

- [2] The Claimant, Maurisha Moore, a lady of small stature then gave evidence. She said she was now 23 years old and currently unemployed. She got married last year and her name was now Maurisha Moore-Fraser. Her witness statement stood as her evidence in chief.
- [3] At this juncture, by and with the consent of the parties, the Request for Information was admitted as Exhibit 4 and The Reply to Request for Information as Exhibit 5.
- [4] Essentially the Claimant says that on the 30th March 2014 at about 12:00pm in the afternoon she entered the Island Plaza in Ocho Rios. She used the pedestrian walkway to do so. This took her into the parking lot. She says,

“The next thing I knew is a car entered the plaza at a fast speed and hit me on my right thigh.”
- [5] After the car hit her, the driver came out of the car and was going about his business. She therefore attempted to speak to him about the matter but he continued to walk away. At that point she wrote off the license number 2983 FS on a bank receipt she had in her bag. She says she “hopped” to the nearby Ocho Rios Police Station and made a report. She identified the police officer who took the report as Mr. Lovelace. He gave her a receipt for the report she made.
- [6] She gave details of her medical consultations, treatment and injury. The Reply to Request for Information (Exhibit 5) states that the vehicle which collided with her was an SUV type of vehicle. It was silver/white. She could not say what make or model. Her attorneys obtained information about the Defendant using the license plate number. She did not obtain a police report.
- [7] When cross-examined she said she was 5 feet 4 inches in height. The top of her right thigh received the blow. She indicated the height and counsel agreed she had indicated about 2.5 feet. She did not fall when hit. She could not recall the license plate number. When shown the Particulars of Claim filed on

the 22nd June 2011 and the Amended Particulars she admitted the former had license number 2983 FF and the latter license number 2983 FS.

[8] The witness explained that she had not kept the bank receipt on which she had originally written down the number. She had however written it on the police report receipt. She realised her error when she found the police receipt hence the change to the Particulars of Claim.

[9] It was suggested to her that the Defendant's vehicle was a Mitsubishi Sedan motor car but the Claimant was emphatic that the vehicle which hit her was not a Sedan. She insisted that she remembered the Defendant's face and when she spoke to him he walked away. She estimated that her conversation with the Defendant took 2 minutes and denied it was only for a few seconds.

[10] It was suggested to her that after receiving the Claim the Defendant attended her attorney's office to say he did not own a vehicle 2983 FF but owned 2983 FS and that it was then that the Claim was amended. She indicated that she had heard about his visit to her attorney's office. She agreed that if a motor car Sedan had hit her it would have been below the knee. It was suggested to her that the Defendant worked in Kingston at the time of the alleged incident.

[11] In re-examination the Claimant admitted seeing the Defendant at mediation and a month before when she had come to court. She produced from her hand bag the receipt for the police report which was admitted without objection as Exhibit 6. On the back of it is written FS 2983. This ended the case for the Claimant.

[12] The Defendant gave evidence and his witness statement was allowed to stand as his evidence in chief. He said he is a soldier in the Jamaica Defence Force on Secondment to the Port Authority of Jamaica. He gave his address as in Braeton, Portmore, St. Catherine. His witness statement was allowed to stand

as his evidence in chief. He said further that his Mitsubishi motor car has a bumper which is approximately 18 inches high.

[13] In the witness statement he says that the Mitsubishi Lancer 2983 FS was the only vehicle he owned at the time. He is its only driver. In 2011 papers were served upon him. He noted that the license number stated in those papers was 2983 FF. Further he had not been in Ocho Rios at the time of the alleged incident. The last time he had been there was one year prior to the alleged incident and on that occasion he had been a passenger on public transport.

[14] He therefore attended the Supreme Court and was advised to get an attorney. He went to an attorney who suggested he attend and speak to the Claimant's attorney Mr. Kinghorn. He went three (3) times to Mr. Kinghorn's office but Mr. Kinghorn was never in. He spoke to someone there who told him that the number was a typographical error and he was told to go to his insurance company.

[15] His insurance brokers said that as he had not reported the accident they were unable to assist. He then went to another lawyer (his niece) who promised to make checks and get back to him. In August 2011 he received by way of an envelope found on his verandah an Amended document which now had underlined in red his license number, 2983 FS.

[16] Months later he received a call from his insurers inviting him to come in because he had not reported an accident. The insurers took the documents he had been served with and said they would handle it.

[17] The Defendant explains that upon receiving the first set of documents he had asked his office to say what shift he had worked that day. He subsequently checked it himself and said he worked from 10pm on the 29th March 2011 until 6:00am on the 30th March 2011. It was his habit then to go home and sleep.

He says he could not have been in Ocho Rios on that date and at the time alleged.

[18] When cross-examined, he was asked how did he know the time of the incident when he got the documents. He said he did not know until the mediation occurred. He admitted it was possible to be in Ocho Rios at 12 p.m. if his shift ended at 6:00am. He said at the time his wife was in Negril and his daughter was a student. He denied being in Ocho Rios that day. He said the first time he saw the Claimant was at mediation.

[19] In answer to questions from the court the Defendant said he did own another vehicle which had been stolen. He therefore purchased new plates when he bought the Mitsubishi. That other vehicle was a Nissan Sunny motor car. This ended the case for the Defence.

[20] Each counsel made oral submissions and I am grateful for their assistance. The matter is one of fact to be determined almost solely on the evidence of one or the other of the two witnesses. The evidence of each was impressive. Their demeanour and manner of deponing was earnest and convincing. They both struck me as truthful witnesses.

[21] It is the Claimant who bears the burden of proof. This court must be satisfied on a balance of probabilities. In this regard I remind myself that visual identification is approached with caution by the courts. In this case it was broad daylight, visibility was good. However, the opportunity to view lasted but a few seconds and not 2 minutes as the Claimant would have us believe. She stated that the driver of the vehicle got out and was walking away. She called to him and he ignored her and continued on his way. She did not pursue him, but allowed him to go. She did not take a photograph of his vehicle or him. She noted the license number on a bit of paper which she now no longer has.

[22] An honest witness can be mistaken and moreso where that witness honestly believes that mistaken view. In this case having had only a fleeting glance, the

sight of the Defendant at mediation may have entrenched her recollection and implanted the idea that it was the Defendant. There was of course no

identification parade held and hence no way to truly test whether her recollection operated independently of the confrontation at the mediation.

[23] I bear in mind also that the Claimant was adamant it was an SUV that hit her. This is consistent with the location of the blow on her leg. The Defendant's vehicle is a Sedan. This fact throws further doubt on the Claimant's case.

[24] Finally the Defendant produced documentary support for the shift on which he worked (Exhibit 3). It is a long drive to Ocho Rios. Though not impossible I find it improbable that the Defendant would drive that distance after leaving work. I accept that he was at home asleep or resting on the day in question.

[25] In the final analysis, therefore I find that the Claimant has failed to satisfy me on a balance of probabilities that it was the Defendant who drove a motor vehicle and hit her on the 30th March 2014. I wish to observe that evidence from the investigating officer of the report he took and of his efforts at the Island Licensing Authority may have assisted. Indeed evidence from the licensing authority may have shed light on not only ownership of the license in question but the circumstances in which numbers are transferred and whether that number had ever been attached to any other vehicles.

[26] On the evidence before me however I am not satisfied on a balance of probabilities that the Defendant was driving the motor vehicle which impacted the Claimant. There is therefore judgment for the Defendant against the Claimant. Costs to the Defendant to be taxed if not agreed.

[27] It is my practice to indicate the amount of damages I would otherwise have made so as to reduce costs or the need for retrial in the event a Court of Appeal has a different view. In that regard the injuries were minor. The Claimant submitted \$350,000 for General Damages. The Defendant for

\$100,000. Having considered the medical reports my award for the soft tissue injury would have been \$200,000.00, with special damages as per the receipts tendered of \$38,000.00.

David Batts
Puisne Judge