[2017] JMSC Civ.68

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2012HCV 03667

BETWEEN	**VENTRICE BROWN**	**CLAIMANT**
AND	**HENRY MARSHALL**	**DEFENDANT/ANCILLARY CLAIMANT**
AND	**PATRICK BAILEY**	**1ST ANCILLARY DEFENDANT**
AND	**CHARMAINE BAILEY**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

CLAIM NO. 2013HCV05294

BETWEEN	**FALENSO SMITH**	**CLAIMANT**
AND	**HENRY MARSHALL**	**DEFENDANT/ANCILLARY CLAIMANT**
AND	**PATRICK BAILEY**	**1ST ANCILLARY DEFENDANT**
AND	**CHARMAINE BAILEY**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

CLAIM NO. 2013HCV05296

BETWEEN	**ANDREW SMITH**	**CLAIMANT**
AND	**HENRY MARSHALL**	**DEFENDANT/ANCILLARY CLAIMANT**
AND	**PATRICK BAILEY**	**1ST ANCILLARY DEFENDANT**
AND	**CHARMAINE BAILEY**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

CLAIM NO. 2013HCV03668

BETWEEN	**PATRICK BAILEY**	**CLAIMANT**
AND	**HENRY MARSHALL**	**DEFENDANT/ANCILLARY CLAIMANT**
AND	**PATRICK BAILEY**	**1ST ANCILLARY DEFENDANT**
AND	**CHARMAINE BAILEY**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

CLAIM NO. 2013HCV05599

BETWEEN	**PANDORA RICHARDS**	**CLAIMANT**
AND	**HENRY MARSHALL**	**DEFENDANT/ANCILLARY CLAIMANT**
AND	**PATRICK BAILEY**	**1ST ANCILLARY DEFENDANT**
AND	**CHARMAINE BAILEY**	**2ND ANCILLARY DEFENDANT**

Mr. L. Neale instructed by Bignall Law for Claimants.

Mr. Clifford Campbell instructed by Archer Cummings and Company for the Defendant / Ancillary Claimant.

Motor Vehicle accident – blameworthiness – Credibility – Road Traffic Act - Damages

Heard on: December 5, 2016, December 6, 2016, May 5, 2017 and May 10, 2017

CORAM: MORRISON, J

The facts in the case a bar are relatively simple. But for the failure of one Counsel at whose application written submissions were to be exchanged and filed by January 9, 2017 this judgment would have been delivered before now. These are the facts.

[1] On 8th January 2013 a collision involving two motor vehicles took place along the Ewarton main road in the parish of Saint Catherine. One of the vehicles was being driven by Mr. Patrick Bailey, one of the Claimants and the first Ancillary Defendant. The other was being driven by the Defendant, Mr. Henry Marshall who is also the Ancillary Claimant.

[2] It was approximately 5 am when Mr. Patrick Bailey, who was transporting his fellow Claimants in his taxi cab, along the two-lane Ewarton main road, (a thoroughfare which accommodates two-way traffic), when he encountered the Defendant's Tacoma motor truck thereon. Since the primary facts of the accident are in dispute I shall set out the traversed pleadings and the evidence to see how they comport with the relevant law.

[3] The Claim Forms of all Claimants, Ventrice Brown, Andrew Smith, Pandora Richards and Falenso Smith all recite that they claim "... to recover damages for negligence for personal injuries arising from a motor vehicle accident which occurred on or about the 8th day of January 2013, along Ewarton main road in the parish of Saint Catherine where the Defendant whether by himself his servant and/or agent so negligently drove, managed or controlled a Toyota Tacoma motor truck number and lettered 5122 FE, owned by the said Defendant, that it collided into the front of the Toyota Corolla car lettered and numbered PE 9670, abroad which the Claimant was a passenger at all material times (causing the Claimant to suffer injury, loss and damage and incur expense." (Emphasis supplied).

In the case of Patrick Bailey the Claim Form maintains the general tenor of the material allegations

[4] From the Particulars of Claim, which averred that the accident was caused and / or contributed to by the negligence of the Defendant, the following general Particulars of Negligence of the Defendant are as attributed by each Claimant-

"a) Drove at an excessive and / or improper speed;

b) Failed to keep any or any proper lookout;

c) Drove without any or any sufficient consideration for other users of the road

d) Failed to maintain sufficient control over the said motor vehicle;

e) Failed to apply brake within sufficient time or at all so as to prevent the collision from occurring;

f) Failed to stop, slow down, swerve, turn aside or otherwise operate the said motor vehicle so as to avoid the said collision;

g) Failed to keep any or any proper and effective control of the Toyota Tacoma motor truck numbered and lettered 5122 FE he was driving;

h) Failed to keep the Toyota Tacoma motor truck numbered and lettered 5122 FE on a safe path along the roadway. Being that said Toyota Tacoma motor truck numbered and lettered 5122 FE, from a stationary position suddenly and recklessly drove from the minor road into the major road of Ewarton main road in the parish of Saint Catherine without due care or attention, causing the Toyota Tacoma motor truck numbered and letter 5122 FE to collide with the front of the Toyota Corolla motor car lettered and numbered PE 9670, aboard which the Claimant was a passenger at all material times, causing the Claimant to suffer injury, loss and damage and incur expense.

i) The Claimant will rely on the doctrine of res ipsa locquitur."
(Emphasis supplied).

[5] I shall here remark that the Claimant, in the course of the trial did not rely on the latter doctrine.

[6] As to the Defendant/ Ancillary Claimant his Defence was filed on November 1, 2013. In it he joined issue with the Claimants by saying…"that the collision was

caused solely by or alternatively contributed to by the negligence of the driver of motor vehicle registered PE 9670." In his Defence the Defendant supplied the Particulars of Negligence of Driver of motor Vehicle Registered PE 9670. As itemised they are –

"1. Driving without due care and attention
2. Driving at too fast a rate of speed
3. Failing to maintain proper control over his motor vehicle
4. Failing to keep any or any proper lookout or to have any or sufficient Regard for traffic that was or might reasonably be expected to be on the said roadway.
5. Failing in time or at all to observe or head the presence of the Defendant's motor vehicle along the roadway
6. Operating the said motorcycle (sic) in a negligent and/or inattentive manner
7. Failing to stop, to slow down, to swerve or in any other way so as to manage or control the said motor vehicle to avoid the collision."

[7] From the Ancillary Claim Form filed and dated October 25, 2016 Mr. Henry Marshall claimed an indemnity or an entitlement to a contribution against Mr. Patrick Bailey and Ms Charmaine Bailey for damages, loss, injury and expense incurred by him as a result of the negligence of the Ancillary Defendant Mr. Patrick Bailey. Since the evidence in relation to the Claim and the Ancillary Claim is the same I now propose to deal with the evidence.

THE EVIDENCE

[8] Some seven witnesses gave evidence in this case: five for the collective Claimants and two for the Defendant. The Claimants are generally univocal in giving their testimonies about how the accident happened: Mr. Patrick Bailey was driving in his proper designated lane on the left of the Ewarton main road and heading for the Ewarton Square at a time when the Defendant who the driver

of the Tacoma motor truck which had been parked on the soft shoulder to the said left side of the road made an ill-timed, if not, ill-advised manoeuvre in an attempt to get into the right-bound lane for traffic going in the direction of Ocho Rios, Saint Ann. In the words of the Defendant himself, words which need no flattering sagacity or uncommon discernment to understand, he said: "From the soft shoulder where I was parked I would have had to cross the road into the left lane to go into the right lane", and that, "it took approximately one minute to go from the soft shoulder to the road."

[9] Even at this stage I am tempted to say, without more, that on the face of the above statement one would be hard-pressed in not accepting this as a flagrant violation of the rules of the road. To accept the Defendant's implausible explanation would, in my view, require the rational suspension of a drivers duty to other road users. This is what the Defendant had to say in cross-examination: "At that time the area had a little fog but it wasn't foggy, foggy." He continued: "a bus was parked at a bus stop and then I went down the road for a little distance and parked. My vehicle was facing Linstead. I was able to see two (2) chains down the road in the direction of Linstead… I looked in both directions and I saw nothing." Then comes the clincher: "When I was almost in the middle of the road that I saw a light coming. The car (Patrick Bailey's) came out of nowhere. This was almost immediately after I had driven off".

[10] I am obliged to say, at this point, that I cannot bring to the bar of credibility any acceptance of the reliability or trustworthiness of the Defendant as a witness of truth. The Defendant's witness, Mr. Larenzer Giscombe, gave no evidence which could be deemed to have supported or bolstered that of the Defendant's. In point of fact, Mr. Giscombe's evidence shows that Mr. Bailey's motor vehicle was already in the left lane as one goes in the direction towards Ewarton. At that time the Tacoma had been parked across from the bus and the latter itself was parked and facing in the direction of the Ocho Rios area. It is at this time that the

Defendant drove off and was heading towards Linstead when the collision occurred in the left lane as one heads in the direction towards Kingston. When taxed with the suggestion by the Claimant's counsel that the Defendant drove across the left lane from the soft shoulder when the collision occurred in the said left lane, Mr. Giscombe answered by saying, "He (Marshall) drove out but not suddenly."

[11] Having regard to the above, I am to say that, where the evidence of the Defendant conflicts with that of the Claimants, I am prepared to accept the evidence of the Claimants, in particular, that of Mr. Patrick Baily, in preference to that of the Defendant. I find the Claimants' evidence to be clear, cogent, credible and, by and large, consistent.

THE LAW

[12] The driving rules of engagement for the use of our public roads by motor vehicles are as stated at Section 5 1(i) of the Road Traffic Act." A motor vehicle –

a. Meeting or being overtaken by other traffic shall be kept to the rear side of the road. When overtaking other traffic the vehicle shall be kept on the right or off-side of such other traffic…

b. Being overtaken by other traffic shall be driven to allow such other traffic to pass;

c. Shall not be driven alongside of, or overlapping, ro so as to overtake other traffic proceeding in the same direction if by so doing it obstruct any traffic proceeding in the opposite direction;

d. Shall not be driven so as to cross or commence to cross or to be turned in a road if by so doing it obstructs traffic;

e. Proceeding from one road to another shall not be driven so as to obstruct any traffic on such other road;

f. Proceeding from a place which is not a road or from a road into a place which is not a road shall not be driven so as to obstruct any traffic road

g. Shall not be driven so as to overtake other traffic unless the driver has a clear and unobstructed view of the road ahead;

h. Shall not be permitted to travel backwards further than may be necessary for the turning or other reasonable purpose." (Emphasis mine).

[13] I have taken the liberty of citing this section (though not its entirety) to show that the policy of the law is geared towards public safety by reducing the risk of accidents with an in-built bias in favour of traffic that is already on the road as opposed to vehicles which are trying to get onto the road at the same time. As to the latter any violation of the Section 51(1) strictures would be deemed an obstruction. In fact, Section 51(3)(a) states that, "a motor vehicle obstructs other traffic if it causes risk of accidents thereto."

The expression, "other traffic", as used in Section 51(3)(a), "includes ... motor vehicles... being driven."

[14] There are three elemental strands which must come together in order for a cause of action for negligence to be constituted. First, there must exist a duty to the person injured. Second, there must be a careless act on the part of the tortfeasor and, third, there must be damage as a result of the breach of that duty by the tortfeasor.

[15] Thus, there is a duty cast upon a driver of a motor vehicle to apply ordinary care or skill towards other users of any main or parochial road and any roadway to which the public is granted access, whom he could reasonably forsee to be affected by the fact of his driving thereon.

[16] The duty to take care was defined, long ago, in the case of **Blythe v Birmingham Waterworks Co.,** (1856), 4 W.R. 204, as "the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

[17] In **Glenford Anderson v George Welsh**, [2012] JMCA Civ 43, Harris JA distilled from the case law authorities on the subject-matter the following principle: ... “In a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to the Claimant by the Defendant, that the Defendant acted in breach of that duty and that the damage sustained by the Claimant was caused by the breach of that duty.”

[18] In the words of Lord Uthwatt in **London Passenger Transport Board v Upson** [1949] 155**,** “a driver is not bound to forsee every extremity of folly which occurs on the road. Equally, he is certainly not entitled to drive upon the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, which the experience of users teaches that people do, albeit negligently.”

[19] It is trite law that the onus, or, burden of proof, for the tort of negligence, rests upon the Claimant and that the standard of proof which is required in the discharge of that duty, is on a balance of probabilities. As it relates to the facts in issue in a case, such as the one at bar, I remind myself that they are those which the Claimant must prove in order to succeed in his claim together with those which the Defendant must prove in order to succeed in his defence. Thus, the facts in issue are determined partly by reference to what the parties allege, admit, do not admit, and, deny. The Gordon of proof is, of course, for me by the Claimant.

[20] Again, I am to remind myself that cases, generally, are decided by the quality of the evidence adduced at the trial and that in evaluating that evidence I am, first, to evaluate a witness’s performance in light of the entirety of his evidence. Second, that witnesses do regularly lie but that lies by themselves do not mean that the entirety of the witnesses evidence is rejected especially where it is

recognised that a witness may lie to bolster his case about which the actual case itself remains good.

Third, it is essential that a witness is challenged with the other side's case. After taking into consideration all of the above I am to decide the likely veracity of the response in the overall context of the litigation: See comments of Peter Smith, J in E.P.I. Environmental Technologies plc [2004] EWHC 2945 (CH), [2005], W.L.R. at [74].

[21] Applied to the instant case, I find that the Defendant breached the rules of the road as per Section 5, of the Road Traffic Act, including the regulations thereunder, by driving his Tacoma motor truck so as to cross or commence to or be turned in a road and by so doing it obstructed the motor vehicle being driven by Mr. Patrick Bailey. Alternatively, the Defendant, in violation of Section 51(1)(f) of the said Act, proceeded from the "soft shoulder" of the Ewarton Main road, which "soft shoulder" is not a road, onto the Ewarton main road and thereby did obstruct Mr. Patrick Bailey's motor vehicle. There is no evidence from which the inference could be drawn that Mr. Bailey ought to have anticipated the egregious manouvre of Mr. Marshall in encroaching into his lawful path in his use of the Ewarton main road.

[22] I rejected the evidence of the Defendant, as previously noted, not only because of his obvious error of judgment but also because the logic of his prose left a lot to be desired.

CONTRIBUTORY NEGLIGENCE

[23] In **Froom v Butcher** [1975] 3 ALL ER 520, the eminent juristic words of Lord Denning M.R. on the subject are worth repeating: "Negligence depends on a breach of duty whereas contributory negligence does not." Negligence, when contrasted to contributory negligence, he says, "is a man's carelessness in

looking after his own safety. “Whereas”, a man is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man he might hurt himself.” For this proposition of the law the Master of the Rolls relied on the authority of **Jones v Livex Quarries Ltd;** [1952] 2 Q.B. 608.

[24] In **Nance v Bristish Columbia Electric Rail Co. Ltd.** [1951] AC 60, The Court of Appeal said that when contributory negligence is set up as a defence, its existence does not depend on any duty owned by the injured party to the party sued and that all that is necessary to establish such a defence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed, by want of that care, to his own injury.

[25] However, as noted by my brother K. Anderson, J, in the unreported case of **Neil Lewis v Astley Baker**, [2014] JMSC 1, where the defendant’s negligence has created a dilemma for the Claimant, the defendant cannot escape full liability, if the claimant, in the agony of the moment tries to save himself by choosing a course of conduct which proves to be the wrong one provided the claimant acted in reasonable apprehension of the danger and provided also that the method by which he tried to avoid it was a reasonable one.

Applied to the instant case, appreciating as I do that both driver’s owed a duty of care to each other, it cannot be said that Mr. Patrick Bailey, whose vehicle was already on the Ewarton main road, should have anticipated that a vehicle would abruptly leave the soft shoulder of the road that he was travelling on, transgress his lawful path by the act of turning across his motor vehicle and thereby cause a collision: See also **Lewis v Denye,** [1939], K.B. 540.

[26] It was the Defendant who had caused the dilemma. In the agony of the moment and in order to avoid the collision, Mr. Patrick Bailey swerved his motor vehicle to the left and engaged the car’s braking mechanism to avoid the collision.

I find that Mr. Patrick Bailey acted in reasonable apprehension of the danger and that the method which he employed to avoid the collision, that is, by swerving and by applying his brakes, were reasonable in the circumstances. Accordingly, I am to say that Mr. Patrick Bailey is not contributorily negligent for the accident. The Defendant is wholly to blame for the accident as he should have had a clear view before emerging out onto the roadway; also, he should have signalled electronically or mechanically that he wished to join mainstream traffic. Further, that he sounded his horn to notify other road users, including Mr Patrick Bailey, that he intended to do so. Significantly, the Defendant's account of the accident omits to mention crucial material factors of his intention to notify other road users of his wanting to cross the main road. Further, it is of noteworthy importance where he says, "when I was almost in the middle of the road that I saw a light coming." This is even the more crucial when it is borne in mind that in cross-examination he said "The area was properly lit. It was very clear and I looked left and right." Again, I am to say that the accident was caused entirely by the Defendant's faulty manouvre. He was the victim of his own improper judgment. Accordingly, the Ancillary Claim also fails.

[27] Let me now engage the issues of general damages and special damages in respect of each Claimant.

Re: Ventrice Brown

GENERAL DAMAGES

[28] I begin with the claim of Ms Ventrice Brown who is eminently entitled to recover damages for pain and suffering and loss of amenities. Her injuries as pleaded are supported by medical evidence. According to Dr. Ravi Prakash Sangappa this Claimant suffered lower back strain and mild soft tissue injury to her right leg.

Subsequently, when seen by Dr Andrew Amearally, she was diagnosed as suffering from –

a) paraspinal muscle strain of the lumbar region;

b) soft tissue injury to the right shoulder; and

c) soft tissue injury to the right leg

In the result he gave her a three percent (3%) whole person impairment. Disability ratings were given with respect to the lumbar spine, foot and ankle and to the shoulder.

[29] In assessing damages under this head I am to be guided by the following cases law authorities:-

1. **St. Helen Gordon and another v Royland McKenzie,** Claim No. C.L. 1997 G025; and

2. **Dalton Barrett v Poincianna Brown and others**, Claim No. 2003 HCV 1358

[30] Of the two cited cases I prefer the case of **St. Helen Gordon** it being more analogous to the one at bar. In that case the claimant was awarded $400,000.00 in July 1998. The relevant Consumer Price Index (CPI) was 48.37. The dominant injuries to our current Claimant are whiplash and pain centered around the neck and shoulder with a whole person impairment of 37◦. This figure when properly calculated by using the formula of the present CPI which is 235.6, divided by the CPI at the date of the award the resultant of which is then multiplied by the award itself, would yield approximately $1,948,315.00.

[31] It is to be observed, however, that though Ms Brown suffered injuries similar to those of the claimant in **St. Helen Gordon**, they both received evaluations of 3% whole person impairment. Ms Brown did not suffer from neck injuries she had suffered a back injury. She also suffered additional injuries of soft tissue injury to the right leg and right shoulder. I accept that Ms. Brown's injuries are more

severe than those suffered by the claimant in **St. Helen Gordon** case. Therefore, the award in the **St. Helen Gordon** case, being used as a guide I should think that the award to Ms Ventrice Brown should be increased to reflect that fact.

[32] I find that Ms. Brown did discharge her duty to mitigate her losses by attending medical treatment regularly and that this caused her to see some improvements in her functionality. I therefore accept that an award of $2,200,000.00 is reasonable. As for loss of earnings she claims the sum of $60,000.00. For extra help she claims the sum of $40,000.00. These are arid, bare-bone claims. Some substance, in the form of evidence, documentary or otherwise, needed to have been given to add weight and substance to this aspect of the claim.

[33] I am also to point out that, in her evidence, Ms Brown claims to have incurred more that what she has actually claimed for. It behoves me here to restate the law in this area: Where a claimant seeks to recover special damages such a one must strictly prove that loss. It is not sufficient for such a claimant to put before the Court sterile particulars in asserting his or her loss and then request that he or she be awarded those amounts as damages.

[34] Such an approach has been frowned upon by Lord Goddard in **Bonham-Carter v Hyde Park Hotel Ltd** (1945) 64 T.L.R 177 at page 178: See also Harris, JA in **Martorie Walker, Michael Costa** and **Kenneth Neysmith**, Executors of the Estate of **Neville Walker v Victor Lobban,** SCCA No. 132/02, page 19.

[35] I am aware that there is authority for the proposition that the social realities for certain informal business sector in Jamaica do not readily lend itself to the recording of formal commercial transactions. Hence, it is not expected, say, of a push cart vendor, to produce transactional receipts: See **Desmond Walters v Carlene Mitchell** (1992) 29 JLR 173. It is undoubtedly the case that this sort of unorthodox practice applies to a certain cohort of taxi drivers as well. While I am

prepared to accept the sum of $20,000.00 for transportation costs, I am not prepared to accept the sum of $40,000.00 being claimed for extra help. As for loss of earnings I am inclined to consider giving her the minimum wage for a 40 hour week period which is $3,700.00.

[36] The decision in **Desmond Walters v Carlene Mitchell,** (supra) sought to relax the strict documentary proof requirement in certain circumstances in respect of loss of earnings. It is submitted, by Mr. Neil, that the principle expressed therein has wide application and that the court should use its own experience in arriving at what is proved on the evidence. The circumstances of this case warrant the application of this principle, asserts Mr. Neil, as Ms Brown is self-employed her being in the dressmaking business that in itself does not adhere to good book-keeping practices. However, I am reminded of the authority of **Attorney General v Tanya Clarke**, SCCA 109/2002, which reiterates that the **Bonham-Carter** principle is still good law. In view of the lack of strict proof I am prepared to grant an award for loss of earnings by awarding the minimum wage for ten (10) weeks thus giving a total of $37,000.00.

[37] The claim for extra-help has not been proved and is thus declined.

Re: Andrew Smith

General Damages

[38] Mr. Smith pleaded injuries are supported by medical evidence and are as follows:-

(i) Resolving headache;
(ii) Mild lower back strain;
(iii) Paraspinal muscle strain of the cervical region;
(iv) Left sided forehead contusion; and
(v) 1% WPI (Whole Person Impairment)

[39] In assessing damages under this head, I sustain the guidance of the following cases: **Dalton Barrett v Poncianna Brown et al – 2003 HCV 1358** and **Melford Ricketts v Claudius Dennis** - Claim No. 2006 HCV 04152.

[40] In **Melford Ricketts** the claimant's dominant injuries were whiplash injury to the neck. The court awarded a sum of $950,000.00 in May 2008. The CPI was then 127.8. When transported into the money of today it updates to $1,751,330.00 when using the CPI of November 2016 of 235.60.

[41] Mr. Smith suffered similar injuries to those of the claimant in **Dalton Barrett.** Both suffered neck and back injuries. However, Mr. Smith suffered additional injuries of left sided forehead contusions: See Dr. Ameerally's report. He was also assigned Whole Person Impairment (WPS) of 1% unlike the claimant in the **Dalton Barrett** who was not assigned any WPI. I accept that Mr. Smith's injuries are a little more severe than that of the claimant's in the **Dalton Barrett** case. Accordingly, I am of the view that an award should be made to reflect the fact of the greater severity of Mr. Smith's injuries.

[42] Mr. Smith discharged his duty to mitigate his loss by attending medical treatment regularly and this caused him to see improvements in his functionality. I therefore make an award of $2,000,000.00 which should be adequate compensation in the circumstances.

Special Damages

[43] Special Damages in respect of the receipts tendered were agreed at $98,000. Costs for transportation and loss of earnings were not agreed. These items were specifically pleaded though not strictly proved with reference to the relevant receipts. Mr. Smith claims that he incurred expenses for transportation in the sum of $20,000.00. For loss of earnings he claims the sum of $90,000.00. Again as in the case of Ventrice Brown, I award a sum of $20,000.00 for

transportation costs and award the minimum wage of $3,700.00 per forty-hour week for loss of earnings but I am not prepared to offer the unpleaded amount for extra help.

[44] In his evidence Mr. Smith testified to have incurred transportation expenses totalling $20,000. I accept that this amount is reasonable and that he be awarded that sum. The Claimant's counsel argues that he should also be awarded the sum of $90,000.00 for loss of earnings as he testified that owing to the accident, he lost that amount. He testified that he is a business man who works in the craft industry. He said that he is a wholesaler and that he sells and delivers craft items to craft markets for sale to tourist. His evidence is that he was not able to deliver products on that morning owing to the accident and as such lost an opportunity to gain. Special damages, he argues, should be in the sum of $190,200.00. Again, I cannot accept this sum for reasons which I have already stated overleaf: It is too facile to give figures in the round unaccompanied by the strict proof which is required by the law. I am prepared to grant an award on the basis of the minimum wage of a 40-hour work week of $3,700.00.

Re: Pandora Richards

General Damages

[45] Ms Richard's pleaded injuries are supported by medical evidence and are as follows:

(i) Right shoulder strain;
(ii) Mild lower back strain;
(iii) Mild soft tissue injury to right hip;
(iv) Soft tissue injury; and
(v) 3% WPI.

[46] In assessing damages under this head, I have accepted the guidance of the following cases-

1) **St. Helen Gordon and Anors v. Royland McKenzie,** Claim No. C.L. 1997 G025; and,

2) **Dalton Barrett v Poncianna Brown et al**, 2003 HCV 1358.

[47] Ms. Richard suffered similar injuries as the claimants in **St. Helen Gordon** with the same 3% WPI.

[48] Ms. Richards discharged her duty to mitigate her loss by attending medical treatment regularly and this caused her to see improvements in her functionality. I am of the view that an award of $2,000,000.00 would be adequate compensation in the circumstances.

Special Damages

Special Damages in respect of the receipts tendered were agreed at $134,000.00. Costs for transportation and extra help were not agreed. These items were specifically pleaded though not strictly proved with reference to the relevant receipts. Ms Richards claims that she incurred expenses for transportation in the sum of $20,000.00, and for extra help she claims the sum of $40,000.00. Again, while I reluctantly grant the sum claimed for transportation, I cannot yield to the sum claimed for extra help about which the law is clear.

[49] Whereas this Claimant testified that she had to be dependent on assistance from paid sources for about two (2) weeks when she could not work due to her back injury, something else was needed to bolster or support this aspect of the claim. Her mere say-so is not enough. Special damages are therefore granted in the sum of $154,000.00.

Re: Falenso Smith

General Damages

[50] Mr. Smith's pleaded injuries are supported by medical evidence and are as follows:

(i) Mild headache secondary to flexon extension injuries;

(ii) Mild lower back strain;

In assessing damages under this head I accept the guidance of the following cases-

1) **Anna Gayle Anderson v. Andrew (Fitzroy) O'Meally** – 2005 HCV 02551 and; and

2) **Yanique Hunter v Conrod Clarke and Kirk Beckford** [2014] JMSC Civ. 83.

[51] The Claimant in **Anna Gayle Anderson** was awarded $600,000.00 in April 2008 when the CPI was 124.8 This Claimant's most dominant injury is soft tissue injury to the back. This figure would, when updated be almost $1,132,692.00 using the CPI of 235.60 for November 2016.

[52] In **Yanique Hunter** the claimant's dominant injuries were chronic sprain to the lower back with non-specific lower back pain and assigned a 2% WPI. An award of $1,200,000.00 was made in May 2014 (CPI – 215.7) which updates to approximately $1,310,709.39 using the CPI of November 2016 of 235.60.

[53] Mr. Smith suffered similar back injury as the claimants in **Yanique Hunter** and **Anna Gayle Anderson.** He also suffered headache. Both referenced cases are analogus to the one at hand and I am prepared to submit to an award of $1,200,000.00 as has been asked for.

Special Damages

[54] Special Damages in respect of the receipts tendered were agreed at $38,500.00. Costs for transportation were not agreed. Mr. Smith claims that he incurred expenses for transportation in the sum of $20,000.00. This I will grant.

[55] In his evidence he stated that he incurred $13,000.00 for transportation to the doctors' offices and for physiotherapy treatment. I accept that this sum is reasonable as he used public transportation in travelling to the Oasis Health Care Limited offices and to the doctor's office in Kingston. Special damages is therefore awarded in the sum of $51,500.00.

Re: Patrick Bailey

General Damages

[56] Mr. Bailey's pleaded injuries are supported by medical evidence and are as follows:

(i) Mild headache secondary to flexon extension injuries;
(ii) Mild cervical back strain;
(iii) Mild lower back strain; and
(iv) 2% WPI

[57] In assessing damages under this head I accept the guidance of the following-

1) **Dalton Barrett v. Poncianna Brown et al**, 2003 HCV 1358; and
2) **Yanique Hunter v Conrod Clarke and Kirk Beckford**, [2014] JMSC Civ. 83.

[58] I accept that the **Yanique Hunter** is case somewhat similar as in both cases both claimants suffered lower back pain and were assigned 2% WPI. However,

Mr. Bailey suffered other injuries unlike the claimant in the **Yanique Hunter** case. The Claimant submitted that an award should be made to reflect the severity of Mr. Bailey's injuries. The Claimant proposes a sum of $1,900,000.00 as being adequate compensation in the circumstances. It is to be noted that an updated **Yanique Hunter** award comes out at $1,310,709.39. Accordingly, in the round I grant the sum of $1,500.000.00 for general damages.

Special Damages

[59] Special Damages in respect of the receipts tendered were agreed at $144,500.00. Costs for transportation and extra help were not agreed. These items though specifically pleaded were not strictly proved. Mr. Bailey claims that he incurred expenses for transportation in the sum of $20,000.00. In his evidence he indicated that he actually incurred $25,000.00. I am prepared to grant the sum of $20,000.00 it being reasonable as he had to travel by chartered taxi to the Oasis Health Care Limited offices for physiotherapy sessions and to the doctor's office in Kingston.

[60] He also claims the sum of $4,000.00 per week for extra help. In his evidence he states that he was unable to do household chores for up to three months and had to depend on his spouse. He bemoaned that he would need her assistance to even get out of bed. The Claimant submits that four (4) weeks compensation in the sum of $16,000.00 is reasonable for extra help.

Again, I am to reject this aspect of the claim for reasons which I have already expressed overleaf.

[61] In summary I make the following orders:-

For Ventrice Brown

(i) General Damages in the sum of $2,200,000.00 with interest at 3% from the date of service of Claim Form to May 5, 2017.

(ii) Special Damages in the sum of $194,000.00 with interest at 3% from January 8, 2013 to May 5, 2017.

For Andrew Smith

(i) General Damages in the sum of $2,000,000.00 with interest at 3% from the date of service of the Claim Form to May 5, 2017.

(ii) Special Damages in the sum of $155,000.00 with interest at 3% from January 8, 2013 to May 5, 2017.

For Pandora Richards

(i) General Damages in the sum of $2,000,000.00 with interest at 3% from the date of service of the Claim Form to May 5, 2017.

(ii) Special damages are awarded in the sum of $164,000.00 with interest at 3% from January 8, 2013 to May 5, 2017.

For Falenso Smith

(i) General Damages in the sum of $1,200,000.00 with interest at 3% from the date of service of the Claim Form to May 5, 2017.

(ii) Special Damages in the sum of $90,000.00 with interest at 3% from January 8, 2013 to May 5, 2017.

For Patrick Bailey

(i) General damages in the sum of $1,500,000.00 with interest at 3% from the date of service of the Claim Form to May 5, 2017.

(ii) Special damages are awarded in the sum of $164,500.00 with interest at 3% from January 8, 2013 to May 5, 2017.

[62] Costs on each successful claim are to go to the respective Claimant and are to be agreed. If such costs cannot be agreed then such costs are to be taxed. With respect to the Ancillary claim, costs are awarded to the Ancillary Defendants and are to be taxed if such costs cannot be agreed.