



[2025] JMSC Civ 33

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016 HCV 04264

BETWEEN	PEARLINE BOOTHE	1st CLAIMANT
	(Wife and near relation to and Administrator of the estate of the Late Lester Boothe, deceased)	
AND	PEARLINE MAY BOOTHE	2nd CLAIMANT
AND	BARGAIN RENT-A-CAR (JAMAICA) LIMITED	DEFENDANT

Mr Mark Wallen and Ms Janet Simpson instructed by Mark Wallen attorney-at-law for the Claimants

Mr Monroe Wisdom and Ms Houston Thompson instructed by Nunes Scholefield DeLeon and Co attorneys-at-law for the Defendant

February 4, 2025 and March 10, 2025

Trial – Fatal Accident - Law Reform (Miscellaneous Provisions) Act, Fatal Accidents Act – negligence – burst tyre - liability

JUSTICE T MOTT TULLOCH-REID

BACKGROUND

1. Mrs Pearlina Boothe is the administratrix on behalf of the estate of her late husband. She is also the 2nd Claimant in the claim against the Defendant. She is seeking to recover damages for breach of contract and under the Fatal Accidents

Act (“FAA”) and the Law Reform (Miscellaneous Provisions) Act (“LRMPA”) resulting from a motor vehicle accident which occurred on May 19, 2013. In that accident, Mr Lester Boothe lost his life, and the 2nd Claimant was seriously injured. The allegation is that the accident was caused because of defective motor vehicle which the Defendant rented to the Claimants.

The Claimant’s case

2. The Claimant’s case is contained in the evidence of the 2nd Claimant and Mr Aldin Stephenson.
3. The 2nd Claimant’s evidence is that she and her husband arrived in Jamaica on May 14, 2013, through the Norman Manley International Airport. They were in Jamaica to celebrate the 70th birthday of Mrs Boothe’s mother and to attend her sister’s wedding. Other family members were also in Jamaica to attend both events. In anticipation of their visit to Jamaica, they made arrangements with the Defendant to rent a 15-seater motor bus to transport themselves and their other family members.
4. They collected the motor vehicle from the Defendant on their arrival at the Norman Manley International Airport. They completed the paperwork and was shown the motor vehicle. Mr Boothe initially had a difficulty with the vehicle as it had a foul odour. He requested that the vehicle be changed but the Defendant declined that request as they had no other vehicles available to suit the needs of the Claimants. They promised that the vehicle would be cleaned and delivered. The cleaning was not satisfactory but as they had no choice, they collected the vehicle.
5. The vehicle was used over the next few days to run errands, collect family members from the airport and transport them as they needed.
6. On May 19, 2013, they left Belretiro Inn *en route* to the Jamaica Grande Hotel. They were in a good mood. The deceased was seated in the front of the bus and the 2nd Claimant was seated in the second row. One person was at the window,

and she was beside that person. While travelling along the Tower Isle Main Road, she heard a loud explosion, the motor vehicle ran off the road and ended up in a ditch where it overturned. As a result, she was thrown from her seat and landed on the floor of the bus with persons on top of her. She was able to get out of the bus with assistance of passersby. She remembered hearing people screaming and crying. She saw the bus was badly damaged and that her husband was in the front of the bus but was unable to get out. She saw people trying to free her husband without success. She saw her husband bleeding from the injuries he sustained. She was oblivious to her own injuries as she was focused on observing the efforts to free her husband from the wreck. She was removed from the scene of the accident to the St Ann's Bay Hospital for treatment.

7. She was discharged from the hospital on May 23, 2013, and upon being discharged went to the St Michael's Funeral Home to view her husband's body. She later went to the Tower Isle Police Station to see the wreckage and take pictures.
8. She is of the view that the accident was solely because of the Defendant's negligence in providing her with a defective vehicle in breach of the rental agreement.
9. At the time of his death, Mr Boothe was 54 years old and in good health. He was a self-employed mechanic. He earned on average US\$2,000 per week. He paid all the expenses for the home in which he, his wife and children occupied. The children were all expected to attend university or college, and their father would have taken care of those expenses until the children completed their education. The children lost their means of support after their father died. Her 30-year-old daughter received US\$100 per week or US\$4,800 per year from the deceased. Her 29-year-old son and 27-year-old son also received similar allowance. The youngest child, Jordan, aged 22 at the time of the accident, received maintenance of US\$200 per week or US\$9,600 per annum. Mrs Boothe, although employed as

a nurse at the time, was also receiving an annual allowance of US\$24,000 from her husband.

10. The cost of the funeral expenses amounted to US\$67,786 and was borne by the 2nd Claimant entirely. She had to pay \$250,000 to obtain a Grant of Administration, she paid \$3,000 to obtain a police report.
11. As it relates to the expenses incurred as a result of her injuries, the 2nd Claimant has paid \$50,000 for her medical expenses and has had a loss of income of US\$120,000. She has lost income because as a nurse she is required to stand and walk about for long periods of time but because she has lower back pain she was and still is unable to do so. At first, she was unable to work for 9 months but then after that she was only able to work for a few months. At present, she is unemployed and has been unemployed since December 2017. Mrs Boothe says that she incurred travelling expenses in furtherance of her medical treatments and that because she was unable to perform domestic chores, she had to hire a caregiver which forced her to incur additional costs of US\$2000.

Cross-examination

12. In cross-examination Mrs Boothe confirmed that her husband and brother had checked the vehicle off with the Defendant's representative. She says her husband had been a mechanic for approximately 10 years. Her husband had not discussed the state of the motor vehicle with her prior to her signing the rental agreement. He had however discussed the state of the motor vehicle with her prior to taking possession of it. She agreed that she had signed a checklist issued by the Defendant. She said as she was travelling along the road on the fateful day, she was able to see the road. Although she was engaged in talking with the other passengers in the bus, she was paying attention to the road because she was in Jamaica, and she paid attention to everything. In addition to that she always paid attention to the road whether she was driving or not.

13. She agreed that she did not see the state of the tyres immediately after the accident. She said that although the children were not fully dependent on their father, he still gave them money. Jermaine was going to college and the youngest, Jordan had recently had a baby and so his father made sure to give him money on a weekly basis. Her daughter had been living outside the house and still does. When it was put to her that none of the children depended on their father and that Mr Boothe did not give her a monthly allowance, she disagreed. She agreed with the suggestion that she did not indicate on the checklist prepared by the Defendant that she had any issues with the tyres on the motor vehicle when she took possession of it. She agreed that she chose to rent the motor vehicle from the Defendant and not from any other car rental company. She agreed that she rode in the motor vehicle for several days without incident. She disagreed that the motor vehicle rented to her was not defective, that the tyres were not defective, and that the accident was caused by the negligence of her brother. She disagreed with the suggestion that she did not know what caused the accident. She explained that the reason she did not have the option to reject the vehicle was because the Defendant's representative had informed them that there was no other vehicle available that was large enough to accommodate their needs.

14. She said that having taken the motor vehicle, 3 trips were made to the Norman Manley International Airport from Kilancholly, 3 or 4 trips were made from Kilancholly to Highgate to do grocery shopping.

Evidence Aldin Stephenson

15. Mr Stephenson was the designated driver of the motor vehicle during the family visit to Jamaica. His brother-in-law and sister were afraid to drive in Jamaica because of the poor road surface and the tendency of Jamaican drivers to drive badly and so he was asked to drive them around during their stay in Jamaica. He is an experienced driver. He was with his sister and brother-in-law when they collected the vehicle from the Defendant. He says his brother-in-law did not want the vehicle because it had a bad odour and asked for a replacement, but the

Defendant's agents said the vehicle would be cleaned. He said the checks conducted were superficial as they were more concerned with superficial scratches and taking an account of all the accessories and tools in the vehicle. The checks did not include an examination of the engine, transmission or tyres.

16. He drove the vehicle to run errands and transport family members prior to the accident. On the day of the accident, he was travelling at moderate speed when he heard a loud explosion. He lost control of the motor vehicle, which ran off the road and overturned in a ditch. His brother-in-law was pinned in the vehicle and despite the best efforts of passersby they could not free him. He lost consciousness and regained it while he was in the St Ann's Bay Hospital, where he was told his brother-in-law had died.

Cross-examination Aldin Stephenson

17. Mr Stephenson did not agree that the roadway through Junction was not smooth. He said that in May 2013 there were no potholes on the Junction Road. He drove the vehicle a lot of times during the time he had it before the accident. On the morning of the accident, he woke up at approximately 4:30/5:00am as he had to take some relatives to catch their flight in Kingston. He left St Mary at 6:30am. His mother's birthday celebration ended about 10:00pm. He had to take people home from his mother's birthday party. The trip took approximately 1½ hours. He denied being tired even though he had been doing a lot of driving the days before.
18. He said after the motor vehicle turned over, it was badly damaged, especially the front. The ditch the motor vehicle overturned into was right beside the main road. He did not see the tyres on the bus at any time after the accident. He did however see the tyres before the accident. He was not asked in cross-examination or re-examination what was the state of the tyres when the vehicle was first collected from the Defendant, or on the morning of the accident. He did not put air into the tyres at any time before the accident. When it was suggested that he did not know what caused the loud explosion, his response was *"The tyre blew out of course"*

but he denied seeing the tyre after the accident. He disagreed that the accident was caused by his negligence and that he failed to keep control of the vehicle causing it to run off the road. He strongly disagreed that he was not paying attention to the road and that he failed to take reasonable steps to stop the vehicle from running off the road.

19. He disagreed that the vehicle was okay when it was collected from the Defendant. He was not asked in re-examination why he disagreed that the vehicle was okay when it was collected from the Defendant. When asked what steps he took to prevent the vehicle from running off the road, he said he applied his brakes and tried to pull to the right but it (meaning the vehicle) would not go because the tyre blew out.

The Defendant's case

20. Danya Dacres is the Talent Development and Systems Manager at the Defendant. At the time of the accident, she was the Defendant's Fleet Manager. She is the Defendant's only witness.
21. Ms Dacre's evidence is that the motor vehicle which was assigned to the Claimants was purchased by the Defendant in 2011 new from Toyota Jamaica. The rental vehicles are regularly serviced. The service includes checks for engine oil, engine coolant, battery, brake pads and discs, tyres and inflation pressure among other things. She did not say when the vehicle in question was last serviced and she did not say that checking for the wear and tear on the tyre was a part of the service process in general or specifically as it related to the motor vehicle in question. She however said that at the time of the accident, the certificate of fitness was still valid, with an expiry date of September 2013.
22. According to Ms Dacres, when the 2nd Claimant checked the motor vehicle, she did not report any complaints about the state or condition of the vehicle. She took possession of the vehicle on May 14, 2013, and had it until the date of the accident.

23. The accident and fatality resulting therefrom were reported to the Defendant. The Defendant reported the accident to its insurers, which conducted their own investigation. The report did not find any evidence of defect to the vehicle or its tyres. The Defendant did not disclose the report to the Court. I do not see where it was disclosed in standard disclosure or an order sought for it to be specifically disclosed.
24. The vehicle was badly damaged as a result of the accident, and it was scrapped for parts.
25. Prior to the accident there had been no reports made by the Claimants concerning any defects to the vehicle or its tyres. The first time any such report was made was after the accident, and this was so even though they had the vehicle for 5 days prior. The accident was caused by the negligence of the 2nd Claimant's servants or agents. The Defendant denies liability for the accident, or the resulting death and injuries sustained.

Cross-examination Danya Dacres

26. Of the fleet of 500 motor vehicles, only approximately 50 motor vehicles were available for rental. Routine maintenance was conducted on the approximately 50 motor vehicles that were available for rent. She was unable to give any evidence on the maintenance of the vehicles because her duties were mainly administrative, ensuring that the vehicle documents were up to date. She told the Court that in 2013 approximately 6 technicians were employed to service and maintain the entire fleet of motor vehicles.
27. Of the 6 technicians, 4 were assigned to service vehicles in Kingston. The motor vehicles used by the Claimants was serviced by the technicians based in Kingston. Service and maintenance logs are kept for each vehicle. Ms Dacres did not have access to the service logs kept for the vehicle assigned to the Claimants. They

were not disclosed to the Court. They could not be found. She agreed that the logs were important as the information contained in them was important. She said the Defendant was a well-organised organisation even though the logs could not be accounted for. She agreed that the Defendant was stretched in terms of resources as far as service technicians were concerned. She did not agree that even though the Defendant was stretched, it meant that the quality standards were not observed. She disagreed that records are sometimes not maintained but agreed that she did not know if records were maintained for the motor vehicle in this claim. She said even though there was no maintenance log she believes the motor vehicle in question was maintained because of the Defendant's maintenance policy.

28. Although the vehicle had more than 30,000km on it approximately 1½ years after purchase, Ms Dacres did not believe it was extensively driven. She said that was the average mileage for rental vehicles per year. Although the vehicle had used a lot of kilometres, Ms Dacres could not say with certainty that it had been serviced. She agreed that the items noted in the checklist which formed part of the rental agreement did not require a technical person. She said there was no information on the checklist which spoke to the condition of the tyres, it had not been completed. She cannot say with certainty that the tyres were checked. At the point when the vehicle was rented to the Claimants, it had accumulated 49,321km but Ms Dacres could not say with certainty that the tyres had ever been changed. She said that if when the vehicles were checked, (I suspect by the service technicians) and the tyres needed to be changed, they were changed. She agreed that by virtue of the Jamaican road conditions, which had craters, potholes, ditches and other obstacles the tyres would have deteriorated and would need to be changed. She did not say in general how often vehicles were serviced or tyres changed.

Hearsay Documents

29. The following documents were agreed:

- a. Marriage Certificate
- b. Birth Certificates of each of the deceased's children
- c. The 2nd Claimant's photo identification card
- d. Grant of Administration in the estate of Lester Boothe
- e. Death Certificate Lester Boothe
- f. Copy motor vehicle registration and certificate of fitness
- g. Copy of the rental agreement
- h. Copy of the motor vehicle checklist.

The Defendant objected to the use of all other hearsay documents contained in their Notice to Tender filed on February 17, 2023, on which the Claimants intended to rely and filed its Notice to Object to the said documents on March 1, 2023. The Claimants did not bring the makers of the documents to Court, nor did they seek the Court's permission to use the documents without the makers being in attendance. No attempt was made by the Claimants' attorneys-at-law to admit the hearsay documents contained in the Supplemental Notice of Intention to Tender filed on February 17, 2023, into evidence albeit the additional documents had not been objected to by the Defendant's attorneys-at-law.

The Claimant's submissions

30. The Claimant's submissions are contained in Skeleton Submissions filed on March 3, 2023, Claimant's submissions after cross examination filed on February 14, 2025 and Final Claimant's submissions filed on February 19, 2025.

31. Mr Wallen emphasised the principles set out in the case of **Donaghue v Stevenson [1932] AC 562** which sets out the duty of care that is owed to one's neighbours. I need not go into the details of that case and the principles of law which it has adumbrated as the case is a well-known one. Mr Wallen also relied on **Rance v Jamaica Public Service Company Limited Suit No CL R-312 of**

1996 to substantiate his point on *res ipsa loquitur*. He highlighted the decision of **Russell v L&S W Ry [1908] 24 TLR 548 @ 551** as referred to in the **Rance** decision wherein it was said

“The meaning as I understand of that phrase is this, that there is in the circumstances of the particular case, some evidence which viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown and undisputed, than that the occurrence took place without negligence. The res because the facts stand unexplained, and therefore the natural and reasonable, not conjectural, inference from the facts shows that what has happened is reasonably, to be attributed to some act of negligence on the part of somebody, that is somewhat of reasonable care in the circumstances.

Mr Wallen set out the principle of law without saying how it applied to the facts of the case at bar. He has not, in my opinion, set out why the natural and reasonable conclusion that can be drawn from the facts is that the Defendant was negligent. I will show why the principle of *res ipsa loquitur* does not arise on these facts in my analysis below.

32. He also argues that the tyres on the vehicles were excessively worn and in overall poor condition as the vehicle to which they had been affixed at the time of the accident had covered in excess of 49,000km on poor Jamaican roads without evidence that they had been changed or serviced contrary to Sections 56 and 57 of the Road Traffic Regulations of March 20, 2022. I will say immediately that this amounts to speculation on the part of Mr Wallen.

The Defendant’s submissions

33. Mr Wisdom argued on behalf of the Defendant that breach of contract did not arise with respect to the 1st Claimant as privity of contract does not allow persons not privy to the contract to benefit from it except in special circumstances. Since the estate was not party to the contract, it could not claim a breach of contract.

34. With respect to the defective vehicle, he argued that there was no cogent evidence that the tyres on the motor vehicle were defective. The Claimants had an obligation to prove that the Defendant owed them a duty of care to provide a vehicle free from defect and that the Defendant breached the duty which resulted in loss to the Claimants. He argued that the Claimants had to prove three things:

- a. The tyres were defective
- b. The Defendant knew or ought to know that there was a defect
- c. The Defendant failed to take steps to remedy the defect

The Claimants must prove these three elements and if they were unable to do so, their claim in negligence must fail. He relied on the case of **Wayne Ann Holdings (t/a Superplus Food Stores) v Sandra Morgan [2011] JMCA Civ 44** in which Harrison JA said that the legal burden is on the claimant to prove negligence and when he does, the burden then shifts to the defendant to give an explanation as to how the accident happened. The legal burden is placed on the claimant, it is not the defendant's burden to disprove the negligence. He says that it is wrong to assume that the explosion that was heard prior to the accident was the tyre bursting. He said that was a conclusion based on speculation as neither witness could speak with any certainty as to the source of the explosion and/or what was the state of the tyre prior to the accident.

35. Mr Wisdom also asked the Court to consider the fact that the Claimants were required to prove that the tyre blew out and that the tyre blew out because of negligence on the part of the Defendant. He argued that the Claimant has failed to do so and so their claim must fail.

Analysis of the evidence

36. It is unfortunate when accidents resulting in injury and loss of life occur when family members are on a celebratory vacation trip. This was supposed to be a joyous occasion, the celebration of life (birthday) and the joining of two families (wedding).

Instead, there was mourning, sadness and perhaps regret that the family members even travelled to Jamaica that year. The agony of the experience was still evident even though almost 12 years had passed when both Mrs Boothe and Mr Stephenson were giving their evidence. Although the Court is sympathetic to their loss, the Court must make decisions based on the evidence that is placed before it and how the law says that evidence is to be treated with.

37. The law is clear. He who asserts must prove. The Claimants assert that the Defendants were negligent in that it provided them with a motor vehicle which had a defective tyre. They must prove that the tyre was defective when they received the motor vehicle, and it was because the tyre was defective which caused it to burst when the motor vehicle was being operated. This is especially true when there are several possible causes for a tyre to burst. These include the build up of temperature in the tyre, incorrect tyre inflation, high speed driving, faulty tyres, the weight of the vehicle as well as collision with an object such as a pothole, sharp rock or anything that could tear the tyre.

38. I accept Mrs Boothe's and Mr Stephenson's evidence that the loud sound they heard before the motor vehicle got out of control was the tyre burst. I am also of the view that it is because the tyre burst while the vehicle was in operation which caused it to get out of control and overturn in the ditch. There is however no evidence before the Court as to the cause of the tyre burst. The tyre was not presented to the Court. There was no expert opinion from any expert from the police force or any examination depot in St Ann or Jamaica as to what the tyre's condition was after the accident. There is no evidence on what the state of the tyre was before the accident. There was no evidence as to what the treading on the tyre was when it was examined after the accident, what the age of the tyre was at the time of the accident, what was its life expectancy when being used on a rental car. There was no expert opinion on what caused the tyre to burst, whether

there had been previous abuse of the tyre or if there was a defect in the manufacturing of the tyre or any other reason.¹

39. As far as the defence is concerned, the Defendants have not satisfied me that they took all the steps in its maintenance and servicing process to ensure that the tyres on their rented cars were in good working condition. Ms Dacres was unhelpful in this regard. She could not say whether the motor vehicle in question had been serviced, if the tyres had been changed or when were they last changed prior to renting it to the Claimants. I wondered why the Defendants relied on an administrator rather than on someone from the technical/maintenance team to support its defence. I also wondered why the Claimant's attorney did not seek to summon someone from the maintenance team to give evidence when faced with just the Witness Statement of Ms Dacres.

40. Notwithstanding, the Defendant's failure, the Claimants have not succeeded in proving their case on a balance of probabilities, that the tyres were defective and worn out and that is why the tyre burst. They had driven many miles for 5 days prior to the accident without any incident and without having any concern for the functioning of the tyre. During the time when they had the motor vehicle before the accident, there is no evidence that they at any point contacted the Defendant to report any faults on the vehicle or the tyres in particular.

41. When the Claimants did the check off when they collected the motor vehicle, their only concern was with respect to the odour. When that complaint was presented to the Defendants, the issue was rectified to the point where the Claimants were comfortable accepting the vehicle. I say that because there is evidence that the vehicle was still not smelling as good as it should be. I agree that the check off of rented vehicles is usually very superficial in nature. The Claimants say they had no option but to accept that motor vehicle as no other one with the specifications they needed, was available for their use. Notwithstanding, the Claimants were

¹ See the case of **Smith v CO Williams Construction Ltd (1981) 16 Barb LR 282, HC Barbados**

under no obligation to accept a motor vehicle which they did not feel was safe. They would have seen the tyres on the motor vehicle. They would have observed the treading and could make an assessment of its roadworthiness. Mr Stephenson was an experienced driver, and Mr Boothe was a mechanic. They choose to accept the motor vehicle in its current state. Although it was convenient to do so, they could have chosen to not accept it and seek a rental from another agency if they were uncomfortable with what the Defendant offered for their use. At no point in time did they raise a concern about the tyres. Mrs Boothe's evidence is that she signed the Checklist. She appears to have been comfortable in doing so albeit there was no comment checked in relation to the condition of the tyres. There is no evidence that she drew the attention of the Defendant's agent to the absence of this detail, which suggests to me that the state of the tyres did not concern her. In the same way that they raised a concern about the odour in the motor vehicle, I am persuaded that they would have done so if they had observed any issues with any of the tyres.

42. Mr Wallen has sought to emphasize the usage of the motor vehicle and the number of kilometres which it has accumulated in its short life as the reason for the defective and worn tyres. He is not emphasizing any latent defects which the tyre could have possessed, which the Claimants would not have knowledge of even after inspecting the tyres. His emphasis is on the excessive use of the vehicle and the impact on the tyres which were either not serviced or changed regularly as the cause for the tyre burst which led to the accident. It is true that the Defendant has produced no evidence to show that the vehicle had been maintained and the tyres changed as a part of that maintenance. Mr Wallen has however not presented any evidence to show that when the Claimants received the motor vehicle, the tyres were already worn or defective in any way. Not because a motor vehicle has in excess of 49,000km accumulated over a short period of time, means that the motor vehicle had defective and worn tyres. That is where the information in the Checklist as to the condition of the tyres on receipt would have been useful. That is also evidence that the witnesses could have provided based on their

observations. This evidence was absent from Mrs Boothe's and Mr Stephenson's evidence in chief and cross-examination.

43. Also of note is the fact that the issue of tyre burst was not raised on the Defendant's case. Had the Defendant raised it as a defence to *res ipsa loquitur* where there has been an accident, the Defendant would have to show that the tyre burst occurred even though it was not the Defendant's fault due to poor maintenance or inspection which it was responsible to undertake. This is not the case in the claim at bar. The issue of the burst tyre/defective tyre was raised on the Claimants' case so the Claimant must prove it.

Res Ipsa Loquitur

44. The principle of *res ipsa loquitur* does not assist the Claimants in this case. While they assert that the accident must have been caused by a defective tyre on the vehicle provided by the Defendant, there is no evidential basis upon which such an inference can properly be drawn. The doctrine applies only where the circumstances of the accident are such that, in the ordinary course of events, it would not have occurred without negligence. However, the cause of the possible tyre burst remains unknown, and no technical or expert evidence has been presented to establish that it resulted from a pre-existing defect that existed at the time of rental, as opposed to external factors such as road conditions, improper inflation or wear sustained during use. The vehicle was in the Claimants' possession and control for several days prior to the accident, during which it was driven extensively without issue or complaint. The mere occurrence of an accident does not, without more, create a presumption of negligence, nor does it shift the burden onto the Defendant to disprove liability. In the absence of cogent evidence establishing the Defendant provided a vehicle with a defective tyre and that such a defect was the cause of the accident, the requirements for *res ipsa loquitur* are not satisfied and the doctrine does not apply.

45. On a balance of convenience, the Claimants have not proven that the tyre was defective or that a defective tyre was the cause of the accident and as such their case in negligence against the Defendant must fail.

Breach of contract

46. Exhibit 10 is the agreed rental agreement. I find it most unhelpful. It does not provide any detail as to the warranties or conditions that govern the rental of the motor vehicle. Attached to it is an agreement that Mr Stephenson signed as an additional driver which sets out, he is 25 years and older, has a driver's licence and he agrees to the terms of the rental shown on the rental agreement and rental document jacket. The rental document jacket was not disclosed to the Court on specific or standard disclosure and so the Court is not privy to the detailed terms of the contract. Without that document before the Court, I am unable to find that the contract was breached. I do not know what the terms of the contract were.

Concluding Remarks

47. Unfortunately, the Claimants have not satisfied me on a balance of probabilities that there was a breach of contract or negligence on the part of the Defendant. Their claim must therefore fail. As liability was not established, I need not go any further to consider to damages payable.

48. I wish to say however that I find it very surprising that the Defendant was unable to find the service log for the vehicle, that its representative at the time of checking off the vehicle did not check the condition the tyres were in, that the maintenance manager was not called as a witness on its behalf but rather an administrator who could offer very little assistance to the Court, that the investigator's report was not disclosed to the Court and that the rental document jacket was not disclosed to the Court. While the absence of these documents leaves much to be desired, it does not take away from the Claimants' duty to prove their case.

49. I raise these issues concerning the Defendant, only to highlight the importance of companies of this nature to keep very good records. They are offering a service to the public which could result in the death of persons, as has happened in this case, and they therefore have a duty to ensure that their vehicles are very well maintained and there are records to prove that this is so, especially in circumstances where their motor vehicles are very heavily driven. The service and general maintenance of vehicles which cover many kilometres over a short period of time, and which service and maintenance are properly recorded, must be the priority of rental car companies and they are so warned to take care.

Orders

50. In light of the foregoing my orders are as follows:

- a. Judgment is granted in favour of the Defendant.
- b. The Claimants are to pay the Defendant costs in the claim which are to be taxed if not agreed.
- c. The Defendant's attorneys-at-law are to file and serve the Formal Order.