



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2010 HCV 04011**

BETWEEN	ALVIN CATO	CLAIMANT
AND	PAUL WILLIAMS	1ST DEFENDANT
AND	GARFIELD WALTERS	2ND DEFENDANT
AND	ONEIL PEARSON	3RD DEFENDANT
AND	CODIEN HANSON	4TH DEFENDANT

IN OPEN COURT

Ms Winsome Marsh and Mr Nathan Geddes-Morrison for the Claimant

Ms Suzette Campbell and Mr Oshane Vacciana instructed by Burton-Campbell & Associates for the 1st Defendant

The 4th Defendant is unrepresented

Heard: June 9 and 16, 2021

Negligence – Motor vehicle collision – Vehicle stopped in the vicinity of the entrance to a school some distance from a corner – Vehicle colliding with the rear of that which had stopped – The duty of care – The duty of care in terms of proper care – Reciprocated duty – Road code – Breach – Effect – Breach creating no presumption of negligence – Contributory negligence – Credibility of witnesses

Damages – Personal injury – Whiplash injury – Severe neck and back pain – Extreme tenderness to the back – No permanent disability – Amount of damages – Road Traffic Act, sections 51(2), 53(1)(a) and (b) and 95(3), Island Traffic Authority Road Code, Part 2 – 1, 35, 39(b),(c),(d) and (e) and 40

A. NEMBHARD J

INTRODUCTION

- [1] The Claimant, Mr Alvin Cato, was the victim of a road traffic accident which took place on the morning of 26 November 2004. At approximately 7:00 a.m., Mr Cato was travelling in a public passenger vehicle, a Toyota Corolla, registered 4859 PA (“the Toyota Corolla”). Mr Cato was seated in the rear of the Toyota Corolla. His route lay along the Galina Main Road, in the parish of St. Mary.
- [2] At the time of the accident, the Toyota Corolla was owned by the 1st Defendant, Mr Paul Williams and was being driven by the 2nd Defendant, Mr Garfield Walters.
- [3] On reaching the vicinity of the Galina Primary School, having just come around a corner in the road, Mr Walters stopped the Toyota Corolla, in order to pick up a pedestrian. It is whilst stopped in the vicinity of the entrance to the Primary School that a Toyota Hiace, registered 3986 PA, owned by the 3rd Defendant, Mr Oneil Pearson and driven by the 4th Defendant, Mr Codien Hanson, collided with the rear of the Toyota Corolla.
- [4] As a consequence of the collision, Mr Cato suffered whiplash injury, severe pain to his neck and back and extreme tenderness to his back. Fortunately, he suffered no permanent disability.
- [5] By way of a Claim Form, filed on 17 August 2010, Mr Cato commenced an action for Damages in Negligence, in respect of his injuries, loss, damage and expenses, occasioned as a result of the collision.

- [6] On 9 June 2021, the trial of this matter commenced and proceeded against the 1st Defendant. The Court also proceeded to assess damages, as against the 4th Defendant, Mr Cato having obtained an Interlocutory Judgment in Default of Acknowledgement of Service against him, on 27 August 2020.
- [7] Mr Cato obtained an Interlocutory Judgment in Default of Acknowledgement of Service against the 2nd Defendant, Mr Walters. That Judgment was subsequently set aside on 6 July 2020, on the basis that the Claim Form and Particulars of Claim, each filed on 17 August 2010, were never served on Mr Walters.
- [8] Similarly, the 3rd Defendant was never served in respect of this matter.

THE ISSUES

- [9] The issues that arise for the Court's determination may be distilled in the following way: -
- (i) Whether Mr Garfield Walters owed the Claimant, Mr Cato, a duty of care;
 - (ii) Whether Mr Walters breached that duty of care;
 - (iii) Whether the motor vehicle collision was caused by the negligence of Mr Walters;
 - (iv) Whether Mr Walters was contributorily negligent, in respect of the motor vehicle collision and, if so, in what proportion?

THE LAW

The claim in negligence

- [10] It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a

claimant by a 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.¹

The burden and standard of proof

[11] It is also well settled that where a claimant alleges that he/she has suffered damage resulting from an object or thing under the defendant's care or control, a burden of proof is cast on him or her to prove his or her case on a balance of probabilities.

[12] The general state of the law as to the proof of negligence was eminently enunciated by Lord Griffiths in **Ng Chun Pi and Ng Wang King v Lee Chuen Tat and Another**.² He stated as follows: -

“The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant might have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred...

...it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established.”

The duty of care

[13] In establishing a duty of care there must be foreseeable damage consequent upon the defendant's negligent act. There must also be in existence, a sufficient proximate relationship between the parties, making it fair and reasonable to assign liability to the defendant.

¹ See – **Glenroy Anderson v George Welsh** [2012] JMCA Civ 43, at paragraph [26], per H. Harris JA

² Privy Council Appeal No. 1/1988, judgment delivered on 24 May 1988, at pages 3 and 4

[14] Lord Bridge, in **Caparo Industries plc v Dickham**,³ spoke to the test in the duty of care, sufficient to ascribe negligence, in this way: -

“In determining the existence and scope of the duty of care which one person may owe to another in the infinitely varied circumstances of human relationships, there has for long been a tension between two different approaches. Traditionally the law finds the existence of the duty in different specific situations each exhibiting its own particular characteristics. In this way the law has identified a wide variety of duty situations, also falling within the ambit of the test of negligence.”

[15] At pages 573 and 574 Lord Bridge went on to say: -

“What emerges, is that, in addition to the foreseeability of damage, [the] necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the law as one of ‘proximity’ or ‘neighbourhood’ and that the situation should be one in which the Court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other.”

[16] There is a reciprocated duty of care that each driver on the road owes to others. This duty of care is to manage and control his motor vehicle in such a way as to prevent harm or damage to other users of the road. The duty is not owed to the world at large. It must be tested by asking, with reference to each complainant, whether a duty was owed to him or her. If the complainant was not in such a position that direct physical injury could reasonably be anticipated to him or his relations or friends, then normally no duty would be owed. (See – **Stephen Pryce v Joslyn Pryce and Daviot Pryce**,⁴ **Esso Standard Oil SA Limited and**

³[1990] 1 All ER 568 at page 572

⁴ Claim No. 2004 HCV 2899, judgment delivered on 24 April 2009

Another v Ian Tulloch,⁵ Hay or Bourhill v Young,⁶ Elizabeth Brown v Daphne Clarke & Others,⁷ and Pluckwell v Wilson, Bart.⁸)

The duty of care in terms of “proper care”

[17] Lord MacMillan expressed the duty of care in terms of “proper care” in **Hay or Bourhill v Young**.⁹ He had this to say at page 403: -

“Proper care connotes avoidance of excessive speed, keeping a proper look-out, observing traffic rules and signals and so on. Then to whom is the duty owed? Again I quote and accept the words of Lord Jamieson:

‘...to persons so placed that they may reasonably be expected to be injured by the omission to take such care.’

The duty to take care is the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed.”

The duty of care enshrined in statute

[18] This duty of care is enshrined in the Road Traffic Act (“the Act”).

[19] Section 51(2) of the Act imposes a duty on drivers to take such precautionary action to prevent an accident. It reads as follows: -

“Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any

⁵ (1991) 28 JLR 553

⁶ [1942] 2 All ER 396

⁷ [2015] JMSC Civ 234

⁸ (1832) CAR. & P. 376

⁹ *supra*

of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection.”

Other relevant provisions

[20] Section 53 of the Act is relevant for present purposes. The section provides, in part, as follows: -

“53.–(1) A motor vehicle when not in motion –

- (a) shall be placed with its near side as close to the left of the roadway as possible or in such position as may be indicated by any constable or by notice exhibited by a Traffic Area Authority;*
- (b) shall not be placed or allowed to remain in such a position as to obstruct or be likely to obstruct traffic.”*

[21] The relevant portions of Part 2 of the Island Traffic Authority Road Code, 1987 (“the Road Code”) read as follows: -

“1. Before you attempt to move from a parked position wait until there are no vehicles near enough to cause an accident. Give the proper hand or indicator light signals before moving off. Look out for overtaking vehicles. Check your rear view mirror/mirrors.

35. Before you pull out of a parking position look behind, signal your intention and make sure you can do so safely and with no inconvenience to the other road users.

39. Do not park or stop your vehicle: -

(a) ...

(b) At or nearer than 40' from a fire hydrant, a bus stop, hospital or school entrance.

(c) *On a main road carrying fast-moving traffic.*

(d) *On the paved surface of a road when adequate soft shoulder area is provided.*

(e) *At or near a bend, the brow of a hill, or a hump back bridge.*

40. *When you park or stop your vehicle pull in as close as possible to the left of the edge of the road or kerb.”*

[22] Section 95(3) of the Act states as follows: -

*“The failure on the part of any person to observe any provisions of the Road Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.”*¹⁰

ANALYSIS

[23] The question now arising, is, whether, on the evidence, negligence can be ascribed to any party?

[24] The issue of liability is to be determined on the facts of each case, as each case has its own nuances. This principle was enunciated by Lord Greene M.R. in **Morris v Luton Corporation**.¹¹

[25] Lord Greene M.R. stated as follows: -

“There is sometimes a temptation for judges in dealing with these traffic cases to decide questions of fact in language which appears to lay down some rule which users of the road must observe. That is a habit into

¹⁰ See also – **Leighton Samuels v Leroy Hugh Daley** [2019] JMCA App 24, at paragraphs [67] and [71], per Foster-Pusey JA and **Powell v Phillips** [1972] 3 All ER 864, at page 868, paragraphs b-d, per Stephenson LJ

¹¹ [1946] 1 K.B. 114

which one perhaps slips unconsciously...but it is much to be deprecated, because these are questions of fact dependent on the circumstances of each case.”

Whether Mr Garfield Walters owed the Claimant, Mr Cato, a duty of care

- [26] The first issue that arises for the Court’s determination is whether, in the circumstances of this case, Mr Walters owed a duty of care to Mr Cato. To succeed in his claim in negligence, Mr Cato must prove, on a balance of probabilities, that Mr Walters owed him a duty of care; that he [Mr Walters] breached that duty of care; and that that breach caused him [Mr Cato] to suffer harm that was reasonably foreseeable.
- [27] It is now trite law that there is a reciprocated duty of care that each driver on the road owes to others. This duty of care is to manage and control his motor vehicle in such a way as to prevent harm or damage to other users of the road. The duty is one that is limited to persons who are so placed that they may reasonably be expected to be injured by the omission to take such care. Undoubtedly, this duty extends to any passenger travelling in his motor vehicle.
- [28] In the circumstances of this case, the issue of whether Mr Walters owed Mr Cato a duty of care is not a complex one. The Court finds that Mr Walters owed a duty of care to Mr Cato, to manage and/or control his motor vehicle with such care and in such a manner that would not cause harm or injury to his passengers, including Mr Cato.

Whether Mr Walters breached the duty of care

Whether the motor vehicle collision was caused by the negligence of Mr Walters

- [29] To determine the issue of liability, the Court must assess the two divergent accounts of how the collision occurred.

- [30]** Mr Cato avers that Mr Walters stopped the Toyota Corolla, not long after he [Mr Walters] had cleared a corner. Mr Walters is alleged to have brought the Toyota Corolla to a stop, in the vicinity of the entrance to the Galina Primary School, in order to pick up a pedestrian. At that time, the Toyota Corolla was partially on the left soft shoulder (when one faces the direction of Ocho Rios) and partially in the main road.
- [31]** Having collected the pedestrian, Mr Walters moved the Toyota Corolla from where it had stopped further onto the main road. As he did so, a Toyota Hiace, registered 3986 PA, came around the corner behind the Toyota Corolla and collided with its rear. The impact of the collision pushed the Toyota Corolla from the roadway onto the compound of the Primary School.
- [32]** For his part, Mr Walters did not agree that the collision occurred while the Toyota Corolla was moving. He was adamant that it was whilst the Toyota Corolla was stationary that the collision occurred.
- [33]** Mr Walters contends that he brought the Toyota Corolla to a stop, along a straight stretch of road, some forty (40) to fifty (50) feet from the corner. The Toyota Corolla was stopped in front of the gate to the Primary School and was partially on the left soft shoulder and partially on the asphalted surface of the main road.
- [34]** Mr Walters testified as follows: -

"I know that a Primary School existed at that location. As a driver, approaching the school requires extra precaution. That's why I stopped half way on the soft shoulder and half way on the road. I don't think that coming off the road would be a better precaution.

Q: *Could you say that the vehicle was exactly half way on the road?*

A: *It was half way on the road and half way on the soft shoulder.*

If I come off the road totally I have fi go inna de school yard. I passed the gate. There are two (2) columns – one (1) on the left and one (1) on the right. I stopped below the one on the right. The back of my vehicle would not prevent another from going into the school.

The passenger didn't come into the vehicle that morning because I didn't want to block the school gate. So the passenger didn't come into the car.

Q: *You realized that when you stopped that morning you stopped in a dangerous position?*

A: *No Sir. I didn't try to move because the other person didn't come in.*

Me get hit and the car end up in the school yard. The driver came around the corner and something was coming and him couldn't stop. That's how him end up hit me in my back. Something was coming in the opposite direction. That something was a vehicle."

[35] In assessing the credibility and reliability of the witnesses in the instant case, as well as that of the evidence that it has heard, the Court will be guided by the observations of Lord Pearce (dissenting) in the House of Lords decision of **Onassis v Vergottis**.¹²

[36] Lord Pearce is quoted as follows: -

"Credibility involves wider problems than mere demeanour, which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following...Firstly, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly, and if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over discussion of it with

¹² [1968] 2 Lloyds Rep 403 at page 431

others? ...Lastly, although the honest witness believes that he heard or saw this or that, is it so improbable that it is on a balance of probabilities that he was mistaken?

On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness.

All these...compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process..."

- [37]** The Court accepts Mr Cato as a credible and reliable witness and accepts his evidence to be both credible and reliable. The Court accepts that the motor vehicle collision took place in the circumstances described by Mr Cato. On a preponderance of the evidence, the Court finds that Mr Walters breached the duty of care owed by him to Mr Cato. The Court finds that Mr Walters caused the motor vehicle collision and that he so managed and/or controlled the Toyota Corolla in such a manner that caused Mr Cato injury, harm, loss and damage.
- [38]** It is clear from Mr Walters' own evidence that, at the time of the collision, the position of the Toyota Corolla made it an obstacle in the path of the oncoming vehicular traffic. Mr Walters' evidence is that the driver of the Toyota Hiace, having come around the corner, was unable to stop and that there was another vehicle travelling in the opposite direction. It is in those circumstances that the Toyota Hiace is said to have collided with the rear of the Toyota Corolla. The Court finds that this evidence supports that of Mr Cato that the entrance to the Primary School is not far from the corner; that at the time that Mr Walters brought the Toyota Corolla to a stop, more than a half of it was in the main road; and that the collision occurred while the Toyota Corolla was moving further onto the main road.
- [39]** Undoubtedly, the fact that Mr Walters stopped the Toyota Corolla nearer than forty feet (40') of the entrance of a school, in breach of the Road Code, by itself raises no presumption of negligence. It is however, a consideration to which the Court can properly have regard when determining where to ascribe negligence.

[40] In the circumstances of this case, there is a duty placed on Mr Walters to pull sufficiently off the main road and in such a manner so as not to present an obstacle in the path of oncoming vehicles. There is also a duty placed on Mr Walters to manoeuvre the Toyota Corolla from where it had stopped further onto the main road, in such a manner so as not to present an obstacle in the path of oncoming vehicles. The Court finds that this collision would not have occurred but for the improper stopping and manoeuvring on the part of Mr Walters.

[41] For his part, the 1st Defendant, Mr Paul Williams, accepts that in 2004 he was the owner of the Toyota Corolla which he operated as a public passenger vehicle in the parish of St. Mary. Mr Williams also accepts that in 2004 Mr Walters was the regular driver of the Toyota Corolla.¹³

[42] Accordingly, the Court makes the following findings of fact: -

- (i) That on 26 November 2004, Mr Cato was the victim of a motor vehicle accident which took place along the Galina Main Road, in the parish of St. Mary;
- (ii) That at the time of the accident, Mr Cato was a passenger in a Toyota Corolla, registered 4859 PA, which was owned by the 1st Defendant, Mr Williams and which was being driven by Mr Garfield Walters, with the knowledge and consent of Mr Williams;
- (iii) That Mr Cato was seated in the rear of the Toyota Corolla;
- (iv) That Mr Walters brought the Toyota Corolla to a stop in the vicinity of the entrance to the Galina Primary School, in order to pick up a pedestrian;
- (v) That while the Toyota Corolla was stationary, it was positioned partially on the left soft shoulder (when one faces the direction of Ocho Rios) and

¹³ See – Witness Statement of Paul Williams which was filed on 18 September 2019 and which was permitted to stand as the evidence-in-chief of the witness Paul Williams, at paragraph 2

partially on the asphalted surface of the main road and was nearer than forty feet (40') of the entrance of a school;

- (vi) That the Toyota Corolla was stopped some thirty (30) to thirty-five (35) feet from a corner;
- (vii) That the pedestrian entered the Toyota Corolla, after which, Mr Walters drove the Toyota Corolla further onto the main road;
- (viii) That while Mr Walters was so manoeuvring the Toyota Corolla, a Toyota Hiace, registered 3986 PA, came from around the corner and collided with the rear of the Toyota Corolla;
- (ix) That at the time of the collision, the Toyota Hiace was owned by the 3rd Defendant, Mr Pearson and was being driven by the 4th Defendant, Mr Hanson;
- (x) That Mr Walters failed to adequately pull off the roadway; that he failed to keep any or any proper lookout or to have adequate regard for other users of the road; that he failed to heed and/or observe the Toyota Hiace as he manoeuvred the Toyota Corolla further onto the main road;
- (xi) That Mr Walters failed to manage and/or control the Toyota Corolla in a manner that would not cause harm or injury to Mr Cato;
- (xii) That Mr Walters breached the duty of care that he owed to Mr Cato;
- (xiii) That Mr Walters caused the motor vehicle collision and is liable in negligence;
- (xiv) That Mr Cato suffered injury, harm, loss and damage, as a result of the motor vehicle collision; and

- (xv) That Mr Cato sustained whip lash injury, severe pain to the neck and back and extreme tenderness to the back, as a result of the motor vehicle collision.

Assessment of Damages

The approach

[43] The important consideration in making an award of General Damages is the need to arrive at a figure which will compensate the claimant for the injuries he sustained and its resultant pain and suffering.

[44] There are established principles and a process to be employed in arriving at awards in personal injury matters. In determining quantum, judges are not entitled to simply “pluck a figure from the air”. Consistent awards are necessary to inspire and maintain confidence in the system of justice and litigants as well as the public are entitled to know the reasons for the decisions of the court. Regard must be had to comparable cases in which complainants have suffered similar injuries.

[45] In **Beverley Dryden v Winston Layne**,¹⁴ Campbell JA said:

“...personal injury awards should be reasonable and assessed with moderation and that so far as possible comparable injuries should be compensated by comparable awards.”

[46] In the case of **Singh (an infant) v Toong Fong Omnibus Co Ltd**,¹⁵ Lord Morris of Borth-y-Gest said:

“...As far as possible it is desirable that two litigants whose claims correspond should both receive similar treatment, just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled.”

¹⁴ SCCA No 44/87, judgment delivered on 12 June 1989

¹⁵ [1964] 3 All ER 925, at page 927

[47] It is also desirable that the comparison be made with more recent cases. Lord Carswell in the case of **Seepersad v Persad and Another**¹⁶ said:

“The Board entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for physical injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do no more than demonstrate a trend in very rough and general terms.”

The process

[48] In light of the reality of inflation, the Consumer Price Index (“CPI”), which is provided by the Statistical Institute of Jamaica, is used in the process of arriving at a just award. Having selected a comparable case or cases, the judge must apply the CPI in order to arrive at a figure that takes into consideration inflationary conditions.

The medical evidence

[49] Both Learned Counsel Ms Suzette Campbell and Learned Counsel Ms Winsome Marsh agree that the injuries sustained by Mr Cato, as a result of the motor vehicle collision, were not as serious as others have been.

[50] The medical report under the hand of Dr. S.A. Minott, dated 20 December 2004, indicates that, on examination, Mr Cato was in severe pain with significant findings confined to his back and neck. His back had extreme tenderness and pain on flexing his trunk, with difficulty rising and sitting. His neck showed evidence of whiplash injury with difficulty and pain holding his neck upright. Mr Cato was given analgesics and muscle relaxant and placed in a neck collar. Dr.

¹⁶ (2004) 64 WIR 378, at page 388, paragraph 15

Minott also indicated that it was expected that Mr Cato would require a period of six (6) weeks to recuperate.

- [51] Mr Cato was absent from work for four (4) days during the period 27 – 30 November 2004.
- [52] Having considered the awards for General Damages made in the cases referred to by both Counsel, this Court is of the view that they provide a reasonable guide as to the proper award to be made in this case.
- [53] In **Desmond Poyser v Superior Party Hireage Ltd. & Hylton Smith**,¹⁷ G. James J (Ag) (as he then was), on 14 May 1992, awarded Forty Thousand Dollars (\$40,000.00) for whiplash injury with pain in the neck, shoulder and back. This award, when updated, amounts to Six Hundred and Ninety-Eight Thousand Seven Hundred and Nine Dollars (\$698,709.00).
- [54] In **Derrick Munroe v Gordon Robertson**,¹⁸ G. Brown J (Ag) (as he then was) awarded Three Hundred Thousand Dollars (\$300,000.00) for pain in the sternal region of the chest, lower back pain, tenderness in the region of the left costochondrial joints with increased tenderness during respiration and all chest movements and tenderness in the lumbar region in all ranges of motion. There was no permanent irreparable deformity or disability. There was a fourteen (14) day period of partial disability and the claimant was fully recovered. This award, when updated, amounts to Five Hundred and Ninety-Seven Thousand Two Hundred and Forty-Two Dollars (\$597,242.00).
- [55] In **Peter Marshall v Carlton Cole and Alvin Thorpe**,¹⁹ McIntosh J awarded Three Hundred and Fifty Thousand Dollars (\$350,000.00) for moderate whiplash injury, sprain, swollen and tender left wrist and left hand and moderate lower back pain and spasm. The claimant was treated by Dr. Sandra Nesbeth and was

¹⁷ Suit No. C. L. 1991/P158

¹⁸ [2015] JMCA Civ 38

¹⁹ Claim No. 2006 HCV1006, unreported, judgment delivered on 17 October 2006

given two (2) weeks sick leave. He continued to attend for treatment and was discharged on 20 December 2001, after sixteen (16) medical care weeks with no residual pain or suffering. This award, when updated, amounts to Nine Hundred and Ninety-Two Thousand Two Hundred and Eighty-Five Dollars (\$992,285.00).

[56] In **Conway Rhooms v Mai Zhang & Another**,²⁰ Tie J (Ag) (as she then was) awarded One Million Three Hundred Thousand Dollars (\$1,300,000.00) for whiplash injury to the neck with moderate pain and spasm of the muscles of the neck and of the trapezius muscles extending to the occipital area of the head and both shoulders; tenderness to the posterior aspect of the neck; restriction in the normal ranges of movements of the neck by approximately sixty percent (60%) in all directions; lumbosacral back strain with moderate pain and spasm of the muscles of the lower back extending to the gluteal areas and hamstring muscles; tenderness of the tissues in the lumbosacral junction; and restriction in the normal ranges of movements of the lower back. This award, when updated, amounts to One Million Five Hundred and Eighty Thousand Dollars (\$1,580,000.00).

[57] In **Talisha Bryan v Anthony Simpson & Another**,²¹ Lindo J (Ag) (as she then was) awarded One Million Four Hundred Thousand Dollars (\$1,400,000.00) for whiplash injury to the neck and lower back strain. The claimant was treated with analgesics and muscle relaxant and was advised to do physiotherapy exercises at home. This award, when updated, amounts to One Million Eight Hundred and Thirty-Eight Thousand Dollars (\$1,838,000.00).

[58] In the circumstances, the Court will use as its starting point, the updated award of Six Hundred and Ninety-Eight Thousand Seven Hundred and Nine Dollars (\$698,709.00) and will adjust that figure upwards to account for the fact that Mr Cato suffered severe pain to the neck and back, extreme tenderness to his back and pain on flexing his trunk, with difficulty rising and sitting.

²⁰ [2016] JMSC Civ 132

²¹ [2014] JMSC Civ 31

[59] The Court is of the view that an award in the sum of Nine Hundred Thousand Dollars (\$900,000.00) for General Damages is a reasonable award.

Special Damages

[60] It is trite law that Special Damages must be specifically pleaded and specifically proven.²²

[61] The Court finds that Mr Cato has specifically pleaded and specifically proven his Special Damages, in the amount of Forty-Four Thousand Two Hundred and Sixty-One Dollars and Forty cents (\$44,261.40), which is comprised of Eleven Thousand Two Hundred and Sixty-One Dollars and Forty cents (\$11,261.40) for medical expenses, Twelve Thousand Dollars (\$12,000.00) for loss of earnings and Twenty-One Thousand Dollars (\$21,000.00) for transportation.

DISPOSITION

[62] It is hereby ordered as follows: -

- (i) Judgment is entered in favour of the Claimant against the 1st Defendant, on the issue of liability;
- (ii) Special Damages are assessed and awarded to the Claimant against the 1st and 4th Defendants, in the sum of Forty-Four Thousand Two Hundred and Sixty-One Dollars and Forty cents (\$44,261.40), with interest thereon, at the rate of three percent (3%) per annum, from 26 November 2004 to the date hereof;
- (iii) General Damages are assessed and awarded to the Claimant against the 1st and 4th Defendants, in the sum of Nine Hundred Thousand Dollars (\$900,000.00), with interest thereon, at the rate of three percent (3%) per annum, from 27 August 2010 to the date hereof, in respect of the 1st

²² See – **Caribbean Cement Company Limited v Freight Management Limited** [2016] JMCA Civ 2, at paragraphs [62] and [63]

Defendant and from 27 October 2010 to the date hereof, in respect of the 4th Defendant;

- (iv) Costs are awarded to the Claimant against the 1st and 4th Defendants and are confined to one (1) Counsel and are to be taxed if not sooner agreed;
- (v) The 1st and 4th Defendants are jointly and severally liable in respect of the Damages and Costs awarded to the Claimant;
- (vi) The Claimant's Attorneys-at-Law are to prepare, file and serve the Orders made herein.