[2019] **JMSC Civ. 183**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012HCV05324

BETWEEN	**DWAYNE EDWARDS**	**CLAIMANT**
AND	**PAULETTE ELLIS**	**DEFENDANT**

IN OPEN COURT

Mr. Paul Edwards instructed by Bignall Law, Attorneys-at-Law for the Claimant

Mrs. Stacia D. Pinnock Wright of Counsel for the Defendant

Heard: January 21, 22 and September 23, 2019

Civil Practice & Procedure– Negligence– Motor vehicle accident– Personal injury– Contributory negligence– Apportionment of liability– Assessment of damages

CORAM: PALMER HAMILTON, J

BACKGROUND

[1] The Claimant, Mr. Dwayne Edwards, commenced proceedings against the Defendant, Ms. Paulette Ellis, to recover damages for negligence arising out of a motor vehicle accident. The accident occurred on or about the 16th day of July 2012 along Old Hope Road in the vicinity of Hope Gardens in the parish of Saint Andrew.

[2] The Claimant contended that the Defendant negligently drove, managed or controlled a 2005 Green Toyota Rav4 motor car licensed 2558DX causing it to

collide into the Claimant's 2002 Red Honda Civic motor car licensed 1541 FY. As a result, the Claimant suffered injury, loss and damage and incurred expenses.

[3] The Defendant filed a Defence and Counter Claim and averred that the accident was solely caused or alternatively contributed to by the negligence of the Claimant and sought damages for negligence.

THE EVIDENCE

[4] The Claimant's Witness Statement was allowed to stand as his evidence in chief. The Claimant stated that at the material time he was driving his motor car along Old Hope Road, driving from Hope Pastures towards Papine. He stated that the road is a dual carriage roadway with two lanes on both sides. Particularly, at the stop light it is a four (4) lane road juncture, where to his right, there is an entrance to the Mona housing community. The Claimant indicated that to his left is the entrance to the Scientific Research Council. There is a filter lane on his left side of the road for vehicles turning into Mona but there is no such filter lane for vehicles in the right lane going in the opposite direction wishing to turn into the road leading to the Scientific Research Council.

[5] The Claimant indicated that he was a restrained driver aboard a right hand drive motor car with untinted front windscreen, in the left lane of two lanes going up Old Hope Road heading towards Papine. He states that he was travelling alone in the car at the time of the accident.

[6] He indicated that when the light changed to green, he was proceeding through the green light, still in the furthest left lane. The Claimant revealed that he suddenly saw the Defendant coming from his right and in front of him. He averred that he tried swerving away to avoid hitting the vehicle but the collision was unavoidable. The front of his car hit into the left of the Defendant's vehicle and the collision happened in his left lane with the Defendant's car positioned across his lane.

[7] The Claimant further averred that the Defendant swung her car from the right lane of the dual carriage way which has no filter, directly before him causing the collision. He further maintained that the Defendant at no point had on her indicator, nor was her hand out indicating that she was turning right along the roadway. The Claimant stated that the entire front side of his car was damaged and the left front side door of the Defendant's car was damaged.

[8] Under cross examination the Claimant estimated that he was going at a speed of forty (40) to fifty (50) kmph. He conceded that his Witness Statement at paragraph 3 mentioned that he came to a stop at the stop light in the vicinity of Hope Gardens and indicated that this statement was wrong. He maintained that approaching the stop light, it was on green and there was no change to the light. He stated that the light was on green whilst he travelled from the first stop light to the second stop light on the thoroughfare.

[9] The Claimant also stated under cross examination that he did not see the Defendant's vehicle until it was right in front of him. He also revealed that he did not know if there was a filter lane going into Mona. The Claimant further admitted that he could not tell whether the Defendant's indicator was on at the time of the accident. These admissions are inconsistent with what was contained in his evidence in chief.

[10] The Defendant's Witness Statement was amplified and allowed to stand as her evidence in chief. The Defendant indicated that she was travelling on Hope Road in the parish of Saint Andrew towards Half Way Tree from Papine. She indicated that she stopped at the traffic light in the extreme right lane as the traffic signal showed red at the intersection of Garden Boulevard and Old Hope Road.

[11] The Defendant stated that after the traffic lights changed to green, she observed that the traffic coming from Liguanea and going towards Papine also had the green light, so she slowly turned her car to the right then stopped in the centre of the intersection. She further stated that she could see all the cars coming up the three

lanes. One line of cars in the right lane stopped to turn into Garden Boulevard, whilst the other two (2) lanes had cars going towards Papine.

[12] The Defendant stated that the car in front of the middle lane stopped and so did the car immediately behind it. There was a near vehicle in the extreme left lane at this time so she waited. The vehicle turned into the Scientific Research Council entrance and she proceeded to follow behind. The Defendant disclosed that as she almost manoeuvred her turn, the Claimant drove with great speed from the middle lane into the left lane and collided into the left side of her motor vehicle tilting it over to the right.

[13] On cross examination, the Defendant acknowledged that turning right across the three (3) lanes could cause an accident but that is the reason she waited at the intersection for the vehicles to give her permission to cross and she moved with extreme caution in doing her right turn. She indicated that there were no signs preventing her from making the right turn at that intersection and it would not have been her first time making a right turn at that location.

THE MEDICAL EVIDENCE

[14] The Claimant was seen by two doctors after the collision occurred, Dr. R. Edwards BSc, M.B.B.S, DM and Dr. George W. Lawson BSc, (Hons.), M.B.B.S.

[15] The medical report of Dr. R. Edwards is dated the 9th day of August 2012. The Claimant was seen by Dr. Edwards at the Emergency Medicine Division of the University Hospital of the West Indies on the 16th day of July 2012. He was examined and was found to have a 3cm laceration to the medial aspect of his left knee and pain to the left hand. He was discharged home with a prescription for pain tablets.

[16] The medical report of Dr. George W. Lawson is dated the 17th day of September 2012. The Claimant was seen by Dr. Lawson on the 20th day of July 2012, the 23rd day of July 2012, the 26th day of July 2012 and the 22nd day of August 2012. He

was diagnosed with acute cervical strain/ whiplash injury, acute musculoskeletal chest pain, laceration to the left knee, acute mechanical lower back pain and soft tissue injuries to both forearms, right knee, right leg and both wrists. Dr. Lawson's prognosis is that there is extensive muscle spasm associated with his whiplash injuries but most problems improved following conservative measures. Dr. Lawson recommended physiotherapy and indicated that the Claimant would have to be followed up before a proper prognosis could be arrived at.

ISSUES

[17] The Court has to decide on a balance of probabilities: -

1. Whether the Claimant or the Defendant was negligent or both;

2. What is the quantum of damages, if any, to be awarded to the Claimant.

[18] I wish to express my gratitude to both Learned Counsel for providing written submissions to the Court.

SUBMISSIONS

Submissions on behalf of the Claimant

[19] Learned Counsel for the Claimant submitted that on the evidence before the Court, the Claimant's case is entirely probable. His account is clear and the mechanism of the accident described aligns with the exhibits tendered by the Defendant, the points of impact and the damage profiles to the respective vehicles. Learned Counsel maintained that the Defendant's version of the accident is however plagued with numerous inconsistencies which goes to the root of the mechanism of the accident.

[20] Learned Counsel asked that the Court finds the Claimant's version to be more probable than that of the Defendant and holds the Defendant entirely liable for the

accident. In the alternative, Learned Counsel asked that the Court apportion liability seventy-five percent (75%) in favour of the Claimant and twenty-five (25%) in favour of the Defendant.

[21] Based on the medical evidence, Learned Council submitted that the following case law are a useful guide to the Court's discretion: -

1. **Talisha Bryan v Anthony Simpson & Andre Fletcher** [2014] JMSC Civ. 31;

2. **Dalton Barrett v Poncianna Brown and Another** (Unreported), Supreme Court of Jamaica, Claim No. 2003 HCV 1358, judgment delivered on the 3rd day of November 2006; and

3. **Trevor Benjamin v Henry Ford & Ors** (Unreported), Supreme Court of Jamaica, Claim No. 2005 HCV 02876, judgment delivered on the 23rd day of March 2010.

[22] Learned Counsel submitted that the Court award the sum One Million Seven Hundred Thousand Dollars ($1,700,000.00) to the Claimant for his injuries. He indicated that special damages were agreed at Sixty-Five Thousand Eight Hundred Dollars ($65,800.00) and that cost should be awarded to the Claimant to be taxed if not agreed.

Submissions on behalf of the Defendant

[23] Learned Counsel for the Defendant submitted that the following inconsistencies on the Claimant's case: -

1. The colour of the traffic light. The evidence of the Claimant was that there was no change of the light to green because it was always on green, as there was no need to stop at the 2nd stop light. The Claimant subsequently indicated that there was no change of the light to green because it was always on green;

2. The Claimant's uncertainty as to his actual speed. The Claimant indicated that he was travelling forty (40) to fifty (50) kmph or "whatever". She submitted that the word "whatever" suggests that the Claimant did not know his speed or measurement on the day of the accident;

3. The Claimant's evidence as to the existence of a filter lane going into Mona housing community. The Claimant in his evidence in chief indicated that there was a filter lane going into the Mona community, but subsequently indicated that he does not know if there is a filter lane there;

4. The Claimant's evidence regarding when he first saw the Defendant's vehicle. The Claimant indicated that he saw the Defendant's vehicle coming from the right of him but subsequently indicated that when he first saw the vehicle he could not say whether the vehicle came from the right;

5. The Claimant's evidence as to the Defendant's use of her indicator. The Claimant mentioned that the Defendant did not use her indicator but later stated that he could not say whether her indicator was on.

[24] On these inconsistencies, Learned Counsel contended that the responses were not consistent with his earlier evidence and that these blatant inconsistent statements are all proof of the Claimant being a dishonest witness and the Court should disregard the Claimant's evidence.

[25] Learned Counsel for the Defendant made general submissions on the law of negligence, the use of traffic lights and contributory negligence. She continued by submitting that the Claimant has not proved that the accident was caused by negligence on the part of the Defendant. Learned Counsel maintained that after

examining all the evidence, the Claimant has not proved his case, neither from the inferences would the Court be satisfied that negligence has been established. The case of **Henderson v Henry E Jenkins and Sons and Evans** [1970] AC 82 was cited in support of this submission.

[26] The Defendant submitted that it was the Claimant who was negligent in that he drove at a speed which was excessive for the circumstances and that he failed to keep a proper lookout. Learned Counsel averred that the physical evidence of the motor vehicles' damage and location established that the damage to the Defendant's vehicle had been to the left side of the vehicle and this was consistent with what was stated in the Damage Assessment Report prepared by MSC McKay (Ja.) Limited dated the 7th day of August 2012.

[27] Learned Counsel maintained that the Claimant should be found fully liable for the collision. She stated that the following cases are instructive in assessing general damages: -

1. **Billy Tait v Wesley Salmon** [2015] JMSC Civ. 215;
2. **Michael Lawrence v Leon Bell, Vaughn Smith and James Clarke** [2017] JMSC Civ. 50;
3. **Elizabeth Brown v Daphne Clarke; Wilton Clarke et al Consolidated with Bervin Ellis v Daphne Clarke and Wilton Clarke Consolidated with Andrew Thompson v Daphne Clarke et al** [2015] JMSC Civ. 234;
4. **Deloris Briscoe v Jamaica Urban Transit Company Limited and Omar Mitchell** [2015] JMSC Civ 200.

[28] Learned Counsel submitted that a suitable award for general damages for the Claimant would be an amount of Nine Hundred Thousand Dollars ($900,000.00). For special damages Learned Counsel disclosed that it was agreed as follows: -

1. Sixty-Five Thousand Eight Hundred Dollars ($65,800.00) for the Claimant; and

2. One Million Seventeen Thousand and Five Dollars ($1,117,005.00) for the Defendant.

LAW AND ANALYSIS

[29] It is well established that there are three (3) elements to a cause of action for negligence: a duty to the person injured, a breach of that duty and foreseeable loss. As it relates to motor vehicle accidents, the pronouncement of Viscount Simon at page 450 of the case of **Nance v. British Columbia Electric Railway Co. Ltd.** [1951] 2 All ER 448 is useful. He said: -

> *"Generally speaking, when two parties are so moving in relation to one another so as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle".*

[30] I also find instructive the remarks of Lord Wright in the case of **Lochgelly Iron Coat Co. Ltd v McMullan** [1934] A.C. 1 at page 25: -

> *"In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission; it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owing."*

[31] Section 51(2) of the **Road Traffic Act** buttresses this common law position and imposes a statutory duty on drivers of motor vehicles to exercise reasonable care while operating their vehicles on the road and to take reasonable steps to avoid the accident.

[32] The Claimant's version of how the collision occurred bears no resemblance to that of the Defendant and both versions are diametrically opposed. The decision on liability will therefore turn on the credibility of the witnesses. I adopt the dictum of the Honourable Mr. Justice Kirk Anderson in the case of **Continental Petroleum**

Products Ltd. and Scotia DBG Investments Ltd [2016] JMSC Civ. 219 where at paragraph 57 he stated: -

> *"In assessing credibility, as between two (2) witnesses, one of whom is telling the truth in important respects and the other witness, who is not doing so, as regards those same matters, it is always important for the court of first instance to consider contemporaneous documents, probabilities and possible motives, in a case involving disputed facts. The Privy Council made this clear, in the case:* ***Villenueve and another v Gaillard and another*** *– [2011] UK PC 1, per Ld. Walker, at paragraph 67. See also:* ***Armagas v Mundogas SA (The Ocean Frost)*** *– [1986] 1 AC 717, at page 757, per Dunn, L.J."*

[33] The parties agree that there was a collision at the stop light in the vicinity of Hope Gardens in the parish of Saint Andrew and they both agreed on the direction in which the respective vehicles were travelling. After carefully examining the evidence and having assessed the demeanour of the witnesses, I find that the impact of the collision was not consistent with the Defendant's version of events.

[34] I appreciate that there are inconsistencies on both sides, but I find that the Claimant's evidence is more plausible on a balance of probabilities. In my view the inconsistencies on the Claimant's case does not go to the root of how the collision occurred.

[35] I am satisfied after juxtaposing the two accounts, that what the Claimant detailed as to how the collision happened at the material time is credible. I find as a fact that the Claimant was proceeding through the green light in the farthest left lane when the Defendant drove out from the right lane into the path of the Claimant's motor vehicle. There is a duty of care owed by a party crossing the main road from a minor road. It is trite law that when coming from a side road into a main road, the driver of a vehicle should select such a moment as will allow him to enter the main road with safety. Such a driver bears the greater duty of care to see that no one is incommoded before undertaking his manoeuvre.

[36] I am guided by the pronouncement of Wolfe J.A. (Ag.), as he then was in the case of **James Mitchell and Aaron Gordon v Leviene McKenzie and Dorrell Gordon** SCCA 104/91 delivered on October 21, 1992. He stated as follows: -

> *"He [the trial judge] concluded that the cause of the accident was due to the 4th defendant/appellant attempting to cross the northern section of the highway without stopping, at a speed of 5 mph when it was unsafe to do so and adjudged the 4th defendant/appellant to be the sole cause of the accident. 5 supra p. 657 6 supra 660*
>
> *… The question remains what was the cause of the accident. The learned judge accepted the evidence of the bus driver, the plaintiff and Miss Farquharson that the truck driver came across the main road from the soft shoulder without any indication that he intended so to do and afforded the bus driver no opportunity of avoiding the collision. That was the manoeuvre which caused the collision. In the absence of any evidence that he was acting as an automaton, then clearly he must be adjudged negligent and solely to blame for the resultant collision, since in the circumstances, the other driver did nothing to contribute to the accident."*

[37] In my judgment, it is clear from the principles enunciated above that anyone making such a turn must naturally take special care to see that he did not get in the path of the oncoming traffic (**Patel v Edwards** (1970) RTR 425 CA). Section 51(1)(d) of the **Road Traffic Act** also provides that a motor vehicle: -

> *"shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic;"*

[38] I find that even if the Defendant had indicated her intention to turn, she did not ensure that it was in fact safe to turn before doing so and in my judgment, she did not ensure that there was a safe gap between her and any oncoming traffic. The Defendant's own evidence is that the traffic lights regulating the traffic in the path of the Claimant were on green. This is clearly indicative that it would have been foreseeable to her that vehicles would be lawfully proceeding across the path she attempted to manoeuvre.

[39] The Defendant has counterclaimed contributory negligence and the onus is on her to prove this. In the case of **Lewis v Denye** [1939] KB 540 duParcq, LJ stated at page 554: -

> *"In order to establish the defence of contributory negligence, the defendant must prove, first, that the plaintiff failed to take "ordinary care for himself," or, in other words, such care as a reasonable man would take for his own safety, and, secondly, that his failure to take care was a contributory cause of the accident."*

[40] Reasonable care was explained in the case of **Adolph Allen v Orandy Moving & Storage Company Limited; Kayon Kentish v Orandy Moving & Storage Company Limited et al Consolidated with Michaelia Moore, et al** [2017] JMSC Civ. 73 by the Honourable Mrs. Justice Sarah Thompson James at paragraph 59 as follows: -

> *"Reasonable care means the care which an ordinarily skilful driver would have exercised under all the circumstances, and connotes an "avoidance of excessive speed, keeping a good look-out, observing traffic rules and signals and so on" (**Bourhill v Young** [1943] A.C. 92). What is reasonable depends on the circumstances of each case and is a question of degree (Ibid)."*

[41] I am also persuaded by the principle in the case of **Brandon v Osbourne Garrett and Company** [1922. B. 4861.] where Swift J stated at page 550: -

> *"In my opinion this case is covered in principle by the statement of the law in* **Jones v. Boyce**. *(1) Lord Ellenborough there in substance directed the jury that if a person is placed by the negligence of the defendant in a position in which he acts under a reasonable apprehension of danger and in consequence of so acting is injured, he is entitled to recover damages, unless his conduct in all the circumstances of the case amounts to contributory negligence. If a person is not to be held guilty of contributory negligence because he, acting instinctively for his own preservation, does that which a reasonable man under those conditions would do…"*

[42] The Defendant indicated that the Claimant was speeding. The effect to be given to the speed of the Claimant depends on the circumstances of the case. It has little, if any, relevance if it was not the material cause of the accident. The authorities have shown that the act of speeding is not by itself negligent unless the particular circumstances preclude it. Therefore, an additional act of negligence must be proven. The Honourable Mr. Justice Lennox Campbell at paragraph 26 of **Martia King v Matthew Hibbert and Rohan Grant** [2017] JMSC Civ 122 summarised the following authorities: -

> *In **Tribe v Jones** (1961) 105 Sol. J. 931, the English Court of Appeal held that a fast speed was not automatically dangerous and whether it was so could only be determined after all the surrounding factors are taken into consideration. In **Barna v Hudes** Merchandising Corporation. 1962 106 Sol Jo. 194, the court went further to hold that exceeding the speed limit was an offence but was not in itself negligence imposing civil liability. The English authorities have been adopted by the local courts and it has been consistently held that speed by itself does not amount to negligence. (See; **Administrator-General (Administrator Estate Lousis Kelly dec'd) v Randolph Edwards** SCCA 20/90 [18.3.91]).”*

[43] In determining whether the act of speeding would be negligent, I examined whether the action of the Claimant was reasonable in the circumstances. The Claimant indicated that he tried to swerve in order to avoid hitting the vehicle but the accident was unavoidable. In my judgment, considering the prevailing circumstances, in that his view was limited by the flow of traffic in the two (2) adjacent lanes and that he was approaching an intersection, I find that the Claimant did not respond as a reasonable driver would. He indicated under cross-examination that he only swerved to avoid the accident. However, when pressed by Learned Counsel for the Defendant, he subsequently stated that he stopped and “brake up”. In my judgment, swerving proved ineffective. Based on the evidence, I do not believe that the Claimant took any evasive action by applying his brake, which in my view, a driver exercising requisite care and control would do in the circumstances. I find him incredible on that matter.

[44] When pressed under cross-examination as to the speed at which he was travelling at the material time, he was unable to say definitively and culminated his answer with the phrase *“or whatever”*. His actions suggest that either he was speeding whilst approaching the intersection or he failed to keep a proper lookout which would explain why he did not see the Defendant’s vehicle making the manoeuvre until the imminent point of collision.

[45] In examining the issue duty to keep a proper look out, I adopt the expression of the Honourable Justice Mrs. Sonya Wint Blair at paragraph 33 of the case of

Claudia Henlon v Sharon Martin Pink Jeremy Davy, Wendel Abrahams and Richard Williams [2017] JMSC Civ.144: -

> *"It is the duty of the driver or rider of a vehicle to keep a good look out.* **A driver who fails to notice in time that the actions of another person have created a potential danger is usually held to be negligent. (See Foskett v Mistry [1984] R.T.R. 1, CA.) He must look out for other traffic which is or may be expected to be on the road, whether in front of him, behind him or alongside him, especially at crossroads, junctions and bends***. In the instant case I accept that there was a bend in the road which the second defendant drove around before the collision." (my emphasis)*

[46] On the totality of the evidence, I do not find that speeding was the material cause of the collision. Had the Defendant waited until it was safe to proceed across the carriage way, the accident would not have happened. However, in my view, the Claimant's action when faced with the threat of a collision was not reasonable. The collision could have been avoided if he exercised more caution. His action was a partial cause of the accident. Consequently, the result of the collision should be attributed substantially to the Defendant. I find a fair apportionment of liability is that the Defendant is 85% liable and the Claimant is 15% liable for the cause of the accident.

[47] In assessing damages that should be awarded for pain and suffering and loss of amenities, I consider the case of **Dalton Barrett v Poncianna Brown and Leroy Bartley** (supra) in preference to the others submitted, as the injuries are somewhat similar. In the case of **Dalton Barrett** (supra) the claimant experienced pain in his lower back, left shoulder and left wrist. He was diagnosed with mechanical lower back pains and a mild cervical strain. He was prescribed physical therapy and lifestyle modification. The physical therapy proved to be so effective that by the time he was to see another doctor he became pain free. His permanent partial disability rating was zero percent (0%). The award of Seven Hundred and Fifty Thousand Dollars ($750,000.00) for pain and suffering updates to One Million Nine Hundred and Seventeen Thousand, Five Hundred and Thirty-Six Dollars and Eighty-Six Cents ($1,917,536.86) using the Consumer Price Index 254.7. The

Claimant in the present case was not assigned any whole person disability, similar to the claimant in the former case. I note that after nine (9) months the claimant in the **Dalton Barrett** case healed without disability, whereas in the present case the Claimant may continue to experience the symptoms of chest, lower back and neck pain. Also, the injuries of the Claimant at Bar are more extensive than that of **Dalton Barrett**.

[48] I also found merit in the case of **Sasha Neilson v Mark D Thomas, Ian Thompson, Gregory Williams** [2016] JMSC Civ. 117. The claimant sustained injuries when the vehicle in which she was travelling and a vehicle driven by the defendant collided at the intersection of the Bog Walk Bypass and Church Road in the parish of Saint Catherine. The intersection is regulated by traffic lights and each driver contended that the other disobeyed the light. The Claimant was diagnosed with acute cervical strain/ whiplash injury, acute mechanical lower back pain with right lower limb paraesthesiae, sub-concussive blunt head injury with epistaxis (nose bleeding), right TMJ dysfunction & mucosal cheek laceration, possible foreign body to right eye, acute musculoskeletal chest pain and soft tissue injuries to right lower limb, breast & abdominal wall. She was assessed as having a permanent partial disability of two percent (2%) of the whole person. An award of One Million Six Hundred Thousand Dollars ($1,600,000.00) was made for pain and suffering. This award updates to One Million Seven Hundred and Eighty-Two Thousand Eight Hundred and Fifty-Seven Thousand Dollars and Fourteen Cents ($1,782,857.14). I note that the claimant in the **Sasha Neilson** case suffered more injuries than that of the present Claimant. However, I find that the common injuries, in particular, acute cervical strain/ whiplash injury, acute mechanical lower back pain, acute musculoskeletal chest pain and soft tissue injury to the right leg are of a similar degree.

[49] There was nothing placed before the Court for consideration in terms of the Claimant's loss of amenities or future medical expenses. I believe that the sum of

One Million Eight Hundred Thousand Dollars ($1,800,000.00) is consummate with the Claimant's injuries.

[50] I now turn my focus to the claim for special damages. The parties agreed special damages as follows: -

(a) The sum of Sixty-Five Thousand Eight Hundred Dollars ($65,800.00) to the Claimant; and

(b) The sum of One Million One Hundred and Eleven Thousand Seven Hundred and Five Thousand Dollars ($1,111,705.00).

ORDERS & DISPOSITION

1. Judgment for the Claimant with liability assessed at 85% on the part of the Defendant and 15% on the part of the Claimant;

2. General damages awarded to the Claimant for pain and suffering and loss of amenities in the sum of $1,800,000.00 with interest at a rate of 3% per annum from the 1st day of October 2012 to the 23rd day of September 2019;

3. Special damages awarded to the Claimant in the agreed sum of $65,800.00 with interest at a rate of 3% per annum from the 16th day of July 2012 to the 23rd day of September 2019;

4. Special damages awarded to the Defendant in the agreed sum of One Million One Hundred and Eleven Thousand Seven Hundred and Five Dollars ($1,111,705.00) with interest at a rate of 3% per annum from the 16th day of July 2012 to the 23rd day of September 2019;

5. Costs to the Claimant to be taxed if not agreed.