



repeat the entirety of the evidence given in this matter but will only discuss so much of it as impacts my determination.

- [4] The Claimant's evidence in chief was contained in her witness statement dated 17<sup>th</sup> November 2013. The first sentence in para 9 I ordered to be struck out as being hearsay. Her reply to request for information dated 19<sup>th</sup> November 2013 was also put in as part of her evidence. The Claimant stated that the accident occurred at approximately 3:30pm. She was seated close to the door which remained open while the bus was being driven. She felt the bus begin to lose control. She saw one of the bus tyres going "in the opposite direction" to which the bus was travelling. The bus then went to "perch" on a small hillside by a fishing pond. She said,

"At the time I was on my back underneath the bus in a pool of blood at the exit as the bus was leaned on one side. I was in pain and shock as people exiting the bus had to step on me to get out. The driver of the bus asked me if I was O.K. but I was not in any shape or frame of mind to answer him nicely. I simply asked him if he was an idiot, and if he did not see me lying there in blood and in pain."

- [5] The Claimant next explains how she identified the bus. She stated that a complete stranger came to her assistance. He pulled her from beneath the bus and offered to take her to the hospital. She states, "I got in his van, he then asked me if I took the license information of the vehicle I was in, I said no and got out of the van and got the information, this was also done by the said stranger."
- [6] Interestingly the Claimant says that on the way to the hospital she asked the stranger to drop her off at the police station so she could report the accident. She says he having done so two police officers were "immediately sent to the scene of the accident to investigate."
- [7] In her reply to the request for information the Claimant stated among other things that (a) the accident occurred at approximately 4:45pm, (b) the bus was a white Toyota Hiace motor truck, (c) the driver had grown his hair "in an

attempt to lock”, (d) the damage to the bus included broken windows from the side door, dent to the side of the bus and ruptured tires, (d) approximately 8 other persons were travelling on the bus.

[8] When cross-examined she stated that she did not see the driver of the vehicle in court. She looked at the Defendant Mr. Branford Wilson and stated that he was not the driver. She admitted that in paragraph 2 of the Statement of Case she had signed it was alleged that the Defendant was the owner and driver but maintained that the owner was not the driver. She does not know the driver’s name. She was shown the driver’s licence of Linton Ross (then marked ‘A’ for identity but later admitted as Exhibit 5) and said that that was not a photograph of the driver. She denied the bus was blue but said it was patchy and had grey all over it; she described it as grey and white as if under repair. She described herself as being in agony after the accident and being in pain and blood when she took down the information about the bus. She said however that she was not confused.

[9] Surprisingly she stated that she took down the licence number in her cell phone. I say surprisingly because one assumed it had been written down. In fact, and in keeping I suppose with the current generation’s technological advances, the Claimant says she entered the licence number of the bus in her cell phone (properly called a mobile phone). In answer to the court she said she no longer had the phone with the number in it. She admitted in cross-examination that when entering the number she was still in shock, agony and was shaking and trembling. Finally she says she waited 3 hours at the police station before going to the doctor. She said “hospital” in witness statement was wrong as it was a doctor she went to. It was she said the police who gave her information as to the owner’s name. In answer to questions arising from the judge’s questions the Claimant said that at the police station she gave the police the number she had recorded in her phone. She denied it was possible she had made any mistake in the number recorded.

[10] The Claimant’s next witness was Constable Neil Grant. There was no witness statement from this witness. His attendance was consequent on a witness

summons filed on the 8<sup>th</sup> May 2014 and consequent to an Order of the Court. He has been 17 years in the police force and the evidence he gave was such that one need not wonder why his rank had remained unchanged. This police officer said that on the 13<sup>th</sup> October 2010 he took an accident report from the Claimant. She gave him a registration number "PC 4073". He said he used that information to get information about the vehicle and its owner from the collectorate. He says further that he left the police station after taking the report and, on the same day as he got the report, he personally went to the collectorate to obtain the name of the owner of the vehicle associated with that licence plate. He said before doing so he visited the scene of the accident. He saw debris but that the vehicle in question had already been removed from the scene when he arrived.

[11] He then described how based on the information received he searched the telephone directory and then called the Defendant. He left a voicemail and the Defendant called him back. He says he spoke to the Defendant on the very day of the accident. He said the person on the phone who identified himself as the Defendant stated,

"Mr. Grant, you know I don't think it is my vehicle.  
Right now my vehicle 4 wheels are off and it is at my  
home."

[12] The police officer admitted that he did not go to the Defendant's premises to observe the said bus nor did he take steps to have it examined by a motor vehicle examiner. He says other persons namely Adrian Rose and Osbourne Douglas came to report the accident. He did not say whether or not or how these persons identified the vehicle or its owner or driver. He stated that he prepared a report.

[13] When cross-examined he said he investigated approximately 3 accidents per day at that time. He agreed he has by now done in excess of 10,000 accident investigations. He could not recall the time of the accident. By consent a police report was then admitted as Exhibit #4 and the officer having seen it agreed the accident was at 4:45pm. He admitted compiling the report

although he did not sign it. He admitted that it took about 45 minutes to take the complainant's report. He prevaricated before eventually acknowledging that he could not have got to the scene of the accident until about 5:30 or minutes to 6. Needless to say this bit of evidence shed serious doubt on the assertion that he had gone to the tax office on the same day of the accident to get information about the owner of the vehicle.

[14] He denied the suggestion that his telephone conversation with the Defendant occurred in April 2011. The following exchange occurred,

*“Q: Mr. Wilson told you he knew nothing of his bus in accident?”*

*A: No*

*Q: In fact he called you to come look at him at his home on at least 2 occasions*

*A: After the fact yes ma'am*

*Q: You did not go*

*A: No”*

[15] The witness was then again shown Exhibit 4 (the police report) and admitted that the Defendant was in that report noted as the owner and driver. He said although that was said in the report he did not agree. Recalling of course that it was this witness who prepared the report which he admitted not to have signed this was to say the least a surprising response. The witness then explained that as the investigating officer he does not read over police reports which are prepared on request. I pause to say that if this is the practice in the police force when it comes to preparation of police reports then it is ill-advised. It cannot serve the interest of justice if the police report of an accident is not vouched in some way by the investigator. In fact evidentially such reports, if signed by persons who have had nothing to do with the investigation, or put in another way if not signed by the relevant investigator, are evidentially of very little value.

[16] The witness admitted that his entire investigation was based on the licence number the Claimant had given him. When re-examination was completed the

Claimant applied for and was allowed to ask further questions in chief. I did so due to the circumstances under which this witness had been called. In this regard the witness was asked whether in the course of investigation he did anything else. He responded that he visited the bus terminus at King Street in Spanish Town and confirmed that a bus with that licence number plied that route and was on the road at the time of the collision.

[17] In further cross-examination the police officer admitted that he also had contact with an investigator from the insurance company and could not recall if that had been in April or May 2, 2011.

[18] Prior to the close of the Claimant's case I allowed, over the objection of Defence Counsel, amendments to the Claim and Particulars to plead that the driver was the servant or agent of the owner. This amendment is necessary in order to allow the real issues in dispute to be placed before the court. Furthermore the Defendant could not be taken by surprise as the witness statements made it clear such was the position. Also having regard to the evidence led it would be artificial and unreal to restrict the Claimant to an assertion that was false and would have meant her case was lost before it commenced. This is because the Defendant is clearly not a dreadlocked Rastafarian and by his hair (or lack thereof) and age, could not have been a dreadlock in 2010.

[19] In terms of the issue to be determined the Defendant's evidence was straightforward. He did own a bus with that licence number. It was on a route between Portmore and Spanish Town at the time the accident occurred. It was however a blue bus and had not been involved in such a collision. Exhibit 5 (being document earlier marked 'A') was put in as an exhibit. This is the driver's licence of Linton Ross who was his driver at the time. He no longer worked for him and the Defendant had no idea where to find him. An application was made to put in the Statement of Mr. Linton Ross but I refused it. This is because no Notice under the Evidence Act or otherwise was served on the Claimant. Mere service of the Statement was inadequate because the Claimant at all times thought the witness would have attended to give evidence.

- [20] The Defendant stated that the first time he had any knowledge of an alleged accident involving his bus was in April 2011 when his insurance company sent a letter stating they had received such a report, and that he had not reported it. He subsequently received a voicemail from the police. He returned the call and spoke to Officer Neil Grant. He denied knowing about the accident and invited the officer to come and examine the bus which was by that time undergoing mechanical repairs to the engine. The officer did not attend and he never heard from the officer again. Later court process was served and he took it to the Insurance Company. He said Linton Ross was his driver and the bus was delivered to his home each evening. There was no damage to the bus whilst it was operational in the period February 2010 to April 2011. There has been only one accident with his bus and that was in 2012.
- [21] Cross-examination did not do much to shake that account. He admitted that as he does not ride on the bus he could not say for sure that Mr. Ross might not give another driver the bus to drive. However he would expect to know as other crew members would tell him. He admitted he did own other buses. He admitted that it would be “dumb” for an investigator to call him 6 months after the accident but also equally strange to call him the same day of the accident. He says if the police officer had come to examine the vehicle even in April 2011, he would have been able to say there had been no recent body work done to it.
- [22] Such being the evidence I have little difficulty in this matter in finding for the Defendant. The burden of proof on a balance of probabilities, is always on the Claimant. He who alleges it is said must prove. The Claimant’s evidence fell woefully short. The sole link to this accident is the vehicle’s licence number as recorded by the Claimant in her cell phone after a very traumatic experience. The probabilities, in these circumstances of her either misreading the plate or perhaps more likely, making errors as she input the data are reasonably high.
- [23] I was also impressed with the demeanour and evidence of the Defendant. I accept that he was contacted in April 2011 by the police. This contact I can infer followed on enquiries being made by an insurance investigator, no doubt

the same one who contacted the Defendant. This was perhaps the information source for the telephone number which the police officer used. I find it incredible that on the same day as an accident which occurred at anywhere between 3:30 to 4:30pm the police officer would obtain motor vehicle information by a visit to the tax office and then make contact with the owner. I agree with the Defendant that the police don't work so fast in Jamaica. Two to three weeks was a more probable time frame for that. Added to which public officers and in particular the Tax Office in Spanish Town would not still be open at 6pm when the investigator would have got there.

[24] I reject the police officer's account to the extent that it varies from the Defendant's. Indeed I fail to see how any conscientious investigator would not accept an invitation to inspect the alleged vehicle when the owner is denying his vehicle's involvement. Such an inspection with the assistance of a motor vehicle examiner may have detected either that repairs to the body had been done or there was tampering with the licence plate. There is no evidence of any independent or any other verification that this vehicle was involved. The police, had they acted with alacrity, could have determined which wrecker company removed the bus from the scene and thereby get identification of the bus. The accident occurred a stone's throw from the Central Village Police Station on a major roadway at peak hours. I venture to suggest that enquiry by the investigator would have revealed that at least one police officer would have come on the scene. There must have been eyewitnesses from the nearby Jose Marti High School. Of course there were other persons injured, the investigator says so. It does not appear efforts were made through them to confirm the licence plate number of the vehicle.

[25] In the course of oral submissions I raised with counsel the possibility that the Defendant or his driver might have switched licence plates on the vehicle involved. Defence counsel rightly pointed out no such suggestion was put to the Defendant and in any event there was no evidence to suggest that that might have been done. I agree. There is on the evidence before me no basis to find the Defendant liable in this matter.

- [26] As is my practice, and in the event another court takes a contrary view, I will indicate the damages I would otherwise have assessed. The Claimant's injuries were detailed in Exhibit 1, a Medical Report dated 1<sup>st</sup> February 2011. The doctor says he treated her on the 13<sup>th</sup> October 2011, the same day the injuries were suffered. He observed, injury to neck, to both shoulders, to both arms, 1cm abrasion to middle  $\frac{1}{3}$  of forearm, injury to the chest and back. The patient complained of continuous headache and pain to both upper limbs, lower back, chest and neck. The doctor concluded that the Claimant sustained a mild whiplash injury to the neck, bilateral shoulder strain, soft tissue injury to both arms and chest, blunt trauma to abdomen and a lower back strain. He expected complete recovery within one year.
- [27] Claimant's counsel argued that \$1.4 to \$1.6 million should be awarded and cited cases in support. I note in passing that an effort was made to rely on **Tomlinson v Gordon 2010 HCV 04670** but no written judgment was put before me. As it is impossible without that to know what aspects of evidence influenced the judge to make an award I disregarded that reference. The Defendant's counsel described the claim as excessive and in written submissions argued that \$800,000.00 is an appropriate award. I have reviewed the cases cited. In my judgment the Claimant's injuries pain and suffering exceeded that in **Marshall v Cole** Khan's 6 ed. p. 109 and **Walford v Fullerton [2012]JMSC CIVIL 190**, unreported judgment of the 13<sup>th</sup> December 2012 and **Benjamin v Ford** HCV02876/2005 unreported judgment of the 23<sup>rd</sup> March 2010. The injuries however more closely approximate to those sustained by the Claimant in **Campbell v Lawrence CL C135 of 2002**, unreported judgment of 28<sup>th</sup> February 2003. That case when updated amounts to \$2,161,956.52. In that case the trial judge rejected the assertion of a 10% permanent disability. This notwithstanding it is clear that in **Campbell's case** the Claimant had greater loss of amenity and a more severe whiplash.
- [28] In my judgment \$1.5 million would have been an appropriate award for this Claimant. Special Damages were agreed at \$51,800.00.

[29] In the result however there is judgment for the Defendant against the Claimant and the Claim is therefore dismissed. Costs will go to the Defendant to be taxed if not agreed.

**David Batts**  
**Puisne Judge**