[2025] JMSC CIV 14

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV02986

BETWEEN	**EL SADE BRIDGE (b.n.f. Lana Campbell)**	**CLAIMANT**
AND	**RANDY MIGUEL GRAHAM**	**FIRST DEFENDANT**
AND	**JULES GRAHAM**	**SECOND DEFENDANT**

IN OPEN COURT

Mr John Clarke instructed by Bignall Law for the Claimant

Mrs Jeromha Crossbourne Onfray instructed by Dunbar & Company for the Defendants

HEARD: FEBRUARY 5, 6, 10 & 26, 2025

NEGLIGENCE – MOTOR VEHICLE COLLISION– WHETHER VEHICLE POSED AN OBSTRUCTION– NO PROPER LOOKOUT – BURDEN OF PROOF – CAUSATION – LIABILITY – QUANTUM

WINT-BLAIR, J

[1] On July 5, 2012, a ten-year-old girl was sitting in the front seat of her mother's Toyota Hiace bus ("the bus"). She was relaxing with her seat belt off, heading home after school. Her mother, Ms Campbell, stopped the bus at a neighbour's gate beside a mango tree along Pistachio Close in the parish of Saint Catherine, to talk to a neighbour, Ms Betty. It was a few moments after that there was a sudden impact to the rear of the bus. Mr Jules Graham had reversed a Suzuki

motorcar ("the Suzuki") owned by Randy Graham out of his sloped driveway onto Pistachio Close.

[2] There was a collision between both vehicles. Ms Bridge was injured as a result. She relies on the agreed medical report of Dr Sangappa.[1] There was a hairline crack to the taillight of the bus and the two bumper clips fell out. There was no damage to the Suzuki. Ms Bridge by next friend, sues the defendants. This claim alleges that Jules Graham as the servant and/ or agent of the Randy Graham negligently drove, managed or controlled the Suzuki Escudo motor car registered 6525 FZ, owned by the first defendant.

[3] There is no dispute that the Suzuki collided into the Toyota Hiace motor truck registered 7763 DZ. Ms Bridge claims as a passenger in the Toyota Hiace for injuries she suffered as well as for loss, damage, and expenses.

[4] Mr Clarke sought an amendment to the claimant's statement of case. He contends that this amendment can be made at any stage of a trial up to the delivery of judgement. There is no Notice of Application filed in this court to advance that application, rather it has been done orally.

[5] The application seeks pursuant to section 31E of the Evidence Act to tender in evidence the reports of medical practitioners made in documents. These persons have not been qualified nor appointed as expert witnesses by the court nor have their reports ben certified as the CPR requires. The reports therefore stand by themselves as no witness has been called to give evidence as to their contents. Mrs Onfroy opposes the application arguing that even if the application is successful these reports are inadmissible. So while the application seeks to

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[1] Exhibit 1

amend, the court has looked beyond the application to its actual purpose and implementation. Mrs Onfroy is correct.

[6] The case of **National Water Commission v VRL Operators ltd et al**[2] is authority for the proposition that subject to section 31E (4) which provides that the party who wishes to put the statement in evidence, and this refers to the statements in a document, shall not be obliged to call the maker as a witness if the court is satisfied as to the grounds set out at paragraphs (a) to (e). The grounds listed at paragraphs (a) to (e) must be established by evidence called at trial.

[7] In **Sinclair & Jackson v Mason & Dunkley**[3], the Court of Appeal said it is not sufficient for party seeking to admit the hearsay evidence, merely to assert reliance on the statutory grounds without actually adducing any evidence to establish them. The grounds stated are merely advance notice to the other parties in the case of what the claimant intends to do but it does not relieve them of the intention to call evidence on the statutory grounds.

[8] While the court can dispense with the notice requirement, the court cannot dispense with the rules of evidence. Therefore, the doctors named in the medical reports, that Mr Clarke wishes to tender, have not come before this court to testify that they examined Ms Bridge and to have their report admitted into evidence. Those doctors having not been certified or appointed as expert witness and their reports permitted to stand, would have to come to court and testify in order for their reports to be admitted into evidence. The doctors did not attend and no application for an adjournment was made. The reports were not admitted and the application to amend the claimant's statement of case was refused.

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[2] [2016] JMCA Civ 19
[3] (unreported), Supreme Court, Jamaica, Claim No CL 1995/S - 188, judgment delivered 5 August 2009

The Evidence

[9] In her witness statement[4], the claimant stated that it was Randy Graham that struck her mother's car from behind and because she had removed her seatbelt, she was plunged forward and hit the dashboard with her arms taking the brunt of the impact. She saw Randy Graham exit his vehicle with a child who appeared to have been sitting in his lap. After the accident, Randy Graham did not check on her nor her mother's vehicle. There were no discussions. Her mother told him that she preferred to report the accident to the police and take it to court.

[10] The claimant said she is afraid to get behind the wheel of a car for fear of getting into an accident even as a passenger when the car is stationary.

[11] After the accident, Ms Bridge said she experienced back, wrist and neck pains. She has had to wear a support brace for her back because standing for long periods of time meant she experienced extreme levels of back pain which continues to this current day. She cannot lift anything with her hands without feeling some level of irritation that results in numbness and having to stretch her hands afterwards.

[12] In cross-examination, she disagreed that her mother had not pulled off the road, After the accident, her mother came out of the vehicle and Jules Graham emerged from his vehicle with a child. In terms of how the accident happened Ms Bridge very importantly said "*On our road when you reverse you have to reverse at a slant."*

[13] In cross-examination, it was suggested that her mother had not pulled off the road, with which she disagreed. Ms Bridge said after the accident, her mother came out of the vehicle and that she saw the second defendant come out of his vehicle with

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[4] Filed on March 6, 2024

a child. When questioned about whether she complained about a wrist injury to her doctor, Ms Bridge could not recall. When asked whether she was advised by the doctor to wear a back brace, the claimant responded that the doctor told her to support her back without answering the question.

[14] The second defendant has given evidence that on the 5th of July 2012, he was driving a 1998 Suzuki Escudo SUV licensed 6525 EZ. He was leaving his home on Pistachio Close to go to the supermarket. In his witness statement he said he was alone at the time, however, in cross-examination, he testified that his five-year-old son was also in the vehicle. He opened his gate which opens outward. He did not recall seeing any vehicle outside on the road. It was not dark as it was in the summer.

[15] Strawberry Avenue intersects with Pistachio Close to his left when facing his house. His driveway is on a slight uphill grade. That evening he had come home from work, parked the vehicle in the driveway facing his house and closed his gate. Pistachio Close is a dead end and facing the dead end, his house is on the left. His house has a concrete wall running along the front and then an embankment in front of it. The embankment is wide enough for a car to drive up onto it and not be in the road. His driveway is made of concrete and was dry at the time. Pistachio Close is wide enough to accommodate two vehicles going in opposite directions. The asphalted road eroded over time and as a result, was not a smooth road. The road was dry at the time. A sketch of the road and the collision drawn in court by Jules Graham became Exhibit 2.

[16] He got into his right-hand drive vehicle, checked his rear-view mirror and started to reverse. He saw nothing and no one behind him. He continued to watch behind him through his rear-view mirror while he was reversing at less than 5km/h. He stated that he was shadowing the brake and allowing the vehicle to roll backwards towards the road. In cross-examination the witness said, "*allowing the vehicle to roll backwards meaning his foot would not be on the brake at all*."

[17] He only applied enough pressure to the brake so that the vehicle could move back, he pressed down but not enough for the vehicle to stop; he had his foot on the brake easing out of the driveway.

[18] As the rear section of his vehicle passed the gate when the driver's door was in line with the gate, he felt an impact to the right section of the back bumper of his vehicle. Upon feeling the impact, he jammed the brakes, put the vehicle in park and exited. His vehicle had collided with a Toyota Hiace bus. The back right section of his vehicle hit the back left section of the bus directly at the corner of the bus where the lights were. His back bumper touched the back bumper and taillight of the bus.

[19] The bus was positioned with the front to the dead end at the top of the road with its back to Strawberry Avenue. The bus was in the middle of the road and stationary. There was no damage to his vehicle. On the bus, two of the clips on the back bumper were displaced and there was a hairline crack to the taillight.

[20] The driver of the bus, Ms Lana Campbell, is his next-door neighbour, she came over from a house across the road from his. In assessing the damage, she stated that the light was damaged, while he responded that it was only a hairline crack. She used her key and tried to dig out the taillight mark it didn't crack. He offered to replace the bumper clips and cover the cost of the repairs. She said she wanted a new light and did not want him to take her bus for repairs. She did not want to have a discussion she wanted to go to the police. She went back to the neighbour’s, spoke with her, got into the bus and drove towards the police station. He said he had spoken with Ms Campbell for about 20 minutes trying to resolve the issue of repairs to the back of the bus.

[21] During that time, Ms Campbell never mentioned that her child was in the bus nor did she go to the bus to check on her child. No one came out of the bus, no one called out from the bus. He never saw anyone sitting in the bus. After Ms Campbell left the scene, the second defendant went to the Spanish Town Police Station and

made a report. He did not speak with Ms Campbell again until he was sued. He noted that there was a history of discord between the two families, this is not in dispute.

[22] The first defendant, the brother of the second defendant, is listed as the owner of the Suzuki. The first defendant left Jamaica in 2010 and the second defendant, purchased the vehicle from him, but the title could not be located. They had applied for a copy of the title at the tax office and the second defendant was using the vehicle.

[23] In cross-examination, the second defendant stated that his driveway is on a slope so when his car reaches midway in the gate he has to turn the vehicle at an angle to enter Pistachio Close. Although he used his mirrors, he did not look over either shoulder while reversing. The side panel of the vehicle between the front and the back obstructs his view when looking over his right shoulder. It created a blind spot. No other car was parked on the street at the time of the collision, there was no traffic, and it was around 6:35 pm. It was still light out, as it was in the summertime. His child was sitting in the middle of the rear seat. He was small at the time and was not in his line of sight. Mr Graham did not look behind him over his shoulders except with the mirrors, as that is how he normally reverses and he was taught to use the side and rear-view mirrors. The car has no back-up camera. He said he started turning so he could angle the vehicle out. The back of the vehicle was going right, towards the mango tree. He admitted that the bus was in his blind spot.

Submissions

[24] Mr Clarke submits the issues are liability and quantum. He argues that the defendant has led no evidence as was set out in his defence that the car was registered in his name. This means he has not displaced the presumption of liability. That the claimant was in the vehicle as a passenger cannot be denied by the first defendant as he did not check.

[25] The claimant has fulfilled her burden to prove negligence as the defendant admitted his failure to keep a proper lookout. In his evidence, the defendant said there was a blind spot and admitted that perhaps if he had looked over his shoulder, this blind spot could have been made a little clearer. The Particulars of Claim have been established by his failure to keep a proper lookout and the evidence that he drove without any consideration for other users of the road.

[26] The point of impact was to the rear end of both vehicles, the right rear right of the defendant's vehicle and the left rear of the claimant's mother's vehicle. The evidence of the first defendant was he came down the sloped driveway, in one version shadowing the brakes, in another version he was allowing the vehicle to roll back, and then there was an impact.

[27] After the impact, there was damage to the vehicle and on the defendant's account, he and the claimant's mother had conversations about who should fix the claimant's vehicle. On the defendant's case, there is no admission of liability by Ms Campbell who refused to cooperate and went off to the police. She demanded a new tail light while the defendant indicated that it could be fixed.

[28] On the issue of quantum, counsel relied on the case of **Symone Lawrence v Kirk Samuels et**[5] which discusses the case of **Talisha Bryan v Anthony Simpson and Andre Fletcher**[6]. The claimant sustained a whiplash injury and minor soft tissue injuries. An award of One Million Four Hundred Thousand Dollars ($1,400,000.00) was made in March 2014 with a CPI of 82. Applying the October CPI of 133.9, this updates to Two Million Two Hundred and Eighty-Six Thousand and Ninety-Seven Dollars and Fifty-Six Cents ($2,286, 097.56.)

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[5] [2023] JMSC Civ. 232
[6] Claim No. 2011 HCV 05280, delivered March 13, 2014

[29] It was submitted that the medical report of Dr Sangappa speaks to the injuries of the claimant. In assessing the nature of this injury, the court would have regard to the number of times the claimant sought medical treatment. On both occasions, she reported pain in her lower back and it was indicated to her that she would need to do certain things to alleviate same. The claimant was ten years old then and the period of pain and suffering was diagnosed to be at least six months. Dr Prakash Sangappa noted that the claimant would need physiotherapy and that would extend the period of suffering to at least a year to fifteen months.

[30] On the issue of liability of the first defendant, Ms Onfroy submits that the authorities are clear that the mere fact of ownership or the granting of permission is not sufficient to affix liability on the part of an owner of a motor vehicle without evidence of agency. The evidence of Mr Graham is that the first defendant, who owned the vehicle, had migrated and was in the process of selling the motor vehicle to the second defendant. The issue of the second defendant being the servant or agent of the first defendant has not been established. The claimant has failed to prove liability on the part of the first defendant.

[31] Regarding the second defendant, there is no dispute that both vehicles collided. The second defendant is a truthful and open witness who was frank with the court. He describes how he was reversing by shadowing his brakes and using the side mirrors and rear-view mirror to look behind him as that is the way it is done. He said that the suggestion to look over his other shoulder would not have assisted him. He described his vehicle and the side panel limited his range of view.

[32] Counsel urged the court to find that Mr Graham has proven to be a witness of truth It was the claimant who said that Mr Graham did not check on her mother's vehicle but then in cross-examination, admitted that Mr Graham and her mother were at the back of the vehicle as Mr Graham says for twenty minutes. Further, the court is urged to accept Mr. Graham's account that the bus was in the middle of the road and accept Exhibit 2 which shows Ms Campbell's vehicle in relation to the road and the embankment.

[33] The mere fact that the defendant did not see the vehicle does not amount to negligence. What has to be established is that he was not keeping a proper lookout and he was otherwise careless in not seeing the vehicle. He said he looked behind him but he concluded that she must have been in his blind spot. The mere fact that he did not see her does not mean he was not keeping a proper lookout.

[34] If the court should find that Ms Campbell parked where she said she did, then the defendant could have done more and could have avoided the accident by keeping a proper lookout; however, this does not absolve Ms Campbell of having contributed to the accident. In other words, users of the roadway have a duty to each other. Counsel relied on the case of **Chop Seng Heng v Thevannasan s/o Sinnapan & Ors**[7] to submit that one user of the roadway cannot create an obstruction and then after a collision say to the other, I created the obstruction but you could have avoided me; because you are the second person to be wrong.

[35] The fact that one motorist obstructs another by parking is not a basis for saying the other did not keep a proper lookout. There was no emergency, the claimant said her mother had stopped to speak to a neighbour. Mr Graham said there were embankments on either side, she could have pulled over or gone down further. The liability ought to be apportioned 50-50 as Ms Campbell was parked in the middle of the road. This makes Ms Campbell contributorily liable. If the court finds that the defendant was not keeping a proper lookout, he ought not to be blamed completely, but liability should be apportioned 50:50 having regard to the reason of the claimant's mother being in the road. Why was the obstruction there? Users of the road have a duty to each other, one cannot create an obstruction for the other.

[36] On the issue of quantum, counsel submits that in the **Symone Lawrence** case, the claimant suffered lower back pain and stiffness, neck pain and stiffness,

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[7] [1975] 3 All ER 572

headache, dizziness and pain and swelling to the right forearm. X-rays of the cervical and lumbar spine were done and the examination revealed findings consistent with severe whiplash injury, lower back strain and a contusion to the right forearm.

[37] In the medical report of Dr Sangappa, he first saw the claimant two and a half months after the accident. One of the issues to be decided is whether having regard to the nature of the impact, the claimant could have (i) jerked forward and; (ii) sustained any injuries at all. The defendant says it was a minor impact, no damage to his vehicle and a hairline crack to the claimant's mother's vehicle. The main impact was to the corners of both vehicles. This was not challenged. The claimant contends she suffered an injury to the neck and lower back. Her whiplash injury was described as mild whereas in **Lawrence**, the claimant had a more severe whiplash injury.

[38] The claimant in her witness statement speaks to a wrist injury and says that she has difficulty lifting anything with her hands. Any wrist injury cannot be considered as it was not pleaded. The pleadings spoke only to injury to the neck and lower back. It is submitted that the wrist injury not being pleaded goes to the issue of credibility. In respect of the back brace, the doctor stated how she was treated and there is no indication in the medical report that she was required to wear a back brace. Her X-rays were normal, unlike **Lawrence** in which the claimant's injuries were confirmed by X-ray. In the case at bar, the claimant's range of movement was normal when examined by the doctor as it relates to the neck and lumbar spine and by January 2014, the claimant had shown improvement.

[39] Counsel submits that there is no medical evidence to support the argument that the court should consider pain for a duration of up to 15 months. She submits that the case of **Roger McCarthy v Peter Calloo**[8] is a more useful guide to the court

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[8] 2018 JMCA Civ 7

than the authorities relied on by the claimant. The award by the Court of Appeal in the sum of $500,000 updates to $754,000. The claimant's award if any ought not to be more than $850,000 which of course should be reduced if the court finds contribution.

Discussion

[40] The first defendant filed an acknowledgment of service stating that he was not served with the claim form and particulars of claim and intends to challenge service as he resides overseas. The claimant failed to prove service on him.

[41] It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that:

1. A duty of care is owed to a claimant by a defendant.
2. The defendant acted in breach of that duty and
3. The damage sustained by the claimant was caused by the breach of that duty.

Liability

[42] This court relies on the trite law of negligence. It is for the claimant to establish to the requisite standard, on a balance of probabilities that she was owed a duty of care by the defendant, that there was a breach of that duty, and foreseeable damage resulted. The claimant has said that the circumstances of the case are such that the onus of proof has shifted to the defendant. I will commence with an examination of that assertion. Establishing a duty of care requires showing foreseeable damage and a close relationship between the parties that justifies assigning liability. If the defendant's negligent act is the primary or significant cause of the injury, he may be held liable. The claimant must demonstrate that the defendant's negligence directly caused or substantially contributed to any injury, loss and damage claimed. Res

ipsa loquitur does not arise in this claim based on the evidence, as it is for the court to decide on the evidence it accepts.

[43] The court finds the following facts from the evidence presented in this case:

1. There is no dispute that the claimant was in the bus as the second defendant admits to having no knowledge whether anyone was in the vehicle.

2. At the material time, the claimant was ten years of age. There is no evidence that the vehicle's engine was off when she was left in the vehicle. There is no evidence that either party checked on the claimant at the time of the accident. The claimant did not get out of the vehicle, and she made no complaint about being injured to the mother while on the scene.

3. Based on the point of impact on both vehicles, the rear right of the defendant's vehicle and the rear left of the claimant's mother's vehicle, the reasonable inference is that the claimant's mother's vehicle was closer to the embankment and not in the middle of the street.

4. Mr Graham reversed at an angle and did not look over either shoulder to increase his line of sight or to prevent a collision with other road users who may have been in his blind spot.

5. There is an inconsistency in the claimant's version of events. In her witness statement, she states that the first defendant reversed causing the collision. There is no evidence that the first defendant was present at the scene of the accident. This was not challenged. In fact, it is the second defendant's evidence that the first defendant is overseas.

6. The claimant stated that the second defendant did not stop after the collision. However, it is also her evidence that the second defendant came out of his vehicle with a child.

7. The claimant could not recall complaining to her doctor about a sprained wrist even though it was mentioned in her witness statement yet not pleaded.

8. The collision was on July 5, 2012, the claimant was first seen by Dr Ravi Prakash Sangappa on September 22, 2012, some two months and approximately three weeks later. There is no evidence of any mitigation of loss at an earlier stage and no evidence that the claimant was undergoing physiotherapy before September 28, 2012.

9. There is no evidence as to how these injuries affected the schooling of the claimant given the evidence that she still suffers from pain and was ten years old at the time.

10. On his own evidence, the second defendant admits that although he was looking through his rearview and side mirrors, he did not look over his shoulder to check if behind him was clear when reversing.

11. There is no evidence that he applied his brakes to come to a stop, nor took any action to avoid the collision.

12. It is difficult to appreciate how the blind spot remained static while moving down the driveway as Mr Graham's vehicle was in motion.

[44] I find that the second defendant did not keep a proper lookout. It was argued that although the second defendant was not keeping a proper lookout, the claimant's mother contributed to the collision by positioning her vehicle in a way which obstructed the second defendant's right of way. Had her vehicle not obstructed the path, it is unlikely that the collision would have occurred.

[45] Parking anywhere on the road undoubtedly involves some risk. Mr Graham said that after the collision the bus was in the middle of the road. It was submitted that there was an embankment on both sides of the road and that Ms Campbell should have parked there. The remote possibility of an accident with the parked vehicle

created a danger. The place where the bus was parked was visible to other road users. The street was straight at that point.

[46] The bus was not parked outside of or directly across from the gate of Mr Graham. It was his act of reversing at a slant to go in the opposite direction, without checking his blind spot which led to the accident. He admitted that he did not see the bus at all, he said it was in his blind spot yet he took no actions to improve or increase his line of sight by looking over either shoulder or applying his brakes and not rolling down the slope. He said he allowed the vehicle to roll down the driveway and that is evidence I accept. He also said he shadowed the brake, that is evidence I do not accept. He attempted to resile from this position in re-examination, however the fact of a crack in the taillight of the bus demonstrates that the Suzuki was not under Mr Graham's control but was rolling backwards down the slope.

[47] The case cited by Ms Onfroy assists the claimant's case far more than it assists the defendants as the Privy Council affirmed this statement of principle from the dissenting judgment of Ong CJ in the case of **Chan Loo Khee v Lai Siew San** as cited in **Chop Seng Heng v Thevannasan s/o Sinnapan and others**:

> *"If parking a car, however recklessly, so as to cause needless obstruction to other road-users, were to be held blameless, merely because other motorists could still have room to pass, provided they kept a proper look-out, then it would appear that the deliberate parking of a car anywhere, even in the middle of the highway, should be considered equally excusable, if not justifiable, regardless of the fact that, by reason of such obstruction, other motorists had come to grief by reason of their not being fully alert. In such cases there should, in my opinion, be proper apportionment of blame, depending on the circumstances. But, to exonerate the obstructionist completely-when it is undeniable that but for the presence of the obstruction, there could not possibly have been an accident – is to ignore the principle of placing the blame fairly on those to be blamed for their acts*

or omissions. In this age of fast motor transport I think it is the duty of the courts to eschew excessive legalism and to require that every motorist should observe the golden rule of showing due consideration for other road-users or suffer the cons of his failure to do so."

[48] The Privy Council remarked that support for this view was demonstrated by the parked motorists foreseeing that someone could come along who was not keeping a proper lookout.

[49] However, the place of parking is a question of fact, was the bus parked recklessly so as to cause needless obstruction to other road users? The only evidence of where the bus was parked is from Mr Graham who has an interest to serve. Mr Jules Graham led no evidence of recklessness or obstruction on the part of Ms Campbell. In any event, Ms Campbell is not the claimant. Mr Jules Graham has led no evidence nor submitted on the law that the issue of the contributory negligence of a third party has been raised.

[50] At the time of the accident, the prevailing weather conditions lent themselves to the view that road users on the street would be able to see the bus. The impact was such that the taillight of the bus was cracked and the bumper clips fell off. I hold that on the balance, the probabilities are that the claimant would have sustained a lesser injury had the impact been less, as would have been the case had Mr Graham actually had his foot on the brake as he descended the slope in reverse. Had his foot been on the brake, he might have been able to either stop the vehicle or slow it sufficiently so that it would lessen the force of the impact which he entirely failed to avoid.

Assessment

[51] There are two elements to an assessment of liability, causation and blameworthiness.

Causation

[52] Mr Graham did not react in the time available to him, after seeing the bus to avoid hitting it. Had he been proceeding down the slope while braking, he ought to have been able to modify the angle of his descent, adjust his speed by braking to slow or stop his vehicle, and blow the horn to alert the bus driver if there was, in fact, an obstruction, and the accident would not have occurred.

[53] It is open on the facts to find that not only was Mr Graham to be blamed for failing to keep a proper lookout, to brake adequately and to proceed carefully down the sloped driveway and out onto the street. He did not account for the possibility that other road users would be on the road in his blind spot. The admission that there was a blind spot meant that Mr Graham had to proceed with caution and seek to position the vehicle to minimize it and increase his line of sight. This he failed to do.

Blameworthiness

[54] Mr Graham was required to look sideways and to consider the angles. Despite his allowing the vehicle to descend the driveway he should not have relaxed his observation. He was very fortunate that there was no pedestrian in that same place. Mr Graham is to be blamed for causing this collision.

Apportionment

[55] Sections 3(1) and (3) of the Law Reform (Contributory Negligence) Act 1945 provide:

> *"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be*

reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

…(3) Section 3 of the Law Reform (Tort-Feasors) Act, (which relates to proceedings against, and contribution between, joint and several tort-feasors), shall apply m any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person."

[56] Section 3(1) does not specify how responsibility is to be apportioned, beyond requiring the damages to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage (not responsibility for the accident).

[57] The case of **Stapley v Gypsum Mines Ltd**[9], in which Lord Reid stated:

"A court must deal broadly with the problem of apportionment and in considering what is just and equitable must have regard to the blameworthiness of each party, but 'the claimant's share in the responsibility for the damage' cannot, I think, be assessed without considering the relative importance of his acts in causing the damage apart from his blameworthiness."

[58] A just and equitable result is to be arrived at in the particular circumstances of the case and the exercise is one of broad judgment and counsel's views have also been considered. Mr Graham was blameworthy as the reversing vehicle could do far more damage than the parked bus. The damage caused as a result is taken into account on the issue of blameworthiness. There has been no suggestion that

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[9] [1953] AC 663, 682

the claimant could have contributed to either the damage sustained or her own injury. There is no apportionment of liability on the evidence.

The First Defendant

[59] The first defendant has migrated. A Default Judgment against him was set aside by Edwards, J on November 11, 2015. He was permitted to file and serve a defence within twenty-one days. The acknowledgement of service on the first defendant was allowed to stand as filed on November 19, 2015. The first defendant did not participate in the trial, however, the evidence given by the second defendant concerning the first defendant was not challenged. The second defendant said he had purchased the Suzuki from the first defendant. The first defendant migrated and the title to the vehicle could not be located. A new title was applied for and the second defendant continued to drive the vehicle. On the day of the collision, the second defendant was driving out to the supermarket. There is no evidence to challenge or rebut this evidence. The court finds that the first defendant is not vicariously liable, there being no evidence that the second defendant acted as his servant and/or agent.

Damages

[60] On the issue of special damages, there was no documentary evidence to prove special damages. No award can be made.

[61] The claimant was ten years old when she was in the collision on July 5, 2012. She was first seen by Dr Ravi Prakash Sangappa on September 22, 2012, some two months and approximately three weeks later. There is no evidence of any mitigation of loss until then and no evidence that the claimant was undergoing physiotherapy before September 28, 2012.

[62] At that point, she was diagnosed with an injury to her neck and lower back. She was prescribed analgesics. The findings were paraspinal muscle tenderness over the left side of the neck of the cervical spine with a normal range of movements.

There was paraspinal muscle tenderness over both sides of the lower back from the L1-L5 level, and there was vertebral tenderness from the L2-L5 region, with a normal range of movement. Straight leg raising test was painful and normal.

[63] The assessment showed mild whiplash injury to the neck with lower back strain. The claimant was treated with analgesics, and muscle relaxants and referred to physiotherapy for the neck, and lower back and for follow-up.

[64] The claimant was reviewed on September 28, 2012 she had vertebral tenderness from the T12-S1 region and complained of intermittent pain to her neck and lower back. She had not yet started physiotherapy and was advised to do so.

[65] By January 5, 2013, the pain in her neck and back had reduced significantly, and she had episodes of pain to her neck and back once a week. On examination, she had mild tenderness over the neck and lower back. She was treated with analgesics and advised to continue physiotherapy.

[66] In **Peter Marshall v Carlton Cole and Alvin Thorpe**[10], Mr Marshall suffered, among other injuries, moderate whiplash and moderate lower back pain and spasm following a motor vehicle accident. He underwent continuous medical care for 16 weeks. On October 17 2006, he was awarded $350,000.00 in general damages. The equivalent when updated for inflation using the CPI of 143.1 for January 2025 is $501,702.89.[11]

[67] Counsel for the claimant cited the case of **Lawrence v Samuels et**[12] where Ms Lawrence presented with lower back pain and stiffness, neck pain and stiffness, headache and dizziness and pain and swelling to the right forearm. X-rays of the cervical and lumbar spine were done and the examination revealed findings

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[10] reported at page 109 of Recent Personal Injury Awards made in the Supreme Court of Judicature Jamaica, volume 6, compiled by Ursula Khan
[11] https://boj.org.jm/statistics/real-sector/consumer-price-indices/
[12] [2023] JMSC Civ. 232

consistent with severe whiplash injury, lower back strain and contusion to the right forearm. She was treated with analgesics, muscle relaxants and ice therapy. It was also recommended that she engage in physiotherapy sessions. Her prognosis was stated as being impacted by her state of pregnancy which restricted the medications which she could be prescribed. In **Lawrence**, an award in the sum of Two Million Three Hundred Thousand Dollars ($2,300,000.00) was made. However, the injuries sustained by the claimant in **Lawrence** were numerous, Ms Lawrence was pregnant and the injuries sustained were of a greater degree of severity than those of the instant claimant.

[68] A more comparable set of injuries are those in the case of **Pamela Thompson et al v Devon Barrows et al**.[13], in which, the claimant, Pamela Thompson suffered a mild whiplash injury to the neck and complained of pains in the neck, lower back and shoulder. The award for general damages of $250,000.00 in December 2006 when the CPI was 100.00[14] updates to $357,750.00 using the CPI for January 2025 of 143.1.

[69] In the present case, the claimant's injuries were a mild whiplash injury to the neck and lower back pain. She was treated with analgesics, and muscle relaxants and referred for physiotherapy of the neck, and lower back and follow-ups. Subsequent to her initial visit, she had two- follow-up visits and upon her final visit on January 5, 2013, the prognosis was that she had shown good improvement from her injuries. She was expected to experience occasional episodes of pain which was expected to settle in the next three to six months and she would benefit from continuing physiotherapy.

[70] General damages for pain and suffering are awarded to the claimant in the sum of Three Hundred and Fifty-Seven Thousand Seven Hundred and Fifty Dollars

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[13] CL2001/T143; 22nd December 2006.
[14] https://boj.org.jm/statistics/real-sector/consumer-price-indices/

($357,750.00). No award is made for special damages as there is no proof of same.

[71] Orders:

[72] The court makes the following orders:

1. Judgment for the Claimant.

2. Judgment for the First Defendant.

3. General damages awarded to the Claimant against the Second Defendant for pain and suffering and loss of amenities in the sum of Three Hundred and Fifty-Seven Thousand Seven Hundred and Fifty Dollars ($357,750.00) with interest at the rate of 3% per annum from May 29, 2013, to February 26, 2025.

4. Costs to the Claimant are awarded against the Second Defendant to be agreed or taxed.

5. Costs to the Claimant awarded in order number 4 are limited to the maximum award which could be awarded in the Parish Court.

6. No order as to costs for the First Defendant.

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Wint-Blair, J