

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2019/CLE/gen/01671

B E T W E E N

FAITH TAMERIA WILLIAMS

Plaintiff

AND

INDUSTRIAL REPAIR SERVICES LTD.

Defendant

Before: The Honourable Mr. Justice Neil Brathwaite

Appearances: Gail Lockhart Charles, KC, Candice Knowles for the Plaintiff
Viola Major for the Defendant

DECISION

FACTUAL SUMMARY

[1.] The Plaintiff commenced this action by way of a Specially Endorsed Writ of Summons filed on 29th November 2019. The brief facts are that the Plaintiff is the daughter of Timothy Williams, who was an employee of the Defendant. On 30th November 2016 Timothy Williams died as a result of injuries he sustained while performing electrical work in a bucket truck for the Defendant. The Plaintiff particularized the alleged negligence of the Defendant as follows:

- i. Failure to provide a safe system of work contrary to section 4 of the [Health and Safety at Work] Act;
- ii. Failure to provide competent support staff and team as required by the Act;
- iii. Negligently and or in breach of Section 4 of the Act, failing to ensure, so far as reasonably practicable, the health, safety and welfare at work of the deceased;

- iv. Failure to provide such safety equipment and training so as to ensure the safety of the deceased while carrying out his functions at work;
- v. Failing to ensure that measures were taken to prevent the Deceased from coming into contact with live electric wires in breach of the Act and proper operating standards of the industry;
- vi. Failing to take measures to prevent or adequately protect the Deceased from exposure to danger or injury while at work;
- vii. Causing the deceased to come into contact with the live wires;
- viii. Maneuvering or steering the boom of the bucket truck in such a manner that it exposed the Deceased to coming into dangerous contact with live wires;
- ix. Failing to ensure that the Bucket Boom truck equipment was in good working order;
- x. The Deceased's death was caused by the Defendant's negligence.

[2.] The Defendant filed a Defence in which it was admitted that the deceased was an employee of the Defendant, but it was denied that the bucket of the truck was being maneuvered by Fallon Beckford, another employee of the Defendant, or that the death of the deceased was caused by any negligence and/or breach of statutory duty. The Defence reads in part as follows:

5. The Defendant avers that at all material times it implemented, maintained, and executed an adequate and reasonable system of work for the Deceased and all employees. The Defendant further avers that: (i) the Deceased was provided with all the necessary personal protective equipment required to safely perform his work; (ii) the deceased was provided with adequate and reasonable training regarding the safe performance of his work; (iii) the work which was required of the Deceased did not require him to come in contact with live electrical lines; (iv) the Deceased was provided with risk assessment training, which included the specific instruction that the Deceased was required to assess each site and identify all possible risks before commencing work at each site; (v) the Deceased was instructed not to perform the job if he identified any risks which could not be controlled; (vi) the truck and bucket operated by the deceased on 30th November, 2016 received regular inspection and maintenance and was functioning properly on 30th November, 2016.

6. As it relates to paragraph 5 of the Statement of Claim, the Defendant accepts that it is vicariously liable for the negligent actions of its servants, agents, or employees when acting in the course of their employment. However, the Defendant expressly denies that any liability, vicarious or otherwise, arises herein. The Defendant further expressly denies that any of its servants, agents or employees were negligent as alleged and the Plaintiff is put to strict proof thereof.

9. Further, the Defendant states that the Deceased's death and any injury, loss or damage sustained as a result thereof were wholly caused, contributed to, and/or occasioned by the

Deceased's own negligence and/or failure to have any or any sufficient regard for his own safety.

PARTICULARS OF PLAINTIFF'S CONTRIBUTORY NEGLIGENCE

10. The Deceased was contributorily negligent in that he failed to:

- i. take any or any reasonable care for his own safety;
- ii. properly steer or maneuver the bucket to a safe distance away from live electrical lines;
- iii. properly consider whether he could safely approach the streetlight;
- iv. refrain from approaching the streetlight until such time as conditions were safe to do so; and
- v. take all or all reasonable care in the circumstances to avoid any injury to himself.

PLAINTIFF'S CASE

[3.] The Plaintiff called three witnesses. The first was the Plaintiff herself, who testified in her witness statement and supplemental witness statement that she was the youngest child of the deceased, who was a widower, and was completely dependent upon him for maintenance and support. She testified that she was 17 years old when he died, and that they had often discussed a plan to send her abroad to study culinary arts, a plan which could not be brought to fruition due to her father's death. In cross examination the Plaintiff confirmed that she was born August 15th, 1999, and that she graduated high school in 2017. She also spoke to the instability she suffered after her father's death.

[4.] The Plaintiff's second witness was Recardo Williams, her uncle and brother of the deceased, who testified in his witness statement that he was also an electrician, having followed in his brother's footsteps, and that he worked with his brother on many occasions, at which times his brother displayed compliance with all required safety protocols. Recardo was also employed at the defendant company, and testified that he and his brother completed a three day safety training when they were hired, and that a safety protocol meeting was held with appropriate documentation on the morning of the incident which lead to the demise of his brother. He also mentioned receiving the news that his brother had been injured, and that he was at the hospital when his brother arrived. In cross examination the witness was merely asked to confirm his familiarity with the area where the incident involving his brother occurred, and that it was a residential area.

[5.] The Plaintiff's third witness was Chad Bartlett, who testified that he is a Lineman 1 at the Grand Bahama Power Company, and has been so employed for seventeen years, having received on the job training as well as training at a lineman school in Georgia, USA, for six months. He

stated that a Lineman 3 could work in the bucket by themselves, but would have a Lineman 1 or 2 on the ground supervising. A Lineman 1 or 2 is qualified to work on high voltage wires alone, and the person on the ground was responsible for warning of imminent danger, and could override the person operating the bucket aloft if the warning was not heeded.

[6.] In describing the trucks used, Mr. Bartlett testified that there are different types, and that some were properly rated for live lines, with a fiberglass boom so that if a live wire were contacted the electricity would go straight to the ground, while the cable and communications trucks had a metal boom. The truck used by the deceased on the day of the incident was a cable and communications truck, with a two-step control requiring two hands to operate, as opposed to the one needed for a Lineman truck. In the opinion of Mr. Bartlett, the cable and communications truck was less maneuverable, and less safe because of the lack of a fiberglass boom.

[7.] The witness also testified that the minimum approach distance for a high voltage line was 3 feet 11 inches to 4 feet for a qualified person, and 6 feet for an unqualified person, any nearer was not safe. He explained that the line which was contacted by the deceased carried 7,200 volts, and therefore was considered a high voltage line. The witness also stated that the trucks used by linemen had two booms, and were capable of maneuvering up and down as well as in and out. The truck used by the deceased, however, did not have that capability of maneuvering in and out.

[8.] Mr. Bartlett was referred to the Incident Investigation Report, and acknowledged that he had played a part in the investigation. That report states that the ground man tried to communicate with the person in the bucket, and that if she had overridden the bucket control it would have prevented the incident. The root factors contributing to the incident were identified as follows:

“Root Factors

1. Inadequate Communication:

During the positioning of the bucket to repair the night guard light, the IRS Team Lead did not respond to repeated attempts by the IRS ground hand to alert him of his close proximity to Line 336 “A” phase (road side) conductor.

2. Lack of Situational Awareness

IRS Team Lead was maneuvering the bucket to repair the night guard light. He attempted to position the bucket between the neutral and “A” phase (road side) when the back of his neck made contact with the energized conductor; Line 336 “A” phase (road side).

3. Inadequate Decision Making

Evidence suggests IRS Team Lead did not have the skill set to safely maneuver the bucket between the Neutral and “A” phase which resulted in him encroaching on the limits of approach. IRS Team Lead did not have the authority or training to enter this space.”

[9.] The witness was also referred to the conclusions contained in that report, which read as follows:

“The tragic events of November 30, 2016 resulted in the death of IRS contract employee, Timothy Williams. The incident was preventable. Upon reviewing witness statements and gathering information from multiple sources, the investigation team concluded that “Human Factors” were the main contributors that led to this tragic event.

Documented evidence demonstrated this crew had done hundreds of repairs/replacements of street and night guard lights prior to the incident of November 30. They were aware and knew the restrictions in the job scope which included maintaining “limits of approach” from primary conductors.

The investigation team concluded that the IRS Team Lead made a decision to position the bucket in a dangerous position without consideration of mitigating the risk of potential electrical contact. He moved the bucket between the neutral and primary “A” phase (road side) which he was not authorized or qualified to do. He should have not proceeded and rejected this particular job. It was determined there was a lack of situational awareness as he did not respond to repeated requests from the IRS Ground Hand to stop as he was approaching the primary phase.

The investigation team concluded, based on evidence from the IRS Ground Hand, that he was focused on the task of setting up his bucket to reposition the night guard light and did not reassess his surroundings particularly the close proximity of the energized conductor. This lack of awareness resulted in the IRS Team Lead’s neck making contact with Line 336 “A” phase (road side) primary conductor.”

[10.] Finally, the witness testified that when working in or near live wires, there is equipment in the substation which can shut the power off if contact is made with a live wire, but that function was not activated on the day of the incident.

[11.] Mr. Bartlett was cross-examined, and testified that the deceased was adjusting a flood light, which did not require him to work on a wire, and that there was no need to activate the shut off function if there is no intention to approach a live wire. He agreed that the adjusting of flood lights did not require persons to come within the approach distances for high voltage lines, and that the deceased could have adjusted the flood light without coming within the approach distances. The witness also accepted that if a person working on that project saw that he could not adjust the flood light without coming within the approach distances, the person ought not to have performed that task. While the witness declined to say that this was a part of the training conducted by Grand Bahama Power, he did accept that the report was correct. He also accepted that if the boom for the truck was being operated with both hands, there was no difference in the response times between that truck and the truck which only required one hand to operate the boom.

THE DEFENDANT'S CASE

[12.] The Defence called two witnesses, the first of whom was Fallon Beckford, who was working with the deceased at the time of the incident. Her witness statement reads as follows:

- “2. I am familiar with Timothy Williams, now deceased. By the time he died, I had known him for about three and a half years. Mr. Williams used to coach me in flag football and he also offered me a job assisting him with doing electrical work, such as installing power sockets, ceiling fans, fire alarms, air conditioning systems, etc.
3. In April 2016, Jaims Carey of Industrial Repair Services Ltd. (“IRS”) the Defendant herein, offered Mr. Williams and me (and others), a job working on a project that he had subcontracted from the Grand Bahama Power Company (“GBPC”). The project involved changing the existing streetlights and night guard lights from halogen to LED lights. After being hired by IRS, we underwent training with GBPC.
4. Our training included Safety Training, LED light training and tablet training among other areas. As a part of our Safety Training, we were taught how to conduct a risk assessment at each work site. There was a risk assessment form which required us to review the various steps of the job, identify any potential hazards with carrying out those steps, and indicate how the hazards were to be controlled. We were also taught that if we were unable to control potential hazards, we should not attempt to complete the job, but should instead note the hazards on the risk assessment form and submit same to GBPC.
5. Sometime in June 2016, after completing training, we began to work on the project. IRS had several employees working on the project (including Mr. Williams and myself), and we worked in teams. I mainly worked with Mr. Williams and we made a good team.
6. Sometime in October 2016, after Hurricane Matthew struck Grand Bahama, the project we were working on was altered to focus on adjusting and repositioning street lights and night guard lights that had moved out of place as a result of the hurricane.
7. At the beginning of each workday we attended at GBPC to receive our assignments for the day. We then headed out for the day to attend to the various work sites that we were assigned to. Mr. Williams always drove the bucket truck. Once we arrived at a work site, he and I conducted a risk assessment to identify any potential

hazards. Although we discussed the potential hazards together, I was the one who filled out the risk assessment form, as I was responsible for all paperwork. Once the risk assessment form was completed, if we determined it was safe to proceed, I placed flags and traffic cones around the truck to alert others to the work being conducted and, if necessary, to redirect traffic. Mr. Williams then took all of the tools he needed with him, and went up in the truck's bucket to replace or reposition the light. He always wore the required Personal Protective Equipment (PPE). At the end of each workday, we returned to GBPC and handed over all of the day's paperwork.

8. Mr. Williams always operated the bucket himself, using the controls located inside the bucket. I always stayed on the ground and kept watch.
9. Throughout the project there were occasions when we realized that we could not access the light safely. On those occasions we did not do the job and let GBPC know of the safety concerns.
10. Some work sites had just one light fixture to be attended to, and other work sites had multiple light fixtures that needed our attention. Throughout the six (6) months that we worked on the project together, Mr. Williams always drove the same bucket truck. The bucket had never given us any problems or malfunctioned in any way during the six (6) months that we used it. By 30th November 2016 we had replaced or repositioned thousands of light fittings.
11. On 30th November 2016, the day that Mr. Williams died, we were working in the Bahama Ridge area. At about 3:10pm we were at a site with a night guard light that needed to be readjusted because it was facing the wrong direction. The pole that the light was on was located on Bahama Reef Boulevard, and there was a private property on the other side of the pole. The light was supposed to be illuminating the private property, however it was twisted in such a way that it was not doing so.
12. In order to reposition the night guard light, Mr. Williams was required to loosen the arm and brackets, turn the light to face the proper direction, then tighten the arm and brackets. When we arrived at the site, we completed the risk assessment form, as usual, however at the time we did not note any particular hazards. I then placed cones around the truck and Mr. Williams went up in the bucket.
13. Mr. Williams was wearing his usual PPE of fire protection clothes, a safety harness, a hard hat, steel-capped boots, and gloves that came up to his forearm.

14. I watched from the ground and saw that Mr. Williams was taking longer than usual to maneuver the bucket into place so that he could access the light fixture. I believe that he did not realize the difficulty in accessing the light until he was already up in the bucket. The pole that the light was on had high-power lines at the top and a neutral power line below. I watched as Mr. Williams attempted to maneuver the bucket between the high-power lines and the neutral line. I also watched as the high-power line, which was behind Mr. Williams, made contact with the back of his neck and stuck there. Mr. Williams stood stuck on the line for about 10-15 seconds before falling forward.
15. I shouted out his nickname, "Coach", which is what I used to call him, and went to the truck to get my phone. I got a shock while opening the truck door however I managed to get it open and grab my phone which was on the seat. I then used my phone to call for help. I also ran to the house closest to where we were working and asked her to dial 911, but her phone was not working.
16. The police and ambulance arrived on the scene, as well as persons from GBPC, and Mr. Williams was taken away in an ambulance. I was also taken to the Rand Memorial Hospital in a private vehicle and was placed on an IV drip."

[13.] In cross-examination Ms. Beckford said that she worked with the deceased for two years before the incident, and that he was teaching her electrical work. They typically worked 8 hours per day, and 12 hours during the hurricane repairs. They also did side jobs, for which she said the deceased could have earned \$500- \$1000 per month. She also knew that the deceased had a daughter who lived with him and for whom he provided, and that he paid for her education.

[14.] When speaking about the day of the incident, the witness said she was trained on the safety override buttons on the truck to take control of the bucket and to shut down the bucket if assistance was needed. She said she never had to use that function, and was never trained to shut down the bucket if it was approaching high voltage lines.

[15.] In re-examination Ms. Beckford said that from where she was standing she could not tell if Mr. Williams needed assistance which would cause her to use the override button. She further said that she didn't call to warn him, but that she called to see why he wasn't moving any more, and that from where she was standing it did not look like he was close to the wire.

[16.] The Defendant's second witness was Jaims Carey, President and owner of the Defendant Company, who gave three witness statements. In the first, the witness indicated that his company was contracted by the Grand Bahama Power Company to participate in an LED Lighting

Installation Project. The crew members employed by IRS were approved by GBPC based on qualifications and experience, and the trucks used by IRS were also inspected and approved by GBPC. The witness further indicated as follows:

- “6. All of the IRS crew members hired for the project were trained by GBPC, including Mr. Timothy Williams and Ms. Fallon Beckford. The training included full details of how to perform the job safely. The training covered proper removal and installation of street and night guard lights, safe systems of work, managing traffic, accessing customer property, and risk assessment training. Risk assessment training included training in how to work around live power lines and maintaining a safe distance from primary power lines. In the risk assessment training, all crews were told that if you identify a risk that cannot be controlled, they are not to do the job. They were provided with risk assessment forms which were to be completed before the start of each job, and were submitted to GBPC at the end of each workday.

9. In October 2016, the project was expanded to include adjusting streetlights and flood lights that had moved out of place during Hurricane Matthew. At the beginning of each workday, crew members attended at GBPC to receive their assignments for the day. At each job site they were required to conduct a risk assessment. After the risk assessment was conducted, they were required to isolate the area utilizing traffic cones. Then the electrician was required to go up in the bucket truck and reposition the light, As per GBPC's requirements, the electrician who went up in the bucket truck was required to be the person who controlled the bucket.”

[17.] In two supplemental witness statements, Mr. Carey provided evidence that the deceased had been approved to work on the project by GBPC, and that the truck had been inspected and approved by GBPC. The witness also provided a sign-in sheet indicating that the deceased and Ms. Beckford, as well as the witness, had attended orientation training on 16th March 2016.

[18.] Mr. Carey was briefly cross-examined, and indicated that he was not involved in giving the training, and could not assist with the industry training requirements. He also could not speak to the safety procedures between the person in the bucket and the person on the ground.

PLAINTIFF'S SUBMISSIONS

[19.] The Plaintiff notes the provisions of the Health & Safety at Work Act Chapter 321 C, section 4 of which reads as follows:

4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.
- (2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —
- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
 - (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
 - (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
 - (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

[20.] The Plaintiff also relies heavily on the Incident Investigation Report, and submits that, based on that report and the evidence of Chad Bartlett, it is clear that the deceased was not qualified to approach the high voltage wires, and lacked a safe system of work, including effective communication with his ground person, who should have overridden the control of the bucket truck before the deceased encroached on the safe approach distance of the high voltage wires. The Plaintiff further submits that there is no evidence that the deceased underwent the rigorous training necessary to safely approach high voltage wires, and notes the evidence of Jaims Carey that he was not involved in the training.

[21.] With respect to the role of the ground person, the Plaintiff emphasises the evidence of Chad Bartlett, that the ground person is expected to act as an extra pair of eyes and ears, to warn of impending danger, and to shut down the bucket if necessary to avoid the person in the bucket coming into contact with live wires. They say that the failures in this regard are also clear from the evidence of Fallon Beckford, who testified that she was not trained to shut down the bucket truck from the ground to avoid impending danger, and also that she did not see that the deceased was in any danger from where she was standing.

[22.] On the issue of contributory negligence, the Plaintiff relies on **Casson v Spotmix Ltd (in liquidation) and other companies [2017] EWCA Civ 1994**, where the Court of Appeal held that mere inadvertence was insufficient to form a basis for contributory negligence. They further rely

on **Stocker v. Norprint Ltd (10 KIR 10)**, in which the Plaintiff was found not to be contributorily negligent when he lost a portion of his finger while using a machine from which a guard had been removed. In that case the Court concluded that the breach of statutory duty occasioned by not having a guard fence in place was such that it could not be said that the Plaintiff was wholly to blame. The Plaintiff therefore submits that the failure to properly train the deceased and Ms. Beckford amounted to a breach of the statutory duty to ensure a safe system of work, so that the deceased could not be found to be in any way responsible for his demise.

[23.] In addressing the issue of quantum, the Plaintiff asserted that as the Plaintiff was a dependent of the deceased, she is entitled to recover a portion of the deceased's projected earnings representing the amount earned less the amount that the deceased would have spent on himself. They cite the case of **Burrows v Parks [2006] 2 BHS J. No. 157**, as well as **Rhiannon Thomas v Thomas Baldwin 2016/CLE/gen/01428**, as exemplifying the correct approach to be applied in adjudicating such cases. In particular, in the Baldwin case the learned Newton J quotes the following:

[38] The broad principles which form the basis of assessment of damages for fatal accidents are stated in the case of **Davies v Powell Duffryn Associated Collieries Limited [1942] AC 601** where Lord Wright stated at page 617:

“The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having regard to uncertainties, for instance, that the widow might have again married and thus ceased to be a dependent, and other like matters of speculation and doubt.”

[24.] The Plaintiff goes on to submit that the deceased was her sole provider, and had made plans for her future, so that she is entitled to recover a portion of his future earnings based on her financial dependency. She says that the amount to be recovered should be based on his earnings of \$20,800 per annum from the Defendant Company, as well as earnings from side jobs of \$10,000 per year, based on the evidence of Fallon Beckford that she and the deceased earned \$500 to \$1,000 per month from side jobs involving electrical work.

[25.] The Plaintiff further submits that she is entitled to the sum of \$250 per week, which was minimum wage at the time, to compensate for the services provided to her by the deceased, namely transportation and maintenance of the home, for a total of \$13,000 per annum. When this sum is added to the sum for financial dependency, the Plaintiff submitted that the sum of \$33,533 should

be awarded for a period of five years from the date of the death, as the Plaintiff was 17 years old at the time, and should be compensated at least until the age of 22, to account for the expected tertiary education which had been planned. It is further submitted that no discount should be awarded, as the deceased was the sole surviving parent and solely responsible for the welfare of the Plaintiff, that no regard should be had to any assistance provided by other relatives, and that interest should be awarded from the date the writ was filed. It was therefore submitted that the Plaintiff should be awarded the sum of \$167,665 with interest and costs.

DEFENDANT'S SUBMISSIONS

[26.] The Defendant accepts that it owed a duty of care to the deceased, but denies that there was any breach of that duty. It submits instead that the deceased was properly qualified and trained, and that a safe system of work was provided. In particular, the Defendant submits that the truck was appropriate to the task, and was properly inspected and serviced, and that the deceased was provided with the necessary personal equipment to enable him to safely perform the required tasks, and that both he and Fallon Beckford were properly trained by GBPC, who accepted them as qualified for the job.

[27.] In support of that position, the Defendant cites the case of **Rolle v Bahamas Electricity Corporation [2016] 2 BHS J. No. 166**, in which the plaintiff was injured while using a bucket truck to install a street light. In that case the Defendant company was held not to be liable, with the Court concluding that the Plaintiff was properly trained and equipped, and under an equal duty to ensure that he carried out his work cautiously to prevent incidents.

[28.] The Defendant also cites the cases of **Ferguson v Grand Bahama Power Company Limited Supreme Court Action No. COM/lab/FP No. 2 of 2005**, and **Adrianna Thompson v Clearview Management Ltd. d/b/a Sandals Grande Emerald Bay Supreme Court Action No. CLE/gen/01031 of 2016**, and submit that an employer is not required to guard against every eventuality, and that an employer is also entitled to expect an experienced employee to take reasonable care, and guard against incidental risks.

[29.] The Defendant goes on to submit that even if there was a breach of duty, there is no evidence that that breach caused the harm to the deceased, and rely on the case of **Miguel Fernander v Neptune Watertoys Limited d/b/a Blue Adventures [18 March 2020] 2013/CLE/gen/00180** in which the learned Charles J, having considered the law with respect to the issue of causation, said the following:

[87] It is trite law that a Plaintiff must demonstrate that the breach of duty was, as a matter of fact, the cause of the damage. In **Barnett v Chelsea and Kensington Hospital**

Management Committee [1969] 1 Q.B. 428, Nield J. confirmed the burden of proof in causation rests solely on the plaintiff. At page 438, he stated:

“...I am of the view that the onus of proof remains upon the plaintiff, and I have in mind (without quoting it) the decision cited by Mr. Wilmers in **Bonnington Castings Ltd v Wardlaw [1956] A.C. 613**.

...

[89] The usual rule for causation is that, in order to recover damages for negligence, a claimant must prove that “but for” the defendant’s wrongful conduct he would have not sustained the harm or loss in question. In **Clerk & Lindsell on Torts, 20th Ed.** the learned authors explained the premise of the “but for” test at paragraph 2-09:

“The first step in establishing causation is to eliminate irrelevant causes, and this is the purpose of the “but for” test...The “but for” test asks: would the damage of which the claimant complains have occurred “But for” the negligence (or other wrongdoing) of the defendant? Or to put it more accurately, can the claimant adduce evidence to show that it is more likely than not, more than 50 per cent probable, that “but for” the defendant’s wrong-doing the relevant damage would not have occurred. In other words, if the damage would have occurred in any event the defendant’s conduct is not a “but for” cause.”

[30.] The Defendant therefore submits that in the absence of evidence of causation, they cannot be held liable for the death of the deceased.

[31.] On the issue of quantum, the Defendant contends that a Plaintiff under the *Fatal Accidents Act* is entitled to be compensated for the loss of financial dependency, and submit that the value of the loss of dependency is to be determined by calculating the value of the dependency and multiplying it by the number of years of dependency.

[32.] In the instant case, the Defendant submits that the only evidence led of the income of the deceased is to be found in a pay slip, which indicates that the deceased was paid \$730.00 over an 8 day period in 2016, which they say works out to \$91.25/day, which equates to \$465.25/week or \$23,725.00/year. That figure, it is submitted, should be subject to a reduction by 33%, on the basis of the authority of **Greene v Colebrooke [2014] 1 BHS J. No. 26**, in which the Court concluded that where the deceased leaves behind children but no spouse, it can be construed that a deceased will spend 33% or one-third of their income on themselves and two-thirds of their income on their dependent children, so that the most that can be awarded to the Plaintiff in this case is the sum of \$15,895.75 per year. While there is also a contention that the deceased earned significant sums from side jobs, the Defendant submits that there is no evidence to support this, so the Court should have no regard to this aspect of what is being sought.

[33.] The Defendant further submits that the amount that could be awarded should be multiplied by the number of years that the Plaintiff would have been dependent on the deceased. This would normally be until the age of majority. While the Plaintiff has suggested that there was an intention for her to pursue tertiary education, the Defendant submits that there is no evidence to support this, and rely on the case of **Corbett v Barking, Havering and Brentwood Health Authority [1991] 2 Q.B. 408** to urge that the Court should estimate the chance of the Plaintiff pursuing tertiary education, and increase the period of dependency accordingly. As the Plaintiff was 17 at the time of the death, and in the absence of any substantial evidence of the intention to pursue tertiary education, the Defendant submits that a generous period would be 2 years, so that even if the Court determines that the Defendant is liable for the death of the deceased, the most the Plaintiff should be awarded is the sum of \$15,895.75 multiplied by 2 for a total of \$31,791.50.

[34.] The Plaintiff also seeks compensation for bereavement and for funeral expenses. On these claims, the Defendant simply submits that there is no evidence of the payment of funeral expenses or the amount, and, relying on **Wilchcombe et. al. v Princess Margaret Hospital et. al Supreme Court Action No. 1309 of 1996**, the Defendant submits that no award can be made in claims under the Fatal Accidents Act for bereavement.

DISCUSSION

[35.] In addressing the applicable first principles relating to negligence, the Court is guided by the decision of the English Court of Appeal in **Barber v Somerset County Council [2002] 2 All ER 1**. Although that case concerned psychiatric injury, the Court's exposition of the foundational elements of negligence is of general application. The Court stated:

“Several times while hearing these appeals we were invited to go back to first principles. Liability in negligence depends upon three inter-related requirements: the existence of a duty to take care; a failure to take the care which can reasonably be expected in the circumstances; and damage suffered as a result of that failure. These elements do not exist in separate compartments: the existence of the duty, for example, depends upon the type of harm suffered. Foreseeability of what might happen if care is not taken is relevant at each stage of the enquiry. Nevertheless, the traditional elements are always a useful tool of analysis, both in general and in particular cases.”

[36.] The Court in **Barber** went on to consider the extent of an employer's duty, observing that the standard is one of reasonableness rather than perfection. The Court stated:

“What then is it reasonable to expect the employer to do? His duty is to take reasonable care. What is reasonable depends, as we all know, upon the foreseeability of harm, the magnitude of the risk of that harm occurring, the gravity of the harm which may take place, the cost and practicability of preventing it, and the justifications for running the risk: see the oft-quoted

summary of Swanwick J in **Stokes v Guest, Keen Nettlefold (Nuts and Bolts) Ltd [1968] 1 WLR 1776**, at p 1783D-E.”

[37.] These principles reflect the well-established position that, in cases involving employers, the duty of care is not one of strict liability. Both at common law and under section 4 of the *Health and Safety at Work Act*, the employer’s obligation is to take such steps as are reasonably practicable to ensure the safety of its employees. The law does not require elimination of all risk, particularly where the work undertaken is inherently hazardous.

[38.] In this case there is no dispute that a duty of care exists. The dispute lies in the remaining elements of liability. The issues which this Court must therefore determine are:

- a. Whether the Defendant breached its duty, whether at common law or under section 4 of the Act;
- b. If so, whether any such breach caused or materially contributed to the death of the deceased; and
- c. Whether the death was caused wholly or partly by the acts or omissions of the deceased himself.

Alleged Mechanical Defects and Control of the Bucket

[39.] In the Statement of Claim, the Plaintiff claims that the Defendant caused the deceased to come into contact with live wires, maneuvered the boom truck in such a manner that it exposed the deceased to coming into contact with the said live wires, and failed to ensure that the boom truck was in good working order. On the evidence which I accept, the deceased was himself maneuvering the boom alone, so I do not find that the Defendant or another of its employees caused the deceased to come into contact with the live wires. Further, I accept the evidence that the truck was regularly inspected, approved by Grand Bahama Power Company, functioned without incident for approximately six (6) months prior to the accident, and there is no evidence that the truck was not in good working order. Accordingly, I do not accept the Plaintiff’s contentions and I find no breach on these grounds.

Training, Qualification, and System of Work

[40.] The Plaintiff also alleges that the deceased was not properly qualified and trained to work safely in proximity to high-voltage lines and that the Defendant therefore failed to provide a safe system of work. I do not accept this contention. On this issue, the evidence of Recardo Williams, the Plaintiff’s witness, establishes that the deceased was trained in electrical installation beginning in high school in 1977, and continuing with the City & Guild’s electronic and electrical installation exam, and proceeding to the College of the Bahamas, where the deceased received a certificate in Electronic and Electrical Installation. The evidence is also that the brothers worked in that field

for many years, and Recardo's witness statement indicates that the deceased worked on household and industrial electrical projects, and always displayed compliance with the necessary safety protocols. With respect to employment on the project in question, Recardo's evidence is that he and his brother completed a three day safety training program, and that a safety briefing was held the morning of the incident. Finally, according to Fallon Beckford, she and the deceased had adjusted or repositioned thousands of light fixtures while working on the project, and the Incident Investigation Report indicates that 18 such tasks had been performed by this team just on the day of the incident.

[41.] On this evidence, which I accept, I am satisfied that the deceased was properly qualified and trained for the task of adjusting or repairing street lights, which is what the contract entailed, and what he was supposed to have been doing at the time of the incident. I also accept that the deceased was properly outfitted with the necessary equipment, and there is no evidence that a lack of equipment or a failure of equipment contributed in any way to the incident. While much has been made of the training indicated by Chad Bartlett as necessary to progress through the various ranks of lineman, I do not find that a failure to progress in that manner must mean that the deceased was not properly trained and qualified, given his years of experience, his technical training, and his on the job experience. In fact, on the evidence of Mr. Bartlett, a trainee lineman is able to perform certain tasks alone, while a lineman 2 or 3 is qualified to work on high voltage lines. I bear in mind that the assignment in this case was not to work on high voltage lines, but to adjust night lights, so that a person with the extensive experience indicated by Mr. Bartlett to progress through the necessary categories of lineman was not necessary for these particular tasks.

Minimum Approach Distance and Risk Assessment

[42.] Turning then to the issue of minimum approach distances and risk assessment, Mr. Bartlett testified that the minimum approach distance to the high voltage line for a qualified person is 3 feet 11 inches. In this case, measurements in the Incident Investigation Report indicate that the distance from the top of the night guard to the high voltage wire was 4 feet 2 inches; greater than the minimum safe approach distance. There was in my view nothing in the nature of the task that took it outside the parameters of one that the deceased should have been able to safely perform. What is clear is that the deceased had been trained not to encroach upon the minimum safe distance, and to reject tasks that were not safe, and that he was himself operating the bucket of the truck. Having examined the photographs in the Incident Investigation Report, I find that there was nothing inherently unsafe about the task itself and there is in my view simply no explanation for why the deceased maneuvered the bucket so far above the night guard light as to come into contact with the high voltage wire, into a position he had been trained to avoid, other than his own inadvertence.

Role of the Ground Hand

[43.] A major issue in this case is the evidence of Mr. Bartlett that the ground hand, viz., Ms. Beckford, should warn the person in the bucket of any danger of encroaching upon the minimum approach distances to the high voltage wire, and that the ground hand should take control of the bucket to prevent such encroachment. While the Incident Investigation Report indicates that the ground hand did shout a warning, the evidence of Ms. Beckford is that she did not shout a warning, and she did not recall telling anyone that she did warn the deceased. Her evidence is further that she did not see that the deceased was approaching the high voltage line, and that from where she was standing it did not look like he was close to that wire.

[44.] While I accept that the ground hand should warn the person in the bucket of impending danger, this presupposes an apprehension of a risk. There is also no evidence of how quickly the incident happened. Ms. Beckford, to my mind, was a credible witness who appeared to be deeply hurt by the death of a person who was clearly her mentor. I accept her evidence that she did not see a risk and that the deceased did not appear to her to be close to the high voltage line.

[45.] However, I must consider whether the failure of Ms. Beckford to see that the deceased was approaching the high voltage line must mean that she failed in her duty. In **Blyth v. Birmingham Waterworks (1856) 11 Exc 781, 784** negligence is defined as “the omission to do something which a reasonable man, guided upon “those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.”

[46.] In this case the question must therefore be whether Ms. Beckford failed to do something which a reasonable man would do. That reasonable man would have the facts as observed by Ms. Beckford in consideration. One factor is that there is no evidence in this case of how quickly the incident happened, which would have a bearing on the ability to warn before the unfortunate incident occurred, but it is clear that the ground hand was on the ground looking up, while the deceased, who is reported to have been well over six feet tall, was up in the bucket, with the wire above him. Given those angles, I again accept Ms. Beckford’s evidence that the deceased did not appear to be close to the wire, so that her failure to warn does not in my view amount to a breach of her duty of care to the deceased. I am further constrained to say that even if her failure to warn could be considered a breach of a duty of care, it could not in my view serve to attract liability on the point of causation, as I am satisfied that the deceased was wholly responsible for the incident which led to his demise.

[47.] I am fortified in this view by the case of **Smith v Youth Justice Board for England and Wales and Another (2010) EWCA Civ 99**, a decision of the Court of Appeal of England and Wales in which a youth offender died after being restrained by custody officers. While the Court

found that appropriate review by the authorities would have led to the discontinuance of the particular form of restraint used, the case was decided on the issue of causation. The court said the following:

- “31. What then is the test which we are required to apply to the facts I have outlined? It is today well established that causation is in essence a question of fairness. Lord Justice Laws in his judgment in **Rahman v Arearose Ltd [2001] QB 351**, §33, (cited with approval by Lord Bingham in **Fairchild v Glenhaven Funeral Services Ltd [2002] UKHL 22**, §12) explained the issue as one of responsibility. In **Spencer v Wincanton Holdings Ltd [2009] EWCA Civ 1404**, §15, I said that a succession of consequences which in fact and in logic is infinite will be halted by the law when it becomes unfair to let it continue. Lord Bingham had lucidly explained why in **Corr v IBC Vehicles Ltd [2008] UKHL 13**, §69–70.
32. Factual causality, it follows, is the first but not the only step. Applying it here, there is no doubt that but for the sanctioning by the Home Office of SDE as a means of restraining young offenders, none of this would have happened. But the second step is to ask to what point the state ought in fairness to be regarded as responsible, and so held liable for the sequence of consequences.”

[48.] The Court went on at paragraph 36 to say the following:

36. “None of this necessarily represents a finding of legal culpability against the appellant or her colleagues: that is not the purpose of the present inquiry. Its purpose is to decide whether it can be fairly said that responsibility for Gareth's death (and hence for its effect on the appellant) rests anywhere but on those who brought it about, one of whom was the claimant. Although, for reasons I have given, no credit goes to the Home Office for having kept in being the system of restraint which enabled the tragedy to occur, its actual occurrence was the responsibility of the appellant herself, albeit with others. It would be rightly regarded as unjust if she were to recover damages for its effect on her.”

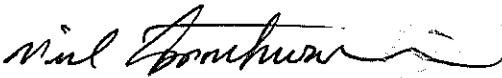
CONCLUSION

- [49.] Section 4 of the *Health & Safety at Work Act* imposes a duty on employers to ensure safety so far as is reasonably practicable. This is a qualified, not absolute, obligation. The Plaintiff bears the burden of proving that the Defendant failed to take reasonably practicable steps and that such failure caused the injury complained of.

[50.]

Having considered this matter, I am satisfied on the balance of probabilities that the Defendant provided a safe system of work, and did everything that was reasonably necessary to ensure the health, safety, and welfare of the deceased while at work. It has been acknowledged by all that this is a tragic case, as the Plaintiff has lost a father with whom she was extremely close. But tragedy does not mean that someone must be responsible, and must pay. In all the circumstances of this case, I do not find the Defendant liable for the death of the deceased, as it would in my view be unfair to hold the Defendant responsible, even vicariously, for an act which was caused by the failings of the deceased. The claim is therefore dismissed, with costs to the Defendant to be assessed by the Court on the papers if not agreed.

Dated this 18th day of February, A.D. 2026



Neil Brathwaite
Justice

