelessness in looking after his own safety. A man is guilty of contributory negligence if he ought reasonably to have foreseen

that, if he did not act as a reasonable prudent man, he might hurt himself[5]. As far as this court is concerned when one has to determine responsibility, then one has to consider that the concept of responsibility requires everyone to exercise those precautions and care that an ordinary prudent man would necessarily observe. There are always risks attached to various types of activity. One does not know when an accident may occur or when the risks of an accident are higher. These accidents happen when least expected or anticipated. When working in a high risk environment, where high powered tools and machines are being used, then the prudent man should always be alert, aware and take every precaution available to him.

[20] The claimant's evidence as set out in his statement was that he was employed by the defendant and rotated among sites. He was not a temporary worker. He was working on the Spice Basket site as a Carpenter/Helper earning $60.00 a day. On or about the 4th working day at the site he was cutting a concrete board with a grinder to do a partition. His evidence was that he asked his supervisor Ethelbert Douglas for a saw, and he was instructed by Mr. Douglas that he could use a grinder. It is clear that Mr. Douglas accepted that he was the immediate supervisor of the claimant. The claimant bent over the board and the blade broke, after which he had felt tremendous pain. He had suffered the injury by this time. It took him one minute to recover from the shock and he was accompanied to the Beaulieu health centre by Mr. Douglas.

[21] Mr. Regis, the claimant set out in his statement that he had never received any training on the proper usage of the grinder during his employment with the defendant company. Importantly though, was the fact that the claimant did admit in his statement to having been provided with a protective vest, a pair of plastic goggles and a protective helmet in 2010, but had not received the same in 2011. The claimant says that by 2011 the protective goggles were no longer useable. The claimant also indicated that there was no insistence by the defendant

[5] See Jones v Livox Quarries Ltd. [1952] 2 Q.B. 608

company that the protective clothing be worn neither was there any policy of sending people home for failing to use the said protective gear.

[22] The claimant was cross-examined by Mr. Hood but remained clear and confident through the cross-examination. The claimant was asked about his goggles at the time of the accident, but clearly stated that he did not have any goggles as they had been destroyed at the Groomes (a site worked on in 2009) project. Mr. Hood cross-examined the claimant on his reply to the defence, and referred him to page 32 of the trial bundle, which is the reply.

Q. In your reply to the defence filed in this claim, see page 32, paragraph 6(ii)[6]?

A. It's a grinder, to cut steel and concrete. The goggles were plastic and it would have been ripped off.

Q. You saying that even if given a new pair goggles, you wouldn't have used it?

A. Even if I wore goggles it would have happened.

Q. You said goggles were damaged at the Groome site, but you never informed anyone at the Company? You never asked for a new pair of goggles?

A. No, Sir.

A little later in the cross-examination was the following:

Q. You said you used goggles before?

A. Yes, in 2009.

Q. You knew that there was potential for damage?

A. I used them as they were provided. Never thought about the damage to my eyes.

Q. If you asked for a new pair of goggles, they would have given it to you?

A. No, I didn't ask.

[6] "He received a pair of protective plastic goggles, a protective vest and a protective helmet in 2010. The said plastic goggles was no longer useable and another was not provided. In any event the use of the plastic goggles would not have prevented the damage to the claimants eye."

[23] The court has quite importantly considered the evidence of Mr. Dolland who was a representative of the defendant company and also the senior supervisor Mr. Ethelbert Douglas, who was also employed by the defendant company as a senior carpenter.

[24] It was clear that on being cross-examined, Mr. Dolland agreed that assistant helpers were not trained but shown how to use the grinder. Mr. Dolland agreed that in his defence he would replace the word "trained" to the word "shown". It would seem to me that the word "trained" signifies bringing someone to an agreed standard of proficiency through instruction over a period of time. 'Shown' means to allow or cause to be seen, or to show or demonstrate. I find that the ordinary meaning ascribed to the word "shown" by Mr. Dolland meant a lesser or informal demonstration in the working of the equipment.

[25] The following excerpt is instructive, when asked about the training:

A. We have assistant helpers who worked with the masons and carpenters and they would have been shown.

Q. Not trained but shown?

A. Yes, shown but not trained.

Q. Did you use someone to show them how to use the saw?

A. Yes, Ethelbert Douglas.

Q. Were you present when Ethelbert Douglas showed Calvin how to use the grinder?

A. No.

[26] Mr. Dolland was also cross-examined on his witness summary at paragraph 7 (i) to (v) and asked whether he wished to remove (i) to (v). The answer to that was that those matters contained in (i)-(v) was the responsibility of the supervisor, and that he, Mr. Dolland, was not aware if the supervisor had carried out those functions.

Mr. Dolland confirmed that there was no safety manual, and that the Grenada Bureau of Standards had not approved the goggles, or the helmet. Mr. Dolland confirmed that the assistant helpers were authorized to use the grinders, in Mr. Dolland's words "yes he's an assistant."

[27] Mr. Ethelbert Douglas was the final witness for the defendant. He was very honest in giving his evidence, and the court finds that there are stark contradictions between the evidence of Mr. Dolland and Mr. Douglas in terms of the procedures adopted at the Spice Basket site. Mr. Douglas confirmed in cross-examination that he was not the foreman, but a senior carpenter. For completeness, the following transcript is useful for the determination of the issue of contributory negligence:

Q. Were you wearing goggles on that day?

A. No.

Q. Helmet?

A. Yes.

Q. Who was the foreman on the site?

A. Kellon. (Surname not remembered by witness).

Q. Was it a strict requirement that a person must wear goggles and helmet?

A. Yes.

Q. Were you present when Calvin received his injury?

A. Yes.

Q. Did you instruct him to use the grinder?

A. Yes.

Q. He was not wearing goggles or a helmet?

A. No.

Q. Did you ask him about goggles before he used the grinder?

A. No.

Q. Did Calvin tell or indicate that he didn't have goggles before using the grinder?

A. No

A little later on in cross-examination:

Q. Whose property is the goggles?

A. It's Mr. Dolland.

Q. The grinder, do you have to be trained to use it?

A. No.

Q. Can anyone use the grinder?

A. We seniors would use it and if he (Calvin) had to use it to cut something I would allow it.

Q. And protective gear?

A. I don't always check on it, I don't always use it.

Q. The day before the accident, were you aware that Calvin had goggles?

A. No, I was not checking on that.

Q. Where you aware that his goggles were damaged?

A. No.

Q. If you were referred to as foreman would that be correct?

A. That's not correct.

Q. Was this first time you requested Calvin to use the grinder?

A. Yes.

Q. Do you know if there was any training on the use of the protective gear?

A. There was no training.

Q. Training in inspecting the grinder?

A. No.

Q. Training on the blades and if they are worn?

A. No.

Q. Training to fit the grinder with the appropriate blade for the appropriate tasks?

A. No, Sir.

Q. Training on eye wear?

A. No, Sir.

[28] When one considers the evidence as it was elicited, it is clear to me that the defendant company was negligent and it did owe a duty of care to its employees. This according to a senior employee (Mr. Douglas) was not done and in fact he was not abiding by the company rules, if they so existed, but he was never sent home for not wearing his protective clothing or equipment. In fact during his evidence Mr. Douglas demonstrated that he had his goggles on but they were hanging around his neck and not being used to protect his eyes. This is the man that was tasked to supervise the claimant, this was the man who asked the claimant to use the grinder and who knew that the claimant had never before used the grinder.

[29] As far as the issue of contributory negligence is concerned, I must also consider what the standard of care is. The standard of care in contributory negligence is what is reasonable in the circumstances, which in most cases corresponds to the standard of care in negligence[7]. Although contributory negligence does not depend on a breach of duty to the defendant, it does depend on foreseeability. It was well stated:

> *"Just as carelessness in ordinary actions in negligence requires foreseeability of harm to others, so contributory negligence requires foreseeability of harm to oneself. A person is guilty of contributory negligence whenever he ought reasonably to have foreseen that, if he did not act prudently, he might suffer injury, and he must take into account the possibility of others being careless."*[8]

[30] I have come to the decisions based on the circumstances of this case. I would state that for completeness that an employer is under certain obligations to his employees and servants to provide for their safety. An employer must provide a safe working environment and proper instructions.

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[7] A.C. Billings & Sons Ltd v Riden [1958] A.C. 240

[8] per Denning L.J. in Jones v Livox Quarries Ltd [1952] 2 Q.B 608 at 615. "Each problem should be approached broadly avoiding those fine distinctions which were apt to be drawn when some slight act of negligence on the part of the plaintiff might defeat the claim altogether," per Lord Porter in Boy Andrew v St Rognvald [1948] A.C. 140 at 155.

Although an employer may seek to delegate various tasks he cannot avoid his own responsibility for their proper performance. So in other words, if an employee is left to carry out a task, and in doing such task his (the employee's) negligence causes the injury to another employee, then the employer would be liable for damages. In this case, the claimant started working with the defendant company, and was provided with safety equipment. The claimant would have worn that equipment for a period of time, knowing the reasons for wearing the items, that being for his own protections and to prevent injury to himself. The equipment was damaged and he, the claimant did nothing to request new safety and protective goggles. He continued working and on instruction used a grinder, which he had not used previously and did not seek guidance on using the equipment without the protective goggles.

**Assessment of Damages**

[31] To arrive at a proper assessment of the general damages payable, it has been submitted that the court must have regard to:

a) The nature and extent of the injuries sustained;
b) The nature and gravity of the resulting physical disability;
c) Pain and suffering;
d) Loss of amenities; and
e) The extent to which pecuniary prospects were affected.

[32] When one adjudicates on claims for general damages, in personal injury cases it has been stated[9] that the judicially accepted approach that the court should seek by an award of damages is to put the claimant as far as it is possible to do so by a monetary award in the position that he would have been in, had he not sustained the injuries to his person and that the best way

[9] By Michel. J (as he was then) in Ronald Fraser v Joseph Dalrimple, Vere Bird & Ors. Claim No: ANUHCV2004/0513 (decided May 5th , 2010), unreported, page 9, paragraph 31 of the judgment.

to achieve this is by considering appropriate awards made by the courts within the jurisdiction for similar type injuries. As also stated in the case of **Livingstone v Rawyards Coal Company** (1980)[10] *"in settling the sum of money to be given for reputation of damages you should nearly as possible get at that 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".*

**Heads of Damages**

[33] *The nature and extent of injury*: The claimant was struck whilst using a power tool (grinder), the blade struck him on the right eye. As far as his visual activity was concerned, the right eye – no light perception. There was a penetrating wound to his right eye. Surgery was done on the right eye. After surgery, a review was done and as far as visual activity was concerned there was no light perception in the right eye. Dr. McGuire was of the opinion that it was unlikely that the claimant would see out of his right eye again. He concluded that the claimant was legally blind in his right eye.

[34] *The nature and gravity of the resulting physical disability*: Dr. McGuire was of the opinion that it was unlikely that the claimant would see out of his right eye again. He concluded that the claimant was legally blind in his right eye.

[35] *The pain and suffering endured*: The claimant suffered pain and had to undergo surgery, which would have caused additional pain to the initial injury. He remained in the hospital for a period of seven days. In addition to this, the evidence adduced was that the claimant had to remain at home for about two weeks, and this was after a second surgery. The claimant did not specifically set out in writing that he was in severe pain but did indicate during his evidence by way of cross-examination that he did suffer with severe and

[10] 5 App. Cases 25 at 30.

excruciating pain. Even if there was and continues to be public embarrassment as set out in the submissions of the claimant, there was no evidence led about this.

[36] Furthermore, the Counsel for the claimant submits that the claimant now wears dark sunglasses at all times to conceal his injury from the public, and continues that the claimant has shied away from the public and public events, but again there was no evidence about this before the court. The court did take note that the claimant was wearing dark sun glasses in the courtroom and this was as a result of the injury sustained and will therefore consider this fact in determining the award to be made for general damages. I have considered the case of **Fabian Haywood v Andrew Ollivierre**[11], in which is 21-year old suffered from a 3cm laceration on the left eyebrow. The wound included the penetration of the left orbit, left eyeball and left anterior sinus wall. The wound resulted in the complete loss of the left eye. The claimant in that case was awarded $75,000.00 EC for pain and suffering and loss of amenities. The total award for general damages in that case was $83,000.00.

[37] There have been many authorities cited within the claimant's submissions on cases out of the Trinidad and Tobago jurisdiction. I have noted those and the currency. For completeness although they are not entirely persuasive or binding I did consider the quantum of the awards and also noted that $1EC dollar would have been approximately $2.34 TT dollars.

[38] *The loss of amenities suffered*: There was little direct evidence under this head, but it is right that in the objective loss of amenities, that damages will be determined. Hence loss of enjoyment of life and the hampering effects of the injury in the normal social and personal routine of life, with the probable effect of the health and spirits of the injured party are all proper considerations to be

[11] Claim No. 278 of 2004 (summarized in the submissions of the Claimant at paragraph 28(i)

taken into account[12]. Also to be taken into account is the fact that the claimant will not lead the life that he wanted to lead or may have led. It was stated by Lord Scarman *"that the award of damages under this head though objective must take the particular plaintiff into consideration in determining quantum"*[13]. I would further add at this stage that there were full submissions made on behalf of the claimant but again the evidence to support the contentions was lacking. There was no evidence as per the submissions that the claimant had difficulty watching television or looking at any object that radiates light. There was no evidence of the burning sensations as set out in writing and again no evidence about the difficulties in performing daily chores.

[39] It has been submitted on behalf of the claimant that the wearing of his sunglasses especially at night, has given him a menacing appearance and that he has now become a target for searches by security personal at airports. While this may be the case, there has been no evidence led by way of evidence in chief or cross-examination to support this contention (in relation to airport security). It was clear to the court that the claimant wore sunglasses and did not remove them. It may be clear that the wearing of sunglasses or any other item of clothing or covering was as a result of the damage and/or injury sustained at the workplace. There must be at least some evidence placed before the court, so that the court can make proper and accurate determinations when coming to a quantum for general damages. The court has considered the limited evidence provided which can be found at paragraphs [22] to [25] of the claimant's witness statement. Therefore when one takes into account all of the above; the court awards the claimant $55,000 for pain and suffering and $40,000 for loss of amenities, the total which is equal to the sum of $95,000, which is just lower than what the claimant submitted it ought to be.

[12] Darell Christopher v Benedicta Samuels BVIHCV2008/0183 at [64]
[13] Pickett v British Rail Engineering Ltd [1979] 1 All ER 774 at 779

[40] *The effect on pecuniary prospects:* The claimant according to his evidence held the title of helper, (according to Mr. E.S. Dolland the claimant was an assistant helper) and among other duties assisted with cutting boards, mixing concrete and assisting the masons on the work site. The claimant had worked on different sites, and had a supervisor with him. His supervisor, Mr. Ethelbert Douglas, was with the claimant at the time of the accident. Although there was little evidence about any pecuniary prospects, it is clear to me that the claimant lost the prospect of continued employment in that specific job for at least twelve (12) months before moving upwards (or elsewhere) and possibly becoming "suitably trained[14]" which would have carried a salary of approximately $1200.00 to $1500.00 monthly[15]. It's also clear that the injury is permanent, the claimant will never be able to see out of his right eye, and this will impact on potential available employment, in fact there will be jobs that the claimant will not be able to do.

[41] In this case there was no evidence in which a reasonable estimate could be made of the claimant's prospective loss. What was clear from the evidence was the fact that the employer continued to pay the claimant for approximately six (6) months after the injury, because he was a good and dedicated worker and therefore treated like everyone else.

**Mitigating Loss**

[42] I ought to deal with at this stage the submission made by the defendant that the claimant had a right to mitigate his loss. The law on mitigation of loss is clear, and that is, that a claimant must take all the reasonable steps to mitigate the loss which he has suffered at the hands of a defendant. This is

[14] There was a marked distinction drawn during the evidence between the pleadings where the word "trained" appeared and the word "shown" used in cross-examination.
[15] These sums have been ascertained by taking into account the value of the monies paid to the defendant between August 2011 and December 2011. Also see the exhibits within the trial bundle at pages 44 to 48.

so whether the wrong has been incurred by way of contract or by tort[16]. If a claimant fails to do so, he is not in breach of any duty, but then he cannot claim damages for any loss, which he ought to have reasonably avoided. The defendant's submission is that a deduction will have to be made for the claimant's failure to mitigate his loss.

[43] According to Halsbury's Laws of England, a personal injury claimant must mitigate his loss by obtaining proper medical treatment and not acting so as to retard his recovery, and he is not entitled to damages in respect of any pain, suffering, loss of amenities or loss of earnings consequent upon his failing to do so. Furthermore, even if disabled from continuing his present employment he should be prepared to accept reasonable alternative work.

[44] Based on the evidence I have come to the conclusion that the claimant did seek proper medical treatment for this very serious injury and did nothing to retard his recovery. One must remember that this is a young man who was working in a labour intensive environment, using a high-powered tool and was inadequately supervised by Mr. Douglas. In my view the supervision by Mr. Douglas was deplorable.

[45] Mr. Douglas in his evidence spoke very calmly about seeing blades break off, in fact he stated that he had seen many blades break off but was not overly concerned about the lack of safety equipment for the claimant, an assistant helper nor himself for that matter. In his words about protective gear Mr. Douglas stated, "*I don't check on it, and I don't always use it*". If that isn't a blatant disregard for health and safety I don't know what is. As far as the alternative employment is concerned the evidence which is mostly accepted is that the company did write to offer the claimant alternative employment and the claimant indicated that he was offered a job after the injury but that he

[16] The same principles apply in respect of actions for damages in both contract and tort. See Sayce v TNT (UK) Ltd [2012] EWCA Civ 1583 at [20] per Moore-Bick LJ.

was not fit physically and mentally to take up employment and did communicate this to representatives of the company. I therefore do not accept the submission on discount for lack of mitigating loss.

**Conclusion**

[46] In my view the claimant is entitled to general damages and therefore to be compensated for:

a) The injury inflicted to his right eye and his permanent loss of sight in that eye;
b) The physical disability that he will have to suffer for the rest of his life;
c) The pain and suffering;
d) The loss of amenity and;
e) Loss of pecuniary prospects.

[47] As indicated in a number of cases, it would be wrong to come to a conclusion on each separate head as set out above, and then add them together. I do not do so in this case because there is an overlap between the various categories. If one was to take, for example (a) and (b) above, then there must be an overlap and it would be wrong to have double counting. It is important to further note that I am not making a specific mathematical calculation but simply assessing general damages.

[48] I have considered many cases on personal injury awards and those include **Cornilliac v St. Louis** (1965) 7 WIR 491, **Ronald Fraser v Joe Dalrimple, Vere Bird & Ors**, Claim No. ANUHCV2004/0513, **Balkaran v Al Construction Limited TT** 2012 HC 290, **Darrel Christopher v Benedicta Samuels** BVIHCV2008/0183, **Wells v Wells** (1998) 3 All E.R 481 at 507, HL.

[49] As the claimant will be receiving a lump sum payment and having considered all the evidence, including having the opportunity to observe the witnesses at trial, considering the helpful submissions and the various authorities provided, it is my judgment that the defendant is liable to the claimant for general damages in the sum of $95,000.00. This figure is normally derived by using the multiplier/multiplicand method, but in the case at bar, this would be an impossible task based on the insufficiency of the evidence. Furthermore, the claimant has not established that there is a continuing loss of earnings, which is attributable to the injury sustained. I have also taken into account the four payments made by the defendant which the claimant received, being:

a) 12th July 2011 - $1320.00
b) 3rd August 2011 - $1260.00
c) 12th November 2011 - $1260.00
d) 28th December 2011 - $1500.00

Making a total of $5,340.00, NIS and included an award of $18,000.00 for the other head at [40] above. The calculation for general damages is $95,000.00 + $18,000.00 = $113,000.00. I have then subtracted $5,340.00 and then reduced that figure by 20%[17] = $85,060.00.

**Special Damages**

[50] Special damages are quantified damages of which a claimant has already spent as a result of the damage and loss suffered. This type of damages must therefore be pleaded for, particularized and proved. This was the view of Lord Diplock in **Ilkew v Samuels**[18] where he said:

> "Special damage is the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularized...it is plain law...that one can recover in an action only

[17] See paragraph [52] of this judgment
[18] (1963) 2 All ER 879

special damage which has been pleaded, and of course, proved".

[51] I make an award for special damages in the sum of $16,980.00, which is the sum of $60.00 per day for 283 days. The claimant has claimed for four hundred and ten (410) days[19], but that calculation has been derived by calculating the difference between the date of injury (3rd June 2011) and the date of the filing of the claim (17th July 2012). There was no evidence that the claimant worked seven (7) days a week, therefore the court will allow special damages for loss of earnings for the "working days"[20] between the two above mentioned dates.

[52] For the reasons set out herein above, I also find that the claimant contributed towards the negligence and therefore any award of damages ought to be reduced to reflect the contributory negligence. Based on my judgment I would reduce the quantum of general damages assessed by 20% to reflect the claimant's contributory negligence.

[53] In the circumstances the order of this court is that the claimant is awarded the following:

a) General damages in the sum $85,060.00.
b) Special damages in the sum of 16,980.00
c) Interest at the rate of 6% per annum on the sum of $85,060.00 from the date of the filing of the claim till the date of judgment.
d) Costs in the sum of $17,012.00.

**Shiraz Aziz**
High Court Judge

[19] See the Trial Bundle, Prayer within the Statement of Claim, Pg. 07
[20] According to Collins Dictionary, a working day is defined as "a day on which work is done especially for an agreed or stipulated number of hours in return for a salary or a wage." It is also efined as "any day of the week except Sunday, public holidays and in some cases, Saturday."