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*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

**ICOS No:**

**Delivered: 20/04/2024**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION**

**BETWEEN:**

**ALAN J CONCARR**

**Plaintiff;**

**and**

**MONTRACON LTD**

**Defendant.**

**Mr Michael McCrea BL (instructed by Donnelly and Kinder Solicitors)  
on behalf of the Plaintiff**

**Mr Thomas Fitzpatrick BL (instructed by McCartan, Turkington & Breen Solicitors)  
on behalf of the Defendant**

**ROONEY J**

***The Facts***

[1] The plaintiff was born on 19 April 1949 and is now aged 74. From 1983 to 2020, the plaintiff was employed by the defendant as a fitter in a large, often cold warehouse, fabricating lorry trailers using a variety of handheld vibrating tools including air-grinders, air-drills, impact wrenches, torque guns and sanders. The plaintiff's case was that during his 37 years employment with the defendant, he would have used a variety of the said handheld vibrating tools every working day and that usage would be dependant upon the nature of the fabrication required to a large selection of trailers.

[2] During the course of his employment with the defendant, the plaintiff claimed that he was required to fit out the bare chassis of a trailer, to include the provision of electrics, lights, wheels, brake systems and hydraulic systems. The size of the trailers varied, to include extendable trailers. The nature of the work to each trailer also varied, for example to include the fitting of stanchions. During this lengthy period of employment with the defendant, the plaintiff's evidence was that there have been significant changes in technology corresponding with an increase in

the equipment fitted to the trailers. Consequently, depending upon the equipment and systems to be fixed to each trailer, the use of handheld vibrating tools increased. Since the commencement of his employment in 1983, the plaintiff worked for 5-6 years on his own. For the next 10-12 years, the plaintiff worked in the company of another operative. Eventually, the plaintiff was part of both three and four person teams.

[3] The plaintiff claimed that he would normally work 40 hours per week. However, on many occasions he worked overtime. By way of an exceptional example, during the 1990s for a period of 5 months, the plaintiff's evidence was that he worked 7 days per week.

[4] The plaintiff provided a detailed description of the handheld vibrating tools to include air-drills, air-grinders, impact wrenches, heavy duty torque guns, orbital and belt sanders and air-ratchets. The variety of the said handheld vibrating tools was identified by the plaintiff in photographs taken by Mr McGill, Consulting Engineer.

[5] The plaintiff described in detail a selection of the tasks in which he would be required to use the said vibrating tools. He indicated that he would use the air-drills, air-ratchets and air-grinders every day. The total usage in any particular day depended upon the nature of each working operation. For example, if he was fixing stanchions to a trailer, he would use an air-grinder and estimated that such a task would normally take approximately 2 hours. In respect of the air-drills, the plaintiff estimated usage (trigger times) between 10 minutes to two hours per day. He estimated 45 minutes to one hour in respect of the impact wrench, 15 minutes to 30 minutes using the air-ratchet and 45 minutes using the torque gun. When it was necessary to use the larger air gun, he estimated 10-15 minutes per day. In respect of the orbital and belt sander, trigger times varied from 10 minutes to two hours per day.

[6] According to the plaintiff, at no stage during his employment did he receive any specific health and safety advice or training from his employer on the risks of vibration at work or Vibration White Finger (VWF) or vascular Hand Arm Vibration Syndrome (HAVS). In addition, he was unaware of any risk assessments. The said failings have been accepted by the defendant. The significance of these failings with regard to liability will be considered in more detail below.

[7] The plaintiff stated that in or around 2017, he became aware of symptoms of episodic discolouration, associated with numbness and pain, affecting fingers on both hands. The symptoms were noticed at work when using handheld vibrating tools, often in cold environmental conditions. The plaintiff reported his symptoms to the defendant during occupational health surveillance in 2017.

[8] The court was provided with occupational health surveillance/medical assessment reports completed by the defendant in respect of the plaintiff from 2016

onwards. Notably, the defendant failed to carry out any occupational health surveillance prior to 2016. On 27 September 2016 during the occupational health surveillance, the plaintiff did not report any complaints or display any symptoms associated with using vibrating tools.

[9] The occupational health surveillance dated 28 September 2017 confirms the plaintiff's evidence that, on this date, he did report symptoms associated with the use of vibrating tools. Following the health surveillance and medical assessment the plaintiff was recommended for Tier 3 HAVS (Hand Arm Vibration Symptoms). This referral did not take place.

[10] A further occupational health surveillance was carried out on 2 October 2018. Once again, it was recommended that the plaintiff should be referred for a Tier 3 assessment and that vibration exposure should be reduced so far as was reasonably practicable. It was also recommended that the defendant should commence a review of the current risk assessments and control measures.

[11] On 22 January 2019, a Tier 3 assessment was carried out on the plaintiff. The outcome of the assessment provided that, pursuant to the Control of Vibration at Work Regulations (Northern Ireland) 2005, potential symptoms of concern were identified with regard to the plaintiff thereby requiring escalation to a Tier 4 assessment with an occupational physician. A specific note attached to the certificate specifies that it was the employer's responsibility to initiate any review or further assessment appointments for the employee.

[12] On 16 April 2019, a Tier 4 assessment was carried out by Dr Gardiner. The certificate provides that Dr Gardiner made a formal diagnosis of HAVS and that the diagnosis was required to be reported to the HSENI under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997 ('RIDDOR'). Dr Gardiner also directed that the plaintiff should be redeployed from exposure to handheld vibration tools to a role that did not involve the use of such tools. It is significant that, despite the diagnosis made by Dr Gardiner and the recommendation that the plaintiff be redeployed, the defendant returned the plaintiff to his previous duties and continued exposure to handheld vibrating tools. The evidence is clear that despite the medical input from Dr Gardiner in April 2019, the plaintiff remained employed in the same cold environment, carrying out his usual duties using the said handheld vibration tools until a risk assessment on 19 September 2019. Following the said risk assessment, the plaintiff was not permitted to use any vibrating tools.

[13] The plaintiff continued in his employment until April 2020 when he accepted an offer of voluntary redundancy. The plaintiff maintains that he only accepted voluntary redundancy because he considered himself to be a hindrance and a burden to his work colleagues, in that he was not permitted to use vibrating tools. As a result, the plaintiff claims that he has lost earnings for a period of three years, up until March 2023 when he received a diagnosis of leukaemia. The total loss of

earnings claimed is a sum of £29,764.25. This figure was not disputed by the defendants, although the liability to pay the amount was contested.

### *The claim*

[14] The plaintiff's claim is based on negligence and breach of statutory duty, namely failure to comply with the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993, the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999, the Management of Health and Safety at Work Regulations (Northern Ireland) 2000, and the Control of Vibration at Work Regulations (Northern Ireland) 2005.

[15] The date of knowledge as to the possible damaging effects of operating hand-held vibratory tools is generally considered to be in the mid-1970s (see *Doherty v Rugby Joinery (UK) Ltd* [2004] EWCA Civ 147 per Hale LJ at para [40]): see also the cases cited in Munkman, *Employers' Liability* 17<sup>th</sup> Edition paras 17.11-17.22). In this case, no issue was raised in the pleadings or in the evidence to suggest that the date of knowledge was in issue. Rather, the defendant admits to the fact that the plaintiff did use vibrating tools but denies that he was exposed to vibration during periods of excessive duration and frequency so as to cause injury. The defendant, therefore, takes issue with the level of exposure claimed by the plaintiff. However, the defendant did not allege that during the periods of exposure to vibration, it was not reasonably foreseeable that the plaintiff might suffer HAVS if overexposed to vibration from the tools used during the working operations.

[16] The plaintiff alleges that the defendant had the requisite knowledge of the risk of injury from the usage of handheld vibration tools and is liable to pay damages for causing the plaintiff's injury due to the negligent exposure to harmful vibration throughout his employment which began in 1983. To reiterate, a case was not advanced on behalf of the defendant that it did not have actual knowledge of the dangers of HAVS or VWF and the necessity for taking precautions and safety measures. Evidence was not called by the defendant that no complaints were received from their workforce about HAVS or VWF during the course of the plaintiff's employment.

[17] In his evidence, Mr McGarry, Consulting Engineer on behalf of the defendant, stated that from at least 1994, following the HSE publication providing guidance on VWF entitled "Hand-arm Vibration," the defendant could reasonably be expected to be aware of the risks and possible damaging effects of operating hand-held power tools.

[18] Pursuant to the Social Security (Industrial Injuries) (Prescribed Diseases) (Northern Ireland) Regulations 1986, vibration wide finger was prescribed for, inter alia, industries involving the use of hand-held rotary tools in grinding and in the sanding/polishing of metal.

[19] Turning to the pleaded breaches of statutory duty in the Statement of Claim, contrary to Order 18 Rules of the Court of Judicature (NI) 1980, the defendant pleads a general denial of any liability. The court has on many occasions expressed its strong disapproval as to the lack of specificity in pleadings. The defence fails to consider each and every pleaded breach of statutory duty and to respond in detail to the allegations made. Rather, the defence makes some general allegations that the plaintiff was provided with proper and adequate instruction, health and safety training regarding the symptoms of hand-arm vibrations syndrome and advice to avoid exposure to vibration wherever possible. The defence also pleads that any symptoms should have been reported to the defendant's supervisors and that, inter alia, the plaintiff was required to keep his hands warm and to wear any gloves provided. It is also pleaded that the plaintiff was required to take regular breaks when using vibratory hand-held tools and that he was subject to regular health surveillance. The court assumes that the defence was drafted on the instructions of the defendant.

[20] Discovery provided by the defendant revealed that, contrary to the said allegations in the defence, the plaintiff did not receive any instruction and training in and about the use of hand-held vibrating tools. Nor was he instructed and warned as to the risks of over exposure to vibration and the risks of developing hand-arm vibration syndrome (HAVS). No advice or instructions were given to the plaintiff regarding the reporting of symptoms to supervisors and the requirement to take regular breaks when using vibratory hand-held tools. No risk assessments were carried out. Prior to 2016, the plaintiff was not subjected to regular health surveillance and assessment. The defects in the pleadings are not acceptable.

[21] Mr Fitzpatrick, counsel for the defendant at the hearing, did not draft the defence. The court was told that he received instructions on the day before the hearing. Significantly, having reviewed the discovery and presumably on instructions from the defendant, during the course of the evidence Mr Fitzpatrick conceded that the defendant was in breach of each of the said statutory provisions and, in particular, the Control of Vibration at Work (Regulations) (Northern Ireland) 2005. In my view, Mr Fitzpatrick was correct to make these admissions. The ambit and relevance of the 2005 Regulations will be considered in more detail below.

### *The Medical evidence*

[22] Medical reports were obtained on behalf of the plaintiff from Dr Gary Wright, Consultant Rheumatologist and Professor Denis Harkin, Consultant Vascular Surgeon, on behalf of the defendant. Both medical experts agree that, on the balance of probabilities, the plaintiff suffers from the vascular component of hand/arm vibration syndrome which has been caused by prolonged occupational exposure to hand-held vibrating tools. The plaintiff reported to Professor Harkin that he had no history of primary Raynaud's Phenomenon prior to exposure to occupational vibration. The plaintiff told Professor Harkin that he had periodic blanching of the affected fingers affected by cold, loss of sensitivity and painful throbbing on return

of blood circulation (vibration white finger). The history provided indicated two-phase colour changes in his fingers in response to cold exposure, namely blanching (whiteness) and rubor (redness). On examination the upper limb large and medium size vessels were satisfactory and there were no objective signs of acute or chronic ischaemia (trophic change).

[23] In his report, Professor Harkin stated as follows:

- “42. By consensus subjective symptoms reporting of Raynaud’s phenomenon along with a consistent history of long-term exposure to vibrating hand tools is sufficient to make the diagnosis of Hand/Arm vibration syndrome (HAVS). In fact, a history of Raynaud’s phenomenon provided by the worker has been described as the “gold standard” and is the basis of the most commonly used severity grading scale for vibration-related vascular disorders, the Stockholm Workshop Classification Scale.
43. On balance, the most likely diagnosis is secondary Raynaud’s phenomenon as part of the Vascular Component of Hand/Arm vibration syndrome (HAVS) caused by excessive exposure to occupational hand transmitted vibration, I would classify him as 2V Early [occasional distal and middle (rarely prox) one/more fingers usually a blanching score of 5-9] for both hands.
- ...
45. It is my opinion much less likely that he has primary Raynaud’s Phenomenon or secondary Raynaud’s Phenomenon caused by an as yet undiagnosed autoimmune or connective tissue disorder, but if new evidence emerges when a rheumatology assessment finally occurs I would reserve the right to amend my opinion based on new evidence.
46. He would be advised to avoid all further occupational hand transmitted vibration exposure. I would expect his hand symptoms should not deteriorate further now that he is no longer exposed to hand-transmitted vibration but now three years after cessation for vibration exposure it is unlikely, they will fully resolve and it is likely that he will continue to have some hand symptoms

long term and these may be triggered by cold exposure and that will impact on his employability in his previous trade and similar trades.”

[24] In summary, the medical experts agree that the plaintiff’s diagnosis of HAVS has been caused by excessive exposure to occupational handheld vibrating tools.

### *The Control of Vibration at Work Regulations (Northern Ireland) 2005*

[25] Regulation 4 of the 2005 Regulations sets a daily exposure limit value (ELV) of  $5\text{m/s}^2$  and a daily exposure action value (EAV) of  $2.5\text{m/s}^2$ . The daily exposure limit value is the maximum amount of vibration an employee may be exposed to on any single day (see regulation 6(4)). The daily exposure value is the level of daily exposure to vibration about which an employer is required to take certain actions to reduce exposure (see regulations 6(2), 7(1)(b) and 8(1)(b)).

[26] Regulation 5 of the Control of Vibration at Work Regulations (NI) 2005 provides for an evaluation of risk from vibration including assessment, and, if necessary, measurement of exposure. In essence, the risk assessment should identify the measures that are available to combat the risk from vibration. Exposure assessment will determine actions which are necessary according to the daily exposure action and the daily exposure limits. The Regulations require action wherever risk is identified and where exposure is likely to exceed the exposure action value.

[27] The risk assessment is designed to consider the magnitude, type and duration of vibration, including intermittent vibration. Although the exposure limit value establishes a maximum allowable exposure, employers are still required to reduce the exposure to the lowest level reasonably practicable (see regulation 6(2)). This should be the primary objective, whether or not the exposure limit value is exceeded.

[28] The Regulations further require action to identify and eliminate, or at least minimise risk from vibration, wherever risk exists when the exposure action value of  $2.5\text{m/s}^2$  is exceeded. In this regard, it is imperative that the employer selects work processes to avoid or minimise vibration exposure, selects and maintains equipment to prevent increased vibration and ensures that operators have the necessary training and supervision to minimise vibration risk.

[29] Regulation 7 requires the employer to provide suitable health surveillance. Regulation 8 makes provision for suitable and sufficient information, instruction and training to the employee where the risk assessment indicates that there is a risk to health or where other employees are likely to be exposed to vibration above the exposure action.

### *The Evidence of the Consulting Engineers*

[30] Mr McGill, Consulting Engineer, received instructions and gave evidence on behalf of the plaintiff. Mr Megarry, Consulting Engineer, gave evidence on behalf of the defendant. Both engineers had access to the defendant's discovery. Both experts accepted, on the basis of the discovery provided, that the defendant was in blatant breach of its statutory obligations as pleaded in the statement of claim, and, in particular, the Management of Health and Safety Work Regulations (Northern Ireland) 2000 and the Control of Vibration at Work Regulations (Northern Ireland) 2005.

[31] The defendant alleges that, despite its admitted breaches of statutory duty and negligence, the plaintiff has failed to prove causation to the requisite standard. In other words, the defendant alleges that the plaintiff has failed to prove, on the balance of probabilities, that he was exposed to vibration levels above a daily exposure limit value (ELV) of  $5\text{m/s}^2$  and a daily exposure action value (EAV) of  $2.5\text{m/s}^2$  as set by the Control of Vibration at Work Regulations (Northern Ireland) 2005.

[32] As summarised above at paras [4]- [6] above, during the course of his employment with the defendant, the plaintiff used a selection of handheld vibrating tools, to include air drills, air grinders, impact wrenches, heavy duty torque guns, orbital and belt sanders and air ratchets. In his evidence, the plaintiff described in detail a selection of the tasks he would carry out using the said vibrating tools. He indicated that he would use the air drills, air ratchets and air grinders every day. The total usage in any particular day depended upon the nature of the work. For example, if he was fixing stanchions to a trailer, he would use an air grinder and estimated that such a task would normally take approximately two hours.

[33] During an inspection of the defendant's premises on 13 May 2022, the plaintiff provided the consulting engineers with a short summary of the vibrating tools that he used and an estimation as to usage. As stated above at para [5], in respect of the air drills, the plaintiff estimated usage (trigger times) between 10 minutes to two hours per day. He estimated 45 minutes to one hour in respect of the impact wrench, 15 minutes to 30 minutes using the air-ratchet and 45 minutes using the torque gun. When it was necessary to use a larger air gun, he estimated 10-15 minutes per day. In respect of the orbital and belt sander, trigger times varied from 10 minutes to two hours per day.

[34] Based on the said summary provided by the plaintiff, Mr McGill provided two vibration exposure calculations, namely a maximum and a minimum trigger time exposure.

[35] Following cross-examination by Mr Fitzpatrick BL, Mr McGill accepted that his estimated maximum trigger time exposure was unrealistic. This concession was correctly made. However, Mr McGill's evidence was that, based upon a daily estimated minimum exposure time of one hour and 22 minutes, the trigger times

exceeded the daily exposure action value (EAV) of  $2.5\text{m/s}^2$  and probably the daily exposure limit value (ELV) of  $5\text{m/s}^2$

[36] For the avoidance of any doubt, although the nature and extent of the plaintiff's exposure to vibration would vary during every working day, I accept that the estimated minimum exposure of one hour and 22 minutes relates to trigger time. I also accept that the plaintiff was subjected to at least the said estimated minimum exposure. For the reasons given below, the defendant failed to produce any evidence which, in my judgment, contradicted this assessment and the estimated exposure time.

[37] With the exception of a limited assessment carried out by the defendant in 2018, the evidence was unequivocal that the defendant has failed to carry out any trigger time assessment of each and every vibration tool used by the plaintiff during the course of his employment. Despite the defendant's blatant failure to comply with its statutory obligations, it sought to rely upon this assessment in 2018 in an attempt to persuade the court that the plaintiff was not exposed to excessive vibration. The 2018 trigger time assessment was carried out in respect of only three tools. The daily exposure results calculated for one operator using the air tools revealed that the operator was above the exposure action value (EAV) limit for a day ( $2.5\text{m/s}^2$ ) but had not reached the exposure limit value (ELV) at  $5\text{m/s}^2$ . Work carried out in teams of four, which would share the workload and exposure, still revealed that the EAV limit had been breached. Significantly, it was recorded that "further assessments of the wire and pipe process is needed to further clarify individual exposure levels."

[38] I reach the following conclusions in respect of the 2018 trigger time assessment. Firstly, the assessment was limited to only three of the tools which would have been used by the plaintiff. The defendant failed to provide any trigger time assessments in respect of all the tools used by the plaintiff at varying times over the course of his employment, despite the fact that the tools remain in usage. It is significant that one of the tools identified by the plaintiff (and not subject to the 2018 assessment) had previously been condemned by the defendant as emitting excessive high levels of vibration. This detail emanated from the evidence of Mr Booker. It is significant that both engineers accepted that the older the tools the greater the degree of vibration that would be emitted without proper maintenance. The court takes into consideration that the defendant failed to provide any documentation or call any evidence relating to the maintenance of the tools used.

[39] I totally reject Mr Fitzpatrick's interpretation of the exposure results which, he claims, would reduce the EAV limit to below  $2.5\text{m/s}^2$ . The document specifically provides that the daily exposure results calculated for one operator breached the EAV limit. Furthermore, despite the results and the recommendation for further clarification of individual exposure levels, it is abundantly clear that the defendant failed to carry out further and more comprehensive trigger time assessments in respect of each and every tool used by the employees of the defendant. By not doing

anything about assessing and reducing the vibration levels of the handheld tools, the defendant materially increased the risk that the plaintiff would suffer from HAVS.

[40] In summary, I found the plaintiff to be an honest and genuine witness. He has an extensive and exemplary work record with the defendant for a period of 37 years. No criticism can be levelled at the plaintiff regarding his estimation as to the time he claims he spent using the said tools. It is axiomatic that the trigger times will vary depending upon the task in question, the works to be carried out to the said trailer and, of course, the variety of the vibrating tools. One thing is clear, namely during an average eight-hour day, the overall trigger time when using the variety of handheld vibrating tools could potentially be significant.

[41] The defendant called evidence from a number of witnesses, namely Derek Brown, Joe Hanna and David Booker. The evidence of these witnesses was limited and generally of little assistance. Derek Brown was employed by the defendant as a Health and Safety Officer from 2016 to 2018. In his evidence, he confirmed that although he was aware of the Control of Vibration at Work Regulations (NI) 2005, he had never read them. He had limited knowledge of the EAV levels and the steps to be taken if the levels had been exceeded. He was unable to provide any information in relation to health surveillance and risk assessments. He stated that he left his employment towards the end of November 2018.

[42] Joe Hanna was employed by the defendant from February 2016 to September 2019. Initially, he worked as a production manager and thereafter as the factory manager. He stated that he had an actual knowledge of the work carried out by the plaintiff and stated that he was familiar with the tools. Without the benefit of any supporting documentation, Mr Hanna challenged the trigger times as stated by the plaintiff.

[43] In cross-examination, Mr Hanna was referred to the health surveillance documents dated 2016 and 2017. Significantly, he stated that these documents and the referrals for Tier 3 HAVS assessments were never brought to his attention. Furthermore, regarding the occupational health surveillance carried out in 2018, he stated that he would have expected the recommendations to have been carried out. In relation to the assessment carried out by Dr Gardiner, he stated that he had no knowledge that there was a mandatory requirement to report to the HSENI. He also confirmed that he had no knowledge of any risk assessments.

[44] David Booker is a Health and Safety Officer. A significant aspect of Mr Booker's evidence was that he was not aware of any risk assessments having been carried out for the premises in question. Also, he confirmed that a certain handheld vibration tool used by the plaintiff emanated "high level vibration" at a figure between 10-15m/s<sup>2</sup>. He stated that he ensured that this tool was removed. Clearly, this did not remain the situation as the tool still remains available to the plaintiff and to other employees.

[45] The evidence of the said witnesses confirms my view that the defendant failed in its statutory obligations, it failed to provide a proper system for detecting and preventing prolonged occupational exposure to vibration tools and it failed to carry out any risk assessments. When health surveillance was implemented, the defendant failed to refer the plaintiff for further investigations and continued to expose him to the risk of injury.

### *Causation*

[46] The principles of causation in VWF cases were considered by the Court of Appeal in *Brown v Corus (UK) Ltd* [2004] EWCA Civ 374 at paras [35]-[50]. The Court of Appeal's analysis was based on the classic consideration of causation in industrial diseases case law as set out in *Bonnington Castings v Wardlaw* [1956] All ER 615, *McGhee v NCB* [1972] 2 All ER 1008 and *Fairchild v Glenhaven Funeral Services Ltd* [2003] 1 AC 32. The so-called "but for" test was explained by Lord Nicholls in *Fairchild* as follows:

"37. In the normal way, in order to recover damages for negligence, a plaintiff must prove that but for the defendant's wrongful conduct he would not have sustained the harm or loss in question. He must establish at least this degree of causal connection between his damage and the defendant's conduct before the defendant will be held responsible for the damage.

[47] In *McGhee*, the plaintiff suffered from dermatitis which was admitted to be attributable to his working conditions. The breach of duty relied on was the failure of his employer to provide adequate washing facilities. The claim initially failed because the trial judge was not satisfied that the plaintiff had shown on a balance of probabilities that the said breach of duty caused or materially contributed to his injury. On appeal, it was held that although the medical evidence could not establish that if the plaintiff had been able to wash immediately in showers provided by his employers he would not have contracted the disease, in the absence of complete medical knowledge of all the material factors relating to the disease, there was no substantial difference between materially increasing the risk of injury on the one hand and making a material contribution to the injury on the other. There was an admitted breach of duty, and the employers were liable for any injury which they created.

[48] In *Brown v Corus (UK) Ltd* [2004] EWCA Civ 374 at para 48, Scott Baker LJ, referring explicitly to the judgment of the Court of Appeal in *Transco v Griggs* [2003] EWCA Civ 564, stated as follows in relation to causation:

"48. In our judgment, once the position is reached that the respondents were in breach of duty in failing to reduce the vibration levels to which these three appellants

were exposed causation is established on the *McGhee* principle. By not doing anything about vibration levels (and there were a number of things that could have been done) the respondents materially increased the risk that the appellants would suffer from HAVS. Had they taken such steps they would have materially reduced the risk involved. Their failure to do so, in the words of Lord Simon in *McGhee*, made a substantial contribution to the condition from which they suffer. If the respondents should, as in our view they should, have changed their practices this would have reduced the risk that the appellants' condition ceased to be asymptomatic and began to show symptoms. ...

49. We conclude, in the words of Hale L.J *Transco v Griggs*, that it would be an unjust legal system which did not on the evidence advanced on behalf of the appellants and the concessions made by the respondents, hold the respondents responsible for what happened to these three appellants. The respondents did not call evidence to attempt to displace the inference of causation which the *McGhee* principle supports in their cases."

[49] It was the duty of the defendant to investigate and assess the vibration levels in relation to each tool and thereafter, depending on the assessment, to ascertain the risks of injury to the plaintiff. The defendant persisted in its breach of that duty. Having carefully considered the plaintiff's evidence, I accept without reservation that on many occasions he would have used vibrating tools up to a period of two hours per day, and taking into consideration the trigger times, he would have been exposed to a risk of injury from excessive and prolonged vibration.

[50] According to the plaintiff, at no stage during his employment did he receive any specific health and safety advice or training by his employer on the risks of vibration at work or vibration white finger (VWF) or vascular hand arm vibration syndrome (HAVS). No risk assessments were carried out. There has been a deliberate failure by the defendant to carry out its statutory obligations.

[51] For the reasons stated above, during the course of the plaintiff's employment, the defendant persisted in breach of its statutory duties, and in particular a failure to assess and reduce the vibration levels to which the plaintiff was exposed. It failed to provide a proper system for detecting and preventing prolonged occupational exposure to vibration tools and it failed to carry out any risk assessments. As stated in *Brown v Corus (UK)*, by not doing anything about assessing the vibration levels of the handheld tools, the defendant materially increased the risk that the plaintiff would suffer from HAVS. In my judgment, there is clearly a causal connection

between the defendant's wrongful conduct and the plaintiff's injury. Accordingly, the defendant remains liable the plaintiff's injury.

### *Assessment of quantum*

[52] The medical reports obtained on behalf of the plaintiff from Dr Gary Wright, Consultant Rheumatologist and Professor Denis Harkin, Consultant Vascular Surgeon, have been considered at paras [22]-[24] above. The plaintiff continues to experience altered sensation and numbness affecting the tips of his second (index) and third (middle) fingers on both right and left hands. This has been continuous for at least five years. The plaintiff continues to experience these symptoms which are provoked by cold or wet conditions, in which case he experiences episodic discoloration and finds it difficult to do any manual tasks especially outdoors, such as gardening. The plaintiff told Professor Harkin that his symptoms can occur daily in cold weather or in the winter months and are less frequent in the warm weather or summer months. When outdoors in cold conditions he wears warm clothing and gloves when possible.

[53] Professor Harkin advised the plaintiff to avoid all further occupational hand-transmitted vibration exposure. A deterioration in his hand symptoms is not expected. However, these symptoms will not fully resolve, and it is likely he will continue to have hand symptoms in the long term, triggered by cold exposure. This will inevitably impact on his employability.

[54] Having considered the guidelines for the assessment of general damages in personal injury cases (6<sup>th</sup> edition) I will make an award of £30,000 for general damages plus interest.

[55] I also accept that the plaintiff would have continued to work but for the development of the above stated injuries. The plaintiff was plainly a dedicated employee. I am prepared to allow the plaintiff two years' loss of earnings which has been calculated in the sum of £15,724.25 plus interest. Costs to the Plaintiff, such costs to be taxed in default of agreement. I will grant a 3 week stay.