



[2017] JMSC Civ 108

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013 HCV 02045

BETWEEN	AMESHA DELLOP	CLAIMANT
AND	RAINFORD LENNON	1 ST DEFENDANT
AND	KHALEDE HYLTON	2 ND DEFENDANT
AND	JERMAINE SALMON	3 RD DEFENDANT

	AND	
BETWEEN	KHALEDE HYLTON	1 ST ANCILLARY CLAIMANT
AND	JERMAINE SALMON	2 ND ANCILLARY CLAIMANT
AND	RAINFORD SALMON	ANCILLARY DEFENDANT

CONSOLIDATED WITH
CLAIM NO. 2013 HCV 02046

BETWEEN	AUNDRAE LEE	CLAIMANT
AND	RAINFORD LENNON	1 ST DEFENDANT
AND	KHALEDE HYLTON	2 ND DEFENDANT
AND	JERMAINE SALMON	3 RD DEFENDANT

CLAIM NO. 2011 HCV 03096

**BETWEEN
AND**

**JERMAINE SALMON
RAINFORD LENNON**

**CLAIMANT
DEFENDANT**

**CONSOLIDATED WITH
CLAIM NO. 2017 HCV 02005**

BETWEEN

**MIKAIL DUNCAN
(An infant who sues by his mother &
Next friend, Claudine English)**

PLAINTIFF

AND

RAINFORD LENNON

1ST DEFENDANT

AND

JERMAINE SALMON

2ND DEFENDANT

AND

KHALEDE HYLTON

3RD DEFENDANT

**CONSOLIDATED WITH
CLAIM NO. 2007HCV 02004**

BETWEEN

MICHAEL DUNCAN

PLAINTIFF

AND

RAINFORD LENNON

1ST DEFENDANT

AND

JERMAINE SALMON

2ND DEFENDANT

AND

KHALEDE HYLTON

3RD DEFENDANT

**CONSOLIDATED WITH
CLAIM NO. 2007HCV02006**

BETWEEN

**THORNIA DUNCAN
(An infant who sues by her mother &
Next friend, Claudine English)**

PLAINTIFF

AND

RAINFORD LENNON

1ST DEFENDANT

AND

JERMAINE SALMON

2ND DEFENDANT

AND

KHALEDE HYLTON

3RD DEFENDANT

Ms. Sharon Gordon instructed by Gordon & Associates for the 1st and 2nd claimants

Ms. Oraina Lawrence instructed by Kinghorn & Kinghorn for the 3rd, 4th and 5th claimants

Ms. Dorothy Gordon for the 6th claimant

Mrs. Michelle Shand Forbes & Mr. Miguel Palmer for the 1st defendant and ancillary defendant

Mrs. Lorraine Moore instructed by Dunbar & Co. for the 2nd and 3rd defendants and ancillary claimant

Heard- 10th, 11th, 12th, 13th and 18th July, 2017

Negligence - Motor vehicle accident - Diametrically opposed versions - Assessment of damages.

CAROLYN TIE, J (AG)

Back ground

[1] It is agreed by all parties that on the 24 December 2010, at around 11.15 p.m., a motor vehicle collision occurred along the Ewarton main road, in the parish of St. Catherine, involving two vehicles. One of those vehicles was a Toyota Sprinter motorcar, registered PE7376 owned by Khalede Hylton and operated as a taxi by Jermaine Salmon. The other was a Honda Motorcar registered EW5860, owned and driven by Rainford Lennon.

[2] A number of persons were injured and commenced proceedings, which were eventually consolidated by an order of the court. Five claims were initially brought and thereafter an ancillary claim by the owner and driver of the taxi.

- [3] The claimants, on their case, were either passengers in the taxi or persons about to enter the taxi. They have sued the above named owners and drivers of both vehicles contending negligence against each, seemingly in the alternative.
- [4] The defence as filed by Mr. Lennon in relation to all the claimants is essentially that he was travelling on his correct side of the roadway when the taxi crossed over into his lane. He swerved to his left in an attempt to avoid a collision but this proved unsuccessful.
- [5] The defence filed by Mr. Salmon, the taxi driver, in relation to all the claimants was essentially that he was stationery on the right soft shoulder/ sidewalk (hereinafter referred to as the soft shoulder) when the driver of the other vehicle drove onto the soft shoulder at a fast rate of speed and collided with his vehicle. This was also the substance of his ancillary claim brought against Mr. Lennon.

The Evidence

- [6] On an examination of the totality of the evidence, there are two diametrically opposed accounts.
- [7] The evidence of the claimants who were about to enter the taxi, Ms. Ameshia Dellop and Mr. Aundrae Lee, was that on the night in question they were standing together on the concrete soft shoulder of the Ewarton main road in the vicinity of Nugent Street when the taxi, which was coming from the Linstead direction came across the road unto the right hand side where they were and stopped on the soft shoulder to pick them up. There was a discussion between the driver of the taxi and themselves and as they were about to enter the taxi, the Honda approached from the Ewarton direction, collided into the taxi and then into them as they stood to the right of the taxi. Mr. Lee did not see the vehicle as it approached but Ms. Dellop testified that it sped towards them, lost control in that it was swinging and dashing and then crashed into the taxi and then into them. Each testified of being flung to the ground as a result of the impact and of

subsequently being taken to the Linstead hospital for treatment and receiving further treatment from Dr. Sandra Marie Nesbeth.

- [8] This version given by these prospective passengers was in keeping with the account given by the Duncans who were passengers in the back seat of the taxi and also of Mr. Salmon, the taxi driver.
- [9] On the other hand the evidence of the defendant Mr. Lennon was that he was driving towards the direction of Linstead when the third defendant Mr Salmon crossed into his lane forcing him to swerve to the left in an effort to avoid a collision, which effort was unsuccessful. Mr Lennon says he did not see Ms Dellop or Mr Lee and could give no explanation for their being injured.

The Issue to be determined

- [10] The issues to be determined are solely factual. The legal principles as regards negligence and the duties of users of the road are well established and require no review.
- [11] The two accounts that have been presented by the parties are diametrically opposed with little room for middle ground. It really is a question of accepting one version or the other. It is either that the taxi was stationary on the soft shoulder and Mr Lennon's vehicle came onto the soft shoulder and collided with the taxi OR that the taxi drove across the path of Mr Lennon's vehicle causing him to take evasive action.
- [12] There is no issue as to the damage sustained to the vehicles. Both vehicles sustained damage to the right front section and both had their right front wheels detached. The taxi also had damage to the right back fender.
- [13] It is of course the claimant's burden to prove their case and to do so on a balance of the probabilities. The evidence of the claimants must therefore be scrutinised.

[14] An examination of the evidence presented through the various claimants, albeit consistent as to the manner in which the collision took place, revealed a number of discrepancies. These discrepancies were mainly as regards-

- the exact positioning of the vehicles at various times,
- the width of the road and soft shoulder,
- where the two prospective passengers were coming from prior to being on the right soft shoulder,
- the seated positions of the passengers in the back seat of the taxi,
- whether or not the taxi door was actually open at the time of the collision and if so by whom,
- the length of time the taxi had stopped before impact; and
- whether or not the taxi had moved after collision.

[15] Needless to say, an incident of this nature involving at least one moving vehicle is a dynamic scenario and hence it may understandably be difficult for the parties to pinpoint with precision the exact location of either vehicle at specific times. It also must be borne in mind that the actual collision would have taken place quickly and somewhat unexpectedly.

[16] In my assessment, many of the discrepancies are not integral to the determination of the core issues in this matter. So for instance the seating arrangements of the passengers in the taxi and whether or not the door was actually opened and by whom are of little moment in determining what happened. The issue is largely one of credibility, which of course may be impacted by the presence of inconsistencies and discrepancies. Certainly inconsistencies and discrepancies among witnesses may, inter alia, be indicative of a lack of credibility or may be explained by the passage of time and failing memories, or by the fact that this was a dynamic occurrence that happened quickly. On the other hand evidence that is identical may be indicative that the witnesses are rehearsed.

[17] Having seen and heard the witnesses, I am of the view that none of the claimants' testimony, which was considered separately, was significantly

discredited under cross examination. I found their account as to how the accident happened to be believable.

[18] One of the arguments by the defendant Mr. Lennon against the credibility of their account was that the soft shoulder could not have accommodated both vehicles and hence the accident could not have occurred there. All the claimants as well as Mr. Salmon say that the taxi was completely on the soft shoulder and that the Honda drove onto same causing the collision.

[19] As regards the width of the soft shoulder only Ms Dellop, Mr Lee, Mr Salmon and Mr Lennon were asked to give an indication of same. Ms Dellops evidence was that she was standing on the soft shoulder, the taxi crossed over the roadway to the right and drove onto the soft shoulder and she walked towards the taxi. From my dissection of her evidence, her estimate of the width of the soft shoulder was in relation to where she was standing originally. She was not questioned as to the width of the soft shoulder where the taxi stopped. The evidence of Mr. Salmon, which was never challenged, was that the width of the soft shoulder was not consistent throughout the length of the road, in that some sections were wider than others.

[20] Under cross examination Mr Lee estimated the width of the soft shoulder where the collision took place to be 6 feet. He also indicated on exhibit 8A, a photograph of the area, where the taxi had stopped. It is evident from the photograph that there is no clear demarcation between the road itself and the soft shoulder, nor are the parameters of the soft shoulder obvious from the photograph. Mr. Lee was never asked to indicate the edges of the soft shoulder using the photograph but his indication of where the taxi stopped is included in the area that Mr. Lennon depicts on the photograph as being the soft shoulder.

[21] Mr. Lennon's evidence is that the soft shoulder is not wide but agreed that it is wider than 4 feet and accepted that it is wide enough for a car to park on it and not obstruct traffic. He was also the only witness asked to indicate on exhibit 8A

his impression as to the demarcation between the road and the soft shoulder, and also the limits of the soft shoulder. His indication on the photograph as regards the soft shoulder encompasses an area which is smoothly paved as well as an unpaved section running alongside the left of this smoothly paved area. In the photograph vehicles are parked along the smoothly paved area and there is yet, to the left of these vehicles, the unpaved area.

[22] On the evidence, including the various indications by the witnesses on the photographs, the taxi stopped on the paved area. To the left of where the taxi stopped is the unpaved area. On the photograph this area where the taxi stopped seems to be wider than other areas along the soft shoulder, which is in keeping with the evidence of Mr Salmon.

[23] The other parties were never asked to indicate on the photograph their impression of the boundaries of the soft shoulder. This may account for the differences in their evidence as regards the width of same. The lack of a clear demarcation between the road and the soft shoulder, and the fact that the area off the road is not consistent in that the left section appears quite different from the right, could cause confusion as to the margins of the soft shoulder. I therefore do not find that the differences in the estimated width of the soft shoulder to be a flaw in the claimants' case. The clear evidence of each claimant, as well as Mr Salmon, was that the accident occurred on the soft shoulder.

[24] I accept their evidence and also find that from exhibit 8A and the indications Mr Lennon made thereon as regards the boundaries of the soft shoulder, that there would be sufficient space for the accident to have happened the way the claimants have said.

[25] Having dissected the evidence of all the witnesses, I am satisfied that the version given by the claimants and Mr Salmon is to be preferred. I found the evidence of the claimants and of Mr Salmon to be credible. I am of the view that none of their

testimony was significantly discredited under cross examination and that their credibility remained intact.

[26] Having analysed the evidence of Mr Lennon, I did not have confidence in his evidence, which I found to be questionable on many grounds.

[27] He, for instance, indicated that he was able to see a distance of some 120 feet along the roadway in issue. It is therefore inexplicable why he only saw the taxi some 6 car lengths (estimated at 60ft) away, given that he accepts that the headlights of the taxi were on. Mr. Lennon is unable to offer an explanation for this. In the circumstances the only reasonable conclusion is that he was not maintaining a proper lookout.

[28] On the issue of headlights, it is noted that counsel for the claimants Ms. Dellop and Mr. Lee submitted that there may be an element of contributory negligence given that Mr. Salmon's head lights were on whilst he was on the soft shoulder which would have breached the Road Code and affected Mr Lennon's ability to see. I cannot find favour with this submission as it is not supported by the evidence. Mr Lennon's makes no assertion of being affected by Mr Salmon's headlights.

[29] It is also incomprehensible why Mr. Lennon was unable to see Ms. Dellop and Mr. Lee who I accept were on the scene and in close proximity to the vehicles, having received injuries. He has tendered no reason for this. It again suggests that he was not maintaining a proper lookout.

[30] His response upon seeing the taxi is also questionable and indeed curious. Having seen this taxi coming over into his lane, whilst the said taxi was some three car lengths away, his sole response, whilst travelling at a mere 50 k.m.p.h. was solely to swerve. It is perplexing why no other evasive action was taken, such as applying his brakes, which could have, on the face of it, prevented a collision, bearing in mind that he does not allege this taxi to be speeding. His explanation for his reaction is simply that he followed his instincts. This suggests

that he was caught off guard and was unable to respond in a reasoned way. It is inconsistent with his travelling at an appropriate speed and keeping a proper lookout.

[31] His stated rate of speed also does not ring true given his evidence that he did not look towards the direction in which he swerved to ensure that it was safe to so do. My acceptance that he was speeding (as put forth on the case of the claimants and Mr. Salmon) is further fortified by the fact that after the collision, on his own evidence, his vehicle travelled some four car lengths, (the estimated equivalent of some 40 feet) before coming to a stop after the collision.

[32] On the issue of the persons who were not in the taxi and who claim to have been injured, their evidence was that before the collision they were standing on the soft shoulder and according to Ms. Dellop not too close to the edge. They were not challenged in this regard which is not surprising given that Mr. Lennon never saw them. Given his evidence that the collision took place in the roadway and further, given his evidence as to where the vehicles ended up after the collision, there is no possible explanation as to how Ms. Dellop and Mr. Lee got injured on his account. Indeed Mr. Lennon himself could not assist in this regard as he at no point saw them.

[33] In all of the circumstances I reject the account of Mr. Lennon as untrue. Whilst fully appreciative that the burden is on the claimants to prove and that this must be on a balance of the probabilities, I accept that they have so proven that Mr. Lennon was the negligent party.

[34] Having scrutinized the evidence, I make the following findings of fact:

1. That the roadway in issue was a relatively straight one from the direction heading towards Ewarton.
2. Given the nature of the roadway nothing would have obstructed the ability of either driver to see the other.

3. That the taxi was heading towards Ewarton when it crossed the road and proceeded towards two persons (Ms. Dellop and Mr. Lee) who were standing on the right soft shoulder, mounted the said soft shoulder and stopped.
4. The taxi driver having gone unto the right soft shoulder had a conversation with the prospective passengers (Ms. Dellop and Mr. Lee). Whilst the evidence is not consistent as to the length of this conversation I am satisfied that the taxi would have been there and stationary for a period of time.
5. I find that Mr. Lennon's vehicle was speeding when it approached, mounted the soft shoulder and collided with the taxi which was stationary and hit Ms. Dellop and Mr. Lee who were on the soft shoulder and about to enter the taxi.

[35] I find that Mr Lennon breached his duty to exercise due care and attention towards other road users. I am satisfied that he failed to maintain a proper lookout, failed to maintain control of his vehicle when he drove off of the roadway and onto the soft shoulder and that he did so whilst travelling at an excessive rate of speed in all of the circumstances.

[36] Having found Mr Lennon to be fully responsible, the remaining issue is that of damages. As regards each claimant, I considered the various cases that were presented for guidance as regards general damages, as well as the submissions of counsel. The injuries of the claimants in those cases presented were generally very similar to those sustained by the claimants herein. My comments will therefore be restricted to that which is particularly distinguishable.

Damages

Amesha Dellop

[37] Special damages in relation to this claimant were agreed at \$120,650.

[38] The medical evidence in relation to Ms. Dellop was contained in two medical reports, one from the Linstead Hospital where she was seen on the night of the accident and the other from Dr. Sandra Marie Nesbeth who examined her on the 28 December 2010. The former medical report indicated that she suffered abrasions on the buttocks and left elbow along with laceration to the right elbow

and swelling to the left toe. She was treated with intra-muscular injections and the wound was cleaned, sutured and dressed. Dr. Sandra Marie Nesbeth having subsequently examined her, diagnosed her with whiplash in the neck, severe swelling and spasm in the right shoulder, pain and swelling in the left elbow, severe swelling and tenderness in the right elbow. The laceration to the right elbow had previously been sutured but was infected as a result of it not having been cleaned from the 24th December 2010. She was also diagnosed with severe pain and spasm in the lower back, severe swelling in the right and left buttocks with multiple infected abrasions, multiple black and blue marks and swelling on the left thigh as well as moderate swelling and tenderness with multiple partially healed abrasions on the medial aspect of the left knee and severe swelling and tenderness in the fifth digit of the left foot. According to the doctor, she was given a total of seven weeks sick leave and was finally discharged on 30 November 2011, after 45 weeks with no residual damages.

[39] I note the observation of counsel for Mr. Salmon (as a defendant) that the medical report as submitted by Dr. Nesbeth predates the date of discharge as stated therein by the doctor. This medical report was tendered and admitted into evidence with the consent of all parties. I am therefore of the view that this flaw does not undermine the substance of the report.

[40] Her counsel relied on the case of **Dalton Barrett v Poncianna Brown** (2003 HCV 1358, Khan Vol. 6 page 104) and **Earl Lawrence v Dennis Warmington** (Suit No. C. L. 1998, KhanVol. 5 page 144). The latter case while bearing some similarities was clearly more serious given that the claimant therein suffered continuous pain and was required to visit the doctor every two weeks and was deemed to have a total disability for a period of nine weeks and thereafter a further period of seven months with partial disability.

[41] Not surprisingly counsel for the defendants provided authorities wherein much lower awards were made. Counsel for Mr Lennon urged reliance on **Gretel Embden v Brookes** (unreported), Supreme Court, Jamaica, Claim No. 2008

HCV 01162, judgement delivered on 2 June 2016. An examination of same reveals that the period of pain experienced by the claimant therein of ten to twelve weeks was shorter than that experienced by the claimant herein. Counsel for Mr Salmon presented the cases of **Peter Marshall v Carlton Cole** (2006 HCV 1006, Khan Vol. 6 page 109) and **Billy Tait v Wesley Salmon** (unreported), Supreme Court, Jamaica, Claim No. 2010 HCV 02354 judgement delivered on 5 November 2017. A review reveals that in both cases the period of incapacity was also shorter than that experienced by the claimant herein.

[42] Having reviewed the cases presented and having compared the injuries therein with those of Ms Dellop, I am of the view that an award of \$1,500,000 is appropriate for general damages.

Aundrae Lee

[43] Special damages in relation to this claimant were agreed at \$134,550.

[44] His medical report from the Linstead Hospital where he was seen on the night of the accident revealed two centimetres lacerations to the occipital vortex area and an abrasion to the right forearm, intra-muscular injections were given and the wound cleaned, sutured and dressed. The report from Dr Sandra Marie Nesbeth, who examined him on the 28 December 2010, reveals a diagnosis of post traumatic stress disorder. Quite appropriately his counsel has asked the court to ignore this finding as there is no indication that this doctor was in a position to make such a diagnosis. The doctor also diagnosed him with whiplash to the neck, severe swelling and pain in the left shoulder, severe swelling and tenderness in both elbows and to the lateral aspect of the right forearm, the latter also having multiple abrasions. He was also diagnosed with lower back pain and spasm, severe swelling and tenderness with a large malodorous infected gaping hole in the anterior aspect of the right thigh, severe swelling in the right and left knees with multiple bruises on the patella. The previously sutured laceration was infected and malodorous as it had not been cleaned. He was given a total of six

weeks sick leave and was finally discharged on November 30, 2011 after a total of 44 weeks without residual disability save for a slight scar to the head and thigh.

[45] The same authorities as had been presented in relation to Ms Dellop were offered for guidance. An examination was done in relation to each of these cases and the observations made above in relation to each as regards Ms Dellop are also relevant given the similarities in the injuries. It is further noted that the period of recovery for Mr Lee was slightly shorter than Ms Dellop's.

[46] In the circumstances, the sum of \$1,300,000 is fitting for general damages. .

Michael Duncan

[47] In relation to Michael Duncan special damages were agreed at \$29,300.

[48] As regards general damages, it is noted that the medical report of Dr. Nishanth Hassan diagnosed him as having severe whiplash injury of the cervical spine, lower back strain and soft tissue injury to both knee joints and chest. He was treated with analgesics and muscle relaxants as well as a cervical collar. He was advised to do physiotherapy and when he was last seen on 10 April 2011 complaining of persistent lower back pains, he was advised to continue physiotherapy. Under cross examination, he admitted to not doing this. He therefore has failed to act to mitigate his condition which in all likelihood would have curtailed his pain and suffering.

[49] His counsel presented for the court's consideration the authorities of **Claston v Campbell et al** (unreported) Supreme Court, Jamaica, Claim No. C.L. C-135 of 2002) judgement delivered on 28 February 2003, **Kimesha Thomas v Sylvester Sydney Rose (t/a Classic Food Wholesale)** (unreported) Supreme Court, Jamaica, Claim No. 2012 HCV 02716 judgement delivered on 24 January 2014 and **Trevor Benjamin v Wilburn Palmer et al** (unreported) Supreme Court, Jamaica, Claim No. 2005 HCV 02876 judgement delivered on 23 March 2010.

[50] I note that the period of recovery in the **Claston** case was much longer than Michael Duncan, the claimant herein, whilst in the **Benjamin** case the period therein was much shorter.

[51] On the other hand, counsel for Mr Lennon recommended the cases of **Pamela Thompson et al v Devon Barrows et al** (unreported) Supreme Court, Jamaica, Claim No. CL 2001/T 143 judgement delivered on 22 December 2006 and **Noel Parkinson v James Kirkland** (unreported) Supreme Court, Jamaica, Claim No. 2007 HCV 02536 judgement delivered 15 February 2010 whilst counsel for Mr Salmon referred to the case of **Peter Marshall** (supra.)

[52] It is evident that in the **Parkinson** case, the claimant therein whilst having suffered similar injuries to Mr. Duncan, did not sustain a whiplash injury which is a significant distinction.

[53] Having reviewed the various authorities and bearing in mind that Mr Duncan did not comply with the recommendations of his doctor as regards physiotherapy and hence his recovery would have been negatively affected, for which the defendant ought not to be held responsible, I am of the view that the sum of \$900,000 is a reasonable for general damages.

Mikail Duncan

[54] In relation to Mikail Duncan special damages in relation to this claimant were agreed at \$27,200

[55] The medical report for Mikhail Duncan, revealed that his injuries were minor. He received a diagnosis of soft tissue injury to the head with the prognosis being that this would resolve within two weeks without any impairment.

[56] His counsel, as did counsel for Mr. Lennon, relied on the authorities of **Junior Panton v the Attorney General** (Suit No. C.L. 1989/P003, Harrison's Case notes pg 50) and **Verta Scott et al v Tankweld Equipment Ltd.** (Suit No. C.L.

1990/S 267, Harrison Case notes pg 59), whilst counsel for Mr. Salmon referred to the former case.

[57] Having evaluated the cases, I award the sum of \$400,000 for general damages.

Thornia Duncan

[58] As regards Thornia Duncan special damages were agreed at \$25,000.

[59] The medical report for Thornia Duncan revealed a diagnosis of soft tissue injury to the left elbow and forearm as well as to both legs. She was treated with analgesics and muscle relaxants and was recommended to do physiotherapy. Her prognosis was that her injuries should resolve without any complications within six to eight weeks. When she was seen on 10 March 2011, she was completely healed. It is evident that she did not undergo physiotherapy as there was no evidence that this was done nor any claim in special damages for the cost of same. There was therefore a failure to mitigate her injury.

[60] Her counsel presented the authorities of **David Rodney v Kemal Ledgister** (unreported) Supreme Court, Jamaica, Claim No. 2008 HCV 503 judgement delivered on 20 July 2009. Counsel for Mr Salmon referred to the cases of **Reginald Stephens v James Bonfield and Conrad Young** (Suit No. C.L. 1992 S 230 Khan Vol. 4 pg 212) and **Carmen Smith v Mervin Reid** (Suit No. C.L. 1984/S320, Harrison's Case notes pg 362), whilst counsel for Mr Lennon urged reliance on **Noel Parkinson** (supra).

[61] Having analysed these cases, I am of the view that the sum of \$450,000 is a reasonable award for general damages.

Jermaine Salmon.

[62] A portion of the special damages had been agreed at the commencement of this matter. The remaining aspects of the special damages for determination are in relation to home assistance, transportation and loss of income.

- [63] As regards the claim for home assistance, which amounted to \$16,000 for four weeks, this was subsequently conceded by counsel for Mr. Lennon.
- [64] In relation to his travelling expenses, he explained that he chartered a route taxi to visit the doctor and to go to the pharmacy. I accept this to be true and award the sum claimed.
- [65] As regards his loss of earnings, it is understandable, given the nature of his work as a taxi driver, that he would be unable to strictly prove damages under this head. It is for the court to review the evidence and to determine that which is reasonable in all of the circumstances. He was tackled on this aspect of his evidence under cross examination and his evidence was not shaken in this regard. I accept his evidence.
- [66] I therefore award a total of \$148,415.52 for special damages.
- [67] As regards general damages, the medical report of Dr. G. A. Bullock diagnosed him with whiplash injury to the neck with pain and spasms which restricted his neck movement by 60%, lower back strain with spasm and pain affecting the movements in his back to varying degrees depending on the direction, contusions to the knees and chest. The report indicates that he was totally incapacitated for a period of 28 days and was given a cervical collar to wear.
- [68] His counsel presented for the court's consideration the authorities of **Billy Tait** (supra) and **Nyokea Leadbeater v Esmond Freebourne** (unreported) Supreme Court, Jamaica, judgement delivered on November 8, 2004.
- [69] Counsel for Mr Lennon also referred to the case of **Billy Tait** but pointed out that the period of rehabilitation therein was longer than in the instant case. I note however that the medical report for Mr. Salmon indicated that he was "totally incapacitated" for 28 days and that his pain and suffering lasted for another 28 days. The indication that he was "totally incapacitated" for a period of time is a dimension which is not apparent in the **Billy Tait** case.

[70] Having considered the authorities and having made adjustments for those features which differentiate the injuries of the claimants therein from those sustained by Mr Salmon, I am of the view that \$1,000,000, as requested by his counsel, is a suitable award for general damages.

Khalede Hylton

[71] As regards the ancillary claimant Khalede Hylton special damages were agreed at \$292,100.

[72] I therefore make the following orders:

- i) As regards the claimant Amesha Dellop, judgment against the defendant Rainford Lennon in the sum of \$1,500,000 for general damages with interest at the rate of 3% from the date of service of the claim and the sum of \$120,650 in special damage with interest at the rate of 3% from December 24, 2010.
- ii) As regards the claimant Aundrae Lee judgment against the defendant Rainford Lennon in the sum of \$1,300,000 for general damages with interest at the rate of 3% from the date of service of the claim and in the sum of \$134,550 in special damage with interest at the rate of 3% from December 24, 2010.
- iii) As regards the claimant Michael Duncan judgment against the defendant Rainford Lennon the sum of \$900,000 for general damages with interest at the rate of 3% from the date of service of the claim and special damages in the sum of \$29,300 with interest at the rate of 3% from December 24, 2010.
- iv) As regards the claimant Mikail Duncan judgment against the defendant Rainford Lennon in the sum of \$400,000 for general damages with interest at the rate of 3% from the date of service of the claim and special damages in the sum of \$27,200 with interest at the rate of 3% from December 24, 2010.

- v) As regards the claimant Thornia Duncan judgment against the defendant Rainford Lennon in the sum of \$450,000 for general damages with interest at the rate of 3% from the date of service of the claim and special damages in the sum of \$25,000 with interest at the rate of 3% from December 24, 2010.
- vi) As regards the ancillary claimant Jermaine Salmon judgment against the defendant Rainford Lennon in the sum of \$1,000,000 for general damages with interest at the rate of 3% from the date of service of the claim and special damages in the sum of \$148,415.52 with interest at the rate of 3% from December 24, 2010.
- vii) As regards the ancillary claimant Khalede Hylton judgment against the defendant Rainford Lennon in the sum of \$292,100 for special damages with interest at the rate of 3% from December 24, 2010.
- viii) Cost to the claimants and the ancillary claimant against the defendant Mr. Lennon to be agreed or taxed.