[2020] JMSC Civ. 168

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISON

CLAIM NO. 2011HCV07500

BETWEEN	**AUBREY ANDERSON**	**CLAIMANT**
AND	**MELFORD HENRY**	**DEFENDANT**

CONSOLIDATED WITH
CLAIM NO. 2012HCV04826

BETWEEN	**CARLOS BAILEY**	**CLAIMANT**
AND	**MELFORD HENRY**	**DEFENDANT**

CONSOLIDATED WITH
CLAIM NO. 2016HCV03907

BETWEEN	**MELFORD HENRY**	**CLAIMANT**
AND	**NEVILLE ROBINSON**	**1st DEFENDANT**
AND	**THE TRANSPORT AUTHORITY**	**2ND DEFENDANT**
AND	**UCAL CAR RENTAL TOURS & TAXI SERVICES LIMITED**	**3RD DEFENDANT**

IN OPEN COURT

Ms. Debby-Ann Samuels instructed by Debby-Ann Samuels & Company for Aubrey Anderson & Carlos Bailey

Ms. Cummings and Mr. Robert Moore instructed Archer, Cummings & Co. for Melford Henry

Mr. McDermott instructed Campbell McDermott for Neville Robinson and The Transport Authority

Heard: July 14, 2020 & July 30, 2020

MOTOR VEHICLE ACCIDENT – PERSONAL INJURY – RES IPSA LOQUITUR – ASSESSMENT OF DAMAGES

WOLFE-REECE, J

INTRODUCTION

[1] The respective claims before the Court arose out of a single motor vehicle accident that occurred on September 22, 2010, along Hague Main Road in the parish of Trelawny. The undisputed facts before the Court are that on September 22, 2010 Aubrey Anderson was travelling as a passenger in a Toyota Corolla Motor Car, registered 3455 DM which was being driven by Carlos Bailey along Hague Main Road in the parish of Trelawny. Melford Henry was travelling in the opposite direction along the said road in his Toyota Corolla motor, registered 9080 FG when upon reaching a section of the roadway, Melford Henry's vehicle diverted from the left lane in which he driver was travelling into the path of the vehicle being driven by Carlos Bailey thereby causing the vehicles to collide.

[2] The collision caused all three men to sustain injuries and suffer losses for which they have brought their respective claims to recover damages.

[3] Mr. Bailey and Mr. Anderson claimed in their respective claims that the accident was due to the negligence of Mr. Henry. Mr. Henry on the other hand, denies being liable for the accident. Instead, he claims that the accident was caused by the negligent driving of Mr. Neville Robinson in his operation of Nissan Caravan registered 5103 EJ.

[4] At the time of the accident, the said Nissan Caravan registered 5103 EJ was owned by UCAL Car Rental Tours & Taxi services Limited, a company duly incorporated under the laws of Jamaica with its registered office at 32 Queens Drive, Montego Bay in the parish of Saint James engaged in the business of motor vehicle rental.

[5] Mr. Neville Robinson was driving the said Nissan Caravan motor vehicle in the execution of his duties as a civilian driver employed to the Transport Authority, a body corporate by virtue of the provisions of the Transport Authority Act.

CASE AGAINST MELFORD HENRY

[6] Mr. Anderson's evidence is that not only was he a passenger in the aforementioned motor vehicle registered 3455 DM but he was also the owner of the motor vehicle. While giving his oral evidence he explained that he resides in Canada and at the time of the accident he was being transported in his vehicle to the airport in Montego Bay.

[7] When asked during cross-examination if he saw how the accident occurred, Mr. Anderson gave the following response:

> *"On approaching the intersection it happened so fast, I saw Mr. Henry car coming in our direction like he was running from someone I don't know who and make a sudden turn head on into my car".*

[8] When asked whether he saw the Nissan van behind Mr. Henry's van he responded in the positive however, he quickly indicated that it happened so fast. His exact words were; *"yes it happened fast I saw the van."*

[9] Mr. Bailey who lives in the United States of America and was in quarantine in Jamaica gave his evidence via zoom. His witness statement filed on the 19th September, 2017 was allowed to stand as his evidence-in-chief. At paragraph 2 of his witness statement he noted that:

> *"Upon reaching the intersection of the Hague District, the green Toyota Corolla motor car registered number 9080 FG suddenly turned in the road into the path of the vehicle I was driving."*

[10] Mr. Bailey noted that he did not see what caused the accident to occur and unlike Mr. Anderson who claimed to have seen the Nissan Carvan behind Mr. Henry's vehicle, Mr. Bailey indicated that he could not confirm that because there was a lot of people at the scene of the accident. He stated as follows:

> *"It was a lot of people on the scene, there was a Nissan at the bus stop but I can't say who was in it".*

[11] Counsel, Ms. Debby-Ann Samuels, argued of behalf of Mr. Anderson and Mr. Bailey that there is no question that the respective claimants were owed a duty of care and that there was a breach of such duty that resulted in the Claimants sustaining injuries. She further noted that the events that occurred were reasonably foreseeable consequences of negligent driving.

[12] Counsel noted that the only issue in dispute is whether the Transport Authority contributed to the accident by pursuing Mr. Henry at the time of the accident.

MR. HENRY'S DEFENCE AND THE CASE AGAINST NEVILLE ROBINSON

[13] Mr. Melford Henry filed 3 witness statements, on the 31st October, 2016, 3rd February, 2017 and the 2nd March, 2020. All three documents were allowed to stand as his evidence-in-chief.

[14] The core of Mr Henry's defence is captured at paragraphs 3-5 of his witness statement filed on the 31st October, 2016 where he expressed the following:

> 3. *"On the 22nd of September, 2020, between 11:00 a.m. and 12:00 in the day I was lawfully driving my 1980 Toyota Corolla motor car registered 9080 FG along the Hague Main Road in the parish of Trelawny, travelling towards Montego Bay from Falmouth.*

4. *Upon reaching the vicinity of the Hague Primary School and the pepper factory, I was lawfully driving in the left lane at approximately 50 miles per hour when my motor vehicle was suddenly struck from behind.*

5. *It immediately fell unconscious and later woke up in the Cornwall Regional Hospital".*

[15] In his witness statement filed on the 2nd March 2020, Mr. Henry gave further evidence that at the time of accident he was able to see a Nissan Caravan registered 5103 EJ travelling behind him and that it was this very vehicle that struck him from behind thereby causing him to immediately become unconscious. At paragraphs 4-5 of the said witness statement he expressed the following:

4. *"I was lawfully driving in the left lane at approximately 50 miles per hour. There was a Nissan Carvan registered 5103 EJ travelling behind me. I noticed that this vehicle was being driven by an inspector from the Transport Authority.*

5. *Upon reaching the vicinity of the Hague Primary School and the pepper factory my motor vehicle was suddenly struck from behind by the same Nissan Carvan"*

[16] While being cross-examined by Mr. McDermott, Learned Counsel for Mr. Neville Robinson and the Transport Authority, Mr. Henry insisted that he was hit from behind. Mr. McDermott asked a series of questions to suggest that Mr. Henry could not see the vehicle from behind; however, Mr. Henry insisted that he saw the vehicle in his rear view mirror. The following was the exchange between the Counsel and Mr. Henry:

A. I see a vehicle coming in my rear view mirror but I didn't know it was after me.

Q. did you see the license plate

A. I couldn't see the registration or license number

Q. You didn't see that any vehicle was being driven by Transport Authority Inspector?

A. I did see a Transport Authority inspector

Q. How did u know it was a Transport Authority inspector?

A. By the clothes and the uniform

Q. Mr. Neville Robinson was wearing Transport Authority uniform?

A. yes

Q. What about the clothes caused you to say it was Transport Authority?

A. It is a white t-shirt, shirt I know and the pants is grey

Q. U stayed in your vehicle and saw the driver in a white t-shirt and grey pants?

A. I see the t-shirt but couldn't see the pants

Q. You concluded that it was a Transport Authority inspector based on the white t-shirt he had on

A. yeah

S. at no time on that day did Neville Robinson collide in your vehicle

A. He was the one who hit my car and pushed me to get entangle with Mr. What's his name there car

Q. prior to u getting hit u didn't know any Nissan caravan was driving behind you

A. I saw the van but I didn't know it was coming after me

NEVILLE ROBINSON'S DEFENCE

[17] Neville Robinson denied being in a collision on the 22nd day of September, 2010, he filed a witness statement on the 10th March, 2020 which was allowed to stand as his evidence-in-chief. Mr. Robinson noted that at the time of the accident he was employed to the Transport Authority as a civilian driver. While giving his oral evidence he explained that as a civilian driver he was not required to wear a uniform and that on the date of the accident he was not dressed in a uniform.

[18] According to Mr. Robinson on the day of the accident he was travelling along Hague Main Road when the team that he was travelling with came upon what appeared to be an accident when some officers who he was travelling with requested that he stopped the vehicle to observe the accident.

[19] At paragraph 5 of the said witness statement filed on the 10th March, 2020 Mr. Robinson reiterated that he was not involved in a collision with Mr. Henry's vehicle. He expressed as follows:

> *"For the avoidance of doubt, we were not at any point in time pursuing motor vehicle bearing registration number 9080FG. Moreover, at no time did we collide with the said motor vehicle. I therefore categorically deny Mr. Melford Henry's allegations".*

ISSUES

1. **Whether res ipsa loquitur is applicable to the current case**

2. **Who is liable for the accident? Mr. Melford Henry or Mr. Neville Robinson**

LAW AND ANALYSIS

[20] It is now common knowledge that in order to succeed in a case of negligence the relevant claimant must satisfy the court that the four (4) elements of the tort have been satisfied, that is:

(i) The defendant owed a duty of care to the Claimant;
(ii) The Defendant breached that duty of care;
(iii) The breach caused the Claimant to suffer damages which are recoverable at law; and
(iv) The injury caused as a result of the breach was reasonably foreseeable.

[21] The requirements of the law of negligence were discussed by Morrison JA in the case of **Adele Shtern v Villa Mora Cottages Ltd and Monica Cummings** [2012] JMCA Civ 20 at paragraph [49] - [50] where His Lordship cited the cases **Caparo Industries plc v Dickman** [1990] 1 All ER 568 and **Ng Chun Pui v Lee Chuen Tat** [1988] RTR 298 to highlight the fact that when the court is asked to make a determination regarding negligence the issue is not always straightforward. His Lordship expressed as follows:

> *"[49] The requirements of the tort of negligence are, as Mr Batts submitted, fourfold, that is, the existence of a duty of care, a breach of the duty, a causal connection between the breach and the damage and foreseeability of the particular type of damage caused (see Clerk & Lindsell on Torts, 19th edn, para. 8-04). The test of whether a duty of care exists in a particular case is, as it is formulated by Lord Bridge of Harwich, after a full review of the authorities, in the leading modern case of Caparo Industries plc v Dickman [1990] 1 All ER 568, 573-574:*
>
> > *'What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other.'*
>
> *[50] As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof, on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case (see Clerk & Lindsell, op. cit., para. 8-149; see also, Ng Chun Pui v Lee Chuen Tat [1988] RTR 298, per Lord Griffiths at page 300). But the actual proof of carelessness may often be problematic and the question in every case must be 'what is a reasonable inference from the known facts?' (Clerk & Lindsell, op. cit., para. 8-150)."*

[22] The core principle to be extracted from the dicta of Morrison JA is that matters of this nature are not black and white. Rather, the court is faced continuously with the task of determining what is reasonable in the circumstances. In the first instance

the court must determine whether it is just, fair and reasonable to impose a duty of care on the Defendant. In the second instance the court must determine whether the defendant's conduct fell below the standard of care that the circumstances demand **(see Carmarthenshire County Council v Lewis [1955] A.C. 549).**

[23] It is trite law that all road users owe a general duty of care to other road users to exercise due care so as not to cause harm to others by their acts and omissions. This point was expressed by the House of Lords in the case of **Hay or Bourhill v Young** - [1942] 2 All ER 396 when the Board affirmed the following dicta of Lord Jamieson:

> *"No doubt the duty of a driver is to use proper care not to cause injury to persons on the highway or in premises adjoining the highway, but it appears to me that his duty is limited to persons so placed that they may reasonably be expected to be injured by the omission to take such care."*

[24] Similarly, section 51(2) of the **Road Traffic Act** imposes a duty of care on drivers to take the necessary precautions to avoid accidents. The section provides as follows:

> *"Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection."*

[25] It therefore goes without saying that all the parties to the respective claims were owed a duty of care and were equally burdened with the responsibility of reciprocating that duty of care to other road users

Issue # 1- The applicability of res ipsa loquitur

[26] The maxim res ipsa loquitur (the thing speaks for itself) is a rule of evidence which allows to court to draw an inference that the defendant was negligent in

circumstances where the cause of the accident is not known but the thing causing the accident was under the management or control of the defendant, in circumstances where the accident would not have occurred in the absence of negligence on the part of the defendant.

[27] The learned authors of the Halsbury's Laws of England, Volume 78, 5th Edition discussed the doctrine of res ipsa loquitur under the heading '*Effect of application of maxim res ipsa loquitur'* in the following terms:

> *"Where the claimant successfully alleges res ipsa loquitur its effect is to furnish evidence of negligence on which a court is free to find for the claimant. If the defendant shows how the accident happened, and that is consistent with absence of negligence on his part, he will displace the effect of the maxim and not be liable. Proof that there was no negligence by him or those for whom he is responsible will also absolve him from liability. However, it seems that the maxim does not reverse the burden of proof, so that where the defendant provides a plausible explanation without proving either of those matters, the court must still decide, in the light of the strength of the inference of negligence raised by the maxim in the particular case, whether the defendant has sufficiently rebutted that inference".*

[28] The Learned authors of the Halsbury's Laws of England make it abundantly clear that the application of this rule of evidence does not reverse the burden of proof by placing it on the defendant. Rather, the burden of proof rests throughout of the Claimant to prove, his/her case (see also paragraph 42 of **Mavis v The Chief Technical Director and the Attorney General of Jamaica,** unreported Claim number C.L.2002/S094 delivered March 6, 2009).

[29] Given the facts that have been presented to this Court, I question whether the rule should be applied in determining the case at bar. The rule was discussed succinctly yet skilfully by Morrison JA at paragraph [57] of **Adele Shtern v Villa Mora Cottages Ltd and Monica Cummings, (supra),** when His Lordship expressed as follows:

> *"[57] Res ipsa loquitur therefore applies where (i) the occurrence is such that it would not normally have happened without negligence*

> *(the editors of Clerk & Lindsell, op. cit., para. 8-152 provide an illustrative short-list from the decided cases: "bales of sugar do not usually fall from hoists, barrels do not fall from warehouse windows, cranes do not collapse, trains do not collide and stones are not found in buns"); (ii) the thing that inflicted the damage was under the sole management and control of the defendant; and (iii)* ***there must be no evidence as to why or how the accident took place.*** *As regards this last criterion, the editors of Clerk & Lindsell (op. cit. para. 8-154) make the important point, based on Henderson v Jenkins & Sons, that 'Where the defendant does give evidence relating to the possible cause of the damage and level of precaution taken, the court may still conclude that the evidence provides an insufficient explanation to displace the doctrine'." [Emphasis]*

[30] About two (2) years after Morrison JA delivered his judgment, Brooks JA applied his reasoning in the case of **Igol Coke v Nigel Rhooms and others** [2014] JMCA Civ 54 in coming to the conclusion that the doctrine did not apply to the facts of that case because it was not a case. Brooks JA noted that \for the doctrine to apply ***"there must be no evidence as to why or how the accident took place."*** The **Igol Coke** case similarly surrounded a motor vehicle accident, in circumstances where the witnesses both pleaded in their particulars of claim and testified as to how the accident occurred (see paragraphs [19] - [20] of the judgment). Based on the foregoing it is therefore safe to say that the rule finds its purpose where there is no evidence as to why or how the accident occurred.

[31] I similarly find that there is sufficient evidence before the court as to how the accident occurred. Mr. Anderson and Mr. Bailey gave their evidence as to how the accident occurred. Likewise, Mr. Henry has given his evidence. The issue to be determined is a question of fact, that is, whether Mr. Henry failed to maintain control of his vehicle by keeping the vehicle in the left lane or whether the collision was as a result of his losing consciousness after being hit to the rear of his vehicle by the Nissan carvan being driven by Neville Robinson.

Issue # 2

[32] Mr Anderson's evidence is that on approaching the intersection he saw Mr. Henry's car coming towards them as if he was '*running'* from someone. Mr. Anderson did

continue to say he did not know from whom Mr. Anderson was '*running.'* He went on to say that he saw a Nissan Carvan travelling behind Mr. Henry's car. Again, he noted that he did not see Mr. Robinson's vehicle colliding with the rear of Mr. Henry's vehicle.

[33] Mr. Henry noted that he observed Mr. Robinson travelling behind him from his rear view mirror. He went on to state as follows: *"I saw the van but I didn't know it was coming after me."* Mr. Robinson on the other hand gave evidence that he arrived on the scene after the accident occurred. He also made the point that at the time of the accident he was not wearing the Transport Authority uniform because he was a civilian driver. This evidence conflicts with the evidence of Mr. Henry who claims that while he was driving he observed that Mr. Robinson was wearing the Transport Authority uniform, which he claimed to be a white shirt.

[34] On a balance of probabilities, I find that Mr. Robinson's version of events is more believable than that of Mr. Henry. I found Mr. Robinson to be a credible witness. While he did not remember specific details surrounding his observations on the day, I found him to be believable based on his demeanour while giving his evidence.

[35] I found the evidence put forward by Mr. Henry to be a bit fantastic. By his own admission he noted that he had no indication that the vehicle travelling behind him was coming after him. Yet he is asking this court to accept that for no reason and without any warning Mr. Robinson hit into the rear of his vehicle so hard that the impact caused him to lose consciousness.

[36] Miss Cummings in her submissions referred to the photographs that were tendered and admitted into evidence of the motor vehicle of Mr. Henry. She submitted that the photographs which were taken by Mr. Henry showed damage to the rear of his vehicle and that was sufficient evidence for the Court to draw an inference and conclude that Mr. Robinson rear-ended Mr. Henry's vehicle, causing him to collide with Mr. Andersons vehicle. I am not of the view that without more that this would

be a reasonable inference, especially in circumstances where there is no evidence of damage to the other vehicle before the Court.

[37] I am therefore constrained to dismiss the claim against Mr. Neville Robinson. I conclude that Melford Henry is solely responsible for the accident which occurred along Hague Main Road in Trelawny on the 22nd September, 2010. Given that the issue of liability has been determined, it is now for the Court to determine the quantum of damages to be awarded to Mr. Anderson and Mr. Bailey for the injuries and loss they have suffered.

ASSESSMENT OF DAMAGES

[38] The ultimate reason why Mr. Anderson and Mr. Bailey filed their respective claims is to recover damages for pain and suffering and other losses that they have incurred as a result of the accident. In an action for personal injury the relevant claimant is usually awarded damages under two heads; special damages which must be specifically pleaded and proven and refers specifically to pecuniary loss incurred by the claimant and general damages which is awarded by pain and suffering. Lord Goddard explained the distinction between the two in the case of **British Transport Commission v Gourley** [1956] A.C. 185 on page 206 where His Lordship expressed as follows:

> *"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far*

as can be done by an award of money, as he would have been had the accident not happened..."

SPECIAL DAMAGES

[39] Mr. Anderson claimed special damages in the sum of Nine Hundred and Forty-four thousand five hundred and fourteen dollars ($944,514.00) particularized as follows:

Wrecker Fees	22,400.00
Cost of Assessor's Report	13,514.00
Loss of use 21 days @ $5,000.00/day	105,000.00
Damage to Property	803,600.00
Grand total	**$944,514.00**

[40] As indicated earlier, special damages must be specifically pleaded and proven. Mr. Anderson provided receipts to substantiate him claim in relation to all the items listed above with the exception of the sum of One Hundred and Five Thousand Dollars ($105,000.00) for loss of use. He has provided no receipt or proof to substantiate the sum being claimed. Given that the sum for loss of use was not specifically proven I am forced to deduct the said sum from the total of Nine Hundred and Forty-four thousand five hundred and fourteen dollars $944,514.00. Special damages is therefore awarded in the sum of Eight Hundred and Thirty-Nine Thousand Five Hundred and Fourteen Dollars ($839,514.00)

[41] Mr Bailey claimed special damages in the sum of $15,000.00 being the cost of the medical report and the cost of medical expenses. Unfortunately, Mr. Bailey did not provide any receipts to substantiate his claim for $15,000.00 and I am therefore constrained to refuse the request for special damages in this regard.

GENERAL DAMAGES

[42] Learned Counsel, Miss Debby-Ann Samuels, claimed on behalf of her clients' general damages in the sum of Three Million and Two Hundred Thousand Dollars ($3,200,000.00) in relation to the pain and suffering of Mr. Anderson and Three Million Five Hundred Thousand Dollars ($3,500,000.00) on behalf of Mr. Bailey. Counsel noted the similarities with the injuries sustained by both her clients and she therefore saw it fit to make a single submission on general damages on their behalf.

[43] Mr. Anderson failed to tender a medical report in evidence however he gave evidence that he sustained the following injuries:

1. *Whiplash Injury*
2. *Head injury*
3. *Lower back injury*
4. *Right Knee injury*
5. *Laceration to the tongue*

[44] I am however challenged in assessing damages for the named injuries without medical evidence of same. I am of the view that what the Claimant is asking the Court to do is to speculate as to what injuries were received and then make an assessment based on this speculation. He is also asking the Court to look at the similarity between his injuries and Mr. Bailey's injuries and base the assessment on that. I am however not of the view that this approach is wise or acceptable. The maxim 'he who asserts must prove' must be the guiding principle. The Claimant, Mr. Anderson, has asserted specific medical injuries, using terms that are determinable only by a medical professional but failed to prove same.

[45] Having concluded that I have accepted that Mr. Anderson was in the motor vehicle at the time of the accident and I accept his evidence that he has suffered pain and general discomfort as a result. This has not been challenged by the Defendant. In

that regard I am prepared to make an award of a reasonable sum in recognition of same.

[46] With regard to the Claimant Mr. Bailey, his medical report reflected injuries as follows:

1. *Head injury*
2. *Trauma to his lower back*
3. *Whiplash injury to his neck*
4. *Trauma to his left shoulder*

[47] Counsel relied on the case of **Dalton Barrett v Poncianna Brown and Leroy Bartley 2003** HCV 1358, delivered on the 3rd November, 2006, reported at page 104 of Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 6. In that case the Claimant sustained injuries in the form of tenderness around the right eye and face, tenderness in the left hand and lumbar spine, pain to the lower back, pain to the left shoulder and left wrist and a very mild cervical strain, he also suffered from contusions to the mouth and to the lower back and left shoulder. General damages for pain and suffering was assessed at Seven Hundred and Fifty Thousand Dollars ($750,000.00) which converts at present, with the application of May, 2020 Consumer Price Index (C.P.I.) of 103.80, to **Seven Hundred and Eighty-One Thousand Four Hundred and Twenty-Five Dollars ($781,425.00)** using the following formula:

Calculation Methodology

$$\frac{\text{103.80 index for May, 2020}}{\text{99.623 index for November, 2006}} \times \frac{100}{1} = 104.19\%$$

$$\frac{104.19}{100} \times \$750{,}000.00 = \mathbf{\$781{,}425.00}$$

[48] The Claimant also relied on the case of **Stacey Ann Mitchell v Carlton Davis, Kenneth Boyd, Harold Henry and Keith Lindsay**, Suit C.L. 1998 M 315 delivered

on the 10th May, 2000 and reported at 146 of **Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 5.** In that particular case the Plaintiff suffered from severe tenderness in the back of the head and neck, laceration to the back of the head, marked tenderness and stiffness of lower spine, continuous pains in the back of the neck and across the waist, swollen and painful left arm with difficulties lifting weight. Her injuries were assessed as moderate whiplash. She was assessed as having severe pains for about 9 resulting in total disability for that period. Thereafter she suffered from dismissing pain resulting in partial disability for about 5 months and at least intermediate pain for at least a further 4 months.

[49] On the 10th May, 2000 she was awarded general damages of **Five Hundred and Fifty Thousand Dollars ($550,000.00)** which converts at present, with the application of May, 2020 C.P.I. of 103.80 to **One Million and Fifty-Six Thousand Two Hundred and Twenty Dollars ($1,056,220.00)** using the following formula:

Calculation Methodology

$$\frac{\text{103.80 index for May, 2020}}{\text{54.05 index for May, 2000}} \times \frac{100}{1} = 192.04\%$$

$$\frac{192.04}{100} \times \$550{,}000.00 = \mathbf{\$1{,}056{,}220.00}$$

[50] Ms. Samuels also relied on the case of **Garfield Scott v Donovan Cheddisingh and Phillip Campbell** Suit No. C.L. 1995, delivered on the 1st day of July, 1997 reported at page 214 of Ursula Khan's Volume 4. In the **Garfield Scott** case the relevant Plaintiff suffered personal injury in the form of excruciating pains, headaches, contusion on right shoulder and hip, puncture wound on left forearm and swollen, painful and tender knee, the Claimant was awarded **Three Hundred Thousand Dollars ($300,000.00)** for pain and suffering. which converts at present, using the of May, 2020 C.P.I of 103.80, to Seven Hundred and Nine

Thousand Three Hundred and Fifty Dollars ($709,350.00) arrived at in the manner set out as follows:

103.80 index for May, 2020 x 100 = 236.45%

43.90 index for July, 1997 1

236.45 x $300,000.00 = **$709,350.00**

100

[51] Learned Counsel also relied on the case of **Henry Bryan v Noel Hoshue & Wilbert Marriat Blake** Suit C.L. 1996 B 219 delivered on September 30, 1997 and reported at 177 of **Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 5.** In that particular case, the relevant plaintiff sustained the following injuries: shock, excruciating pain, dizzy spells, abrasions over the frontal region of the scalp, pain and suffering in the back and severe headaches. The plaintiff was awarded general damages in the sum of Three Hundred and Fifty Thousand Dollars ($350,000.00) which updates using the current Consumer Price Index for May, 2020 of 103.80 to Eight Hundred and Five Thousand Dollars ($805,000.00), arrived at in the following manner:

103.80 index for May, 2020 x 100 = 230.00%

45.13 index for September, 1997 1

230 x $350,000.00 = **$805,000.00**

100

[52] After I have assessed all the cases I find that the injuries suffered by Mr. Bailey are closest in nature and gravity to injuries suffered by the relevant claimant in the **Stacey Ann Mitchell** case. The respective claimants claimed sums within the region of Three Million Dollars. However, I have concluded that a reasonable award for general damages is One Million and One Hundred Thousand Dollars ($1,100,000.00) for Mr. Bailey in keeping with the sum awarded by the court in the **Stacey Ann Mitchell** case.

DISPOSITION

1. Judgment in favour of Mr. Aubrey Anderson against Mr. Melford Henry in Claim number 2011HCV07500. Damages awarded to Mr. Anderson in the following terms:

    a. Special damages is awarded in the sum of $839,514.00 with interest of 3% from July 30, 2020 (the date of Judgment)

    b. General Damages for Pain and Suffering awarded in the sum of $ 350,000.00 with interest at a rate of 3% from the 11th September, 2012 (date of service of the claim form) to the 30th July 2020 (date of the Judgment).

2. Costs in Claim number 2011HCV07500 awarded to the Claimant to be taxed if not agreed.

3. Judgment in favour of Mr. Carlos Bailey in Claim number 2012HCV04826. General Damages for Pain and Suffering and Loss of Amenities awarded in the sum of $1,100,000.00 with interest at a rate of 3% from the 11th September, 2012 (date of service of the claim form) to the 30th July 2020 (date of the Judgment.)

4. Costs in Claim number 2012HCV04826 awarded to the Claimant to be agreed if not taxed.

5. In respect of Claim 2016HCV03907 Judgment in favour of the 1st and 2nd Defendants.

6. Costs in Claim number 2016HCV03907 to the 1st and 2nd Defendants to be taxed if not agreed.

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Hon. S. Wolfe-Reece, J