IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV02421

BETWEEN	**KAREN JOHNSON**	**CLAIMANT**
A N D	**MICHELLE ROBINSON-LEWISE**	**DEFENDANT**

IN OPEN COURT

Ms. Courtney Foster instructed by Courtney N. Foster & Assoc for the Claimant

Ms. Jayanne Williams instructed by Dunbar & Co for the Defendant

HEARD: January 26, 2026 and February 11, 2026

Tort – Negligence – Motor Vehicle Collision – Whether Driver of Motor Vehicle Liable for Collision.

Tort – Negligence – Contributory Negligence – Motor Vehicle Collision – Whether or not Pedestrian Caused or Contributed to the Collision by Stepping into Path of Motor Vehicle.

Road Traffic Act (1938) – ss 51 and 95.

Road Traffic Act – Road Code 1987 – Part 1 Rules 1, 2, and 4 – Duty of Pedestrians When Using the Road.

DALE STAPLE J

BACKGROUND

[1] On the 12th March 2021, there was a collision between the Claimant and the Defendant's motor vehicle along Beckford Street in the parish of Kingston. This collision resulted in the Claimant suffering injuries.

[2] The question for the Court to determine is whether, on the balance of probabilities, the Claimant has satisfied the Court that the collision and resulting injuries were the fault of the Defendant.

[3] The Defendant, for her part, has asserted that the collision was not her fault and/or was substantially the fault of the negligence of the Claimant herself in stepping out into the road into the path of her vehicle.

[4] The Court is now called upon to resolve this dispute.

THE LAW ON NEGLIGENCE

[5] I remind myself that it is the Claimant that must satisfy me that it was more likely than not that this collision was the consequence of the Defendant's negligence in her driving of the car. More specifically, that the Defendant did not properly keep to the driving lane and carelessly came into collision with the Claimant who was walking along the roadway.

[6] As the Defendant has pleaded contributory negligence properly, it is for them to satisfy me, on the balance of probabilities that the Claimant contributed to the collision by walking into the path of the car and failing to take care for herself whilst walking along the road.

[7] Lord Griffiths in the case of ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat et al***[1] reminds us of the burden and standard of proof in a negligence matter. He stated at pages 3 and 4 of his judgment that:

> "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 must 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

[1] [198] UK PC 7

> 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."

[8] Negligence is proven by establishing that the Defendant owed the Claimant a duty of care; that the Defendant breached that duty; and that the breach led to loss, injury or damage to the Claimant that was foreseeable[2].

[9] In establishing this duty of care, the damage to the Claimant caused by the Defendant's negligent act must have been foreseeable and there must exist a sufficient proximate relationship between the Claimant and the Defendant to make it just to impose this duty of care on the Defendant to the Claimant.

[10] In Jamaica, the legislation governing driving on the road at the time of this collision was the **Road Traffic Act (1938)** (hereinafter the RTA). Specifically, section 51. Section 51(2) provided essentially that all drivers have a duty to take such action as is necessary to avoid an accident.

[11] However, it is not only the motorist that has a duty of care on the roads. Pedestrians also owe a duty to take care for their own safety on the roads. The decision of the Supreme Court in ***Walters-Aikerman v Hibbert***[3]. Makes the point beautifully at paragraph 65 where Thomas J said as follows:

> *"Therefore, on a review of the cases, there does appear to be a general principle, that as it relates to negligence involving motor vehicles accidents between motorists and pedestrians, the court imposes a high burden on the motorist. However, this is not to say that the pedestrian owes no duty of care to other road users. Additionally, this does not absolve a pedestrian from paying due regard for his or her own safety."*

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[2] See the case of *Glenford Anderson v George Welch* [2012] JMCA Civ 43 at para 26.
[3] [2024] JMSC Civ 36

[12] The Island Traffic Authority Road Code (1987) (hereinafter "the Road Code") contains rules for the use of the road by pedestrians. Section 95(3)[4] of the RTA provides that breaches of the road code by any person can be used in civil proceedings as a basis for establishing civil liability on the part of that person.

[13] Part 1, Rules 1, 2 and 4 of the Road Code are the relevant rules engaged in this particular case. I will set them out below.

> 1 Always use the sidewalk when there is one and do not walk on the roadway or close to the kerb with your back to the traffic.
>
> 2 If there is no sidewalk, always walk on the right of the roadway facing the oncoming traffic.
>
> 4 Never walk out into the roadway from in front or behind stationary vehicles especially large buses and trucks. It is difficult for the motorist to see you in time to avoid hitting you.

[14] In the case of ***Clifford v Drymond***[5], the pedestrian failed to look to her right before stepping out into the road. Had she done so she would have seen a vehicle about 75ft away travelling at approximately 30mph. Negligence was apportioned at 20% against the Claimant. Lord Justice Bridge stated as follows: "a pedestrian who leaves the pavement and set foot on the carriage way, there is a duty on the pedestrian to keep that car under observation and to see whether the car is going to stop."

[15] There is also the decision in the case of ***Robert Franklin v. Everton Walters & Anor***[6]***.*** In this case, the Claimant was hit from behind by a motor vehicle being operated by the servant and or agent of the 2nd Defendant. This case outlined a number of factors that should be considered when determining liability. This case

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[4] See the case of *Deon Carter v Alford Alexander Junor* [2023] JMSC Civ 200
[5] [1976] RTR 134
[6] [2021] JMSC Civ 36

outlined the standard of care expected from both motorists and pedestrians. They are as follows:

> *" [27] Case law and the Road Code offer a guide as to the standard of care expected of a driver, and this includes:*
> *1. Driving with due care, attention and concentration;*
> *2. Driving within speed limits and adjusting the speed of the vehicle depending on the road conditions and vehicular and pedestrian traffic;*
> *3. Being alert and keeping a proper look out for other road users, including pedestrians emerging suddenly into the road;*
> *4. Driving slowly where pedestrians are seen, such as in crowded streets;*
> *5. Honking the horn to alert others, including pedestrians, to the presence or the approach of the vehicle; and*
> 6. Taking evasive action where necessary.
>
> *[29] Pedestrians must take reasonable care of themselves and the amount of care reasonably required of them depends on the usual and actual state of the traffic on the road. This means that if the pedestrian is aware that the road is a busy one, he should exercise greater care and alertness so as to not expose himself or other road users to danger. The Road Code offers a guide in respect of the standard of care expected of a pedestrian, and this includes:*
>
> *1. Taking reasonable care for his own safety when on the road;*
> ***2. Avoiding walking on the roadway with one's back to the traffic**;*
> ***3. Using sidewalks or footpaths when there is one, and when there is none, walking on the right hand side of the road, facing oncoming vehicle; (emphasis mine)***
> *4. Avoiding walking into the roadway from in front, behind or in between stationary vehicles; and*
> *5. Ensuring that one can see vehicles and can be seen by vehicles before walking into the roadway."*

[16] It was also stated that the test that must be applied is that of what a "reasonable man" would have done in the position of the operator to a motor vehicle and that regard must be had to whether or not the claimant took reasonable care for his own safety.

THE EVIDENCE AND FINDINGS OF FACT

[17] The evidence in this case comes from the Claimant and the Defendant themselves.

[18] The Claimant testified in her evidence in chief that on the 12th March 2021 she was walking along Beckford Street in Kingston at around 4:30 pm. There were shopping bags on each of her arms.

[19] She was in the vicinity of the Darling Street Police Station. She had started walking along the sidewalk, but realised that it was blocked with stalls, higglers and pedestrians[7]. In cross-examination, she admitted to making this statement in her evidence in chief, but insisted that there were no pedestrians on the sidewalk. She was adamant that the entire sidewalk was blocked by higglers with their stalls and barrels, going as far as saying that the stalls were extended all the way along the width of the sidewalk beyond the gutter into the road. Some of them, the Claimant said, had put their "lawn grass" in front of their stalls.

[20] She was adamant that there was no space for her to walk along the sidewalk and she was forced to go into the road. She also said that there was not even space to walk between the sidewalk and the cars parked along the kerb as the cars were parked too close to the stalls which extended right to the kerb's edge.

[21] I must say I do not accept this evidence as being credible and it was, in my view, hyperbolic. I do not accept that the stalls on the sidewalk were so positioned as to cover the entirety of the walkway to the point where not even customers could come to the stalls to get things. This would make little practical sense from the perspective of a higgler. Why set up your stall in such a manner that it is blocked from patronage?

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[7] See paragraph 4 of her witness statement

[22] I do accept that the sidewalk was indeed crowded with pedestrians, higglers, their stalls and their barrels. But I do not find that pedestrian traffic along the walk way was impeded in the matter described. I find that there were a lot of pedestrians and the ability to walk freely was severely curtailed, but it was not impassable forcing one to walk in the road.

[23] According to the Claimant, she went between two cars that had parked along the left side of the road. Once there, she said she looked behind her to check if there was any vehicle coming up the road as she wanted to make sure the road was safe. I accept her evidence in this regard.

[24] The Claimant said, she saw no vehicles coming and proceeded to walk beside the vehicle closest to her. When she had almost reached the front wheel of this vehicle, she felt a hit to her right elbow from behind. The Claimant claims that she was thrown into the air by the impact and she fell to the ground on her back.

[25] I have a bit of a challenge accepting this evidence. In cross-examination, her testimony was that she looked to make sure and saw nothing coming from her right. Yet she hadn't yet reached the front of the car to her left when she felt the impact from behind. Using commonsense, a car isn't a particularly long thing. So it stands to reason that if she took between 2-3 steps she would reach near to the front. There was no evidence from her that she walked slowly or delayed in her movement.

[26] In that regard, I find that it is unlikely that she would have looked to her right and saw no vehicle coming at all. From whence would this vehicle have come to hit her in a matter of seconds?

[27] I therefore do not accept her evidence that she saw no vehicle coming from the right before she got the hit. It is my finding that it is more likely that the Claimant saw the vehicle coming, but still stepped out into the road and started walking alongside the vehicle to her left.

[28] When she described her distance from the car to the left in cross-examination – she said she was less than a foot from the parked car to her left – it lends credence to my finding as it suggests someone who was keenly aware of the traffic in the road and was doing her best to avoid same.

[29] I also find that the Claimant was walking in the road with her back to the oncoming traffic.

[30] It is my finding that the Defendant collided with the Claimant in circumstances which suggested that the Defendant was not keeping a proper look out in all the circumstances.

[31] At paragraph 2 of her witness statement, the Defendant said as follows,

> *"Lots of people and cars were moving about. Due to the congestion, a deep pothole at the intersection of Beckford and Pechon Street, cars parked on the left, oncoming traffic on the right and people crossing in between cars, I was driving less than 10 miles per hour when I heard an impact on my left side mirror which caused the automatic mirror to be pushed inwards."*

[32] Based on the narrative, which I accept, the Defendant hit the Claimant as she (the Defendant) was passing the Claimant. I find that the fact that the Defendant didn't even seem aware of the fact that her wing mirror had hit someone was suggestive of the fact that she had not been keeping a proper look out.

[33] From her own narrative, the Defendant ought to have been on high alert for passengers moving between vehicles. Had she been keeping such a keen look out, it is my finding that she would have been aware of the presence of her vehicle in close proximity to the Claimant. The presence of the Claimant coming into the road would not have come as a surprise to the Defendant and she would have been able to take some action to avoid the collision such as blow her horn, stop the car in time, move further to the right to avoid the Claimant etc.

[34] I do not accept that the Claimant was thrown into the air by the impact. I find that this was an exaggeration on the part of the Claimant. I do accept that she lost her

footing and fell as a consequence of the impact. But to say she was thrown into the air is a bit much. I do not find that the Defendant had been travelling as such a speed that a clip to the elbow would have caused such a reaction from the Claimant.

DAMAGES

[35] The parties agreed special damages in the sum of $135,992.00.

[36] I will now turn to the question of General Damages.

[37] The Claimant's evidence is that she was in a lot of pain in the back of her head, right shoulder, right elbow, back and right hip as she was walking to the Darling Street Police Station shortly after the collision. I accepted her evidence in this regard. Even though the Defendant testified that the Claimant did not express that she was in pain to her, I do not find that the Claimant was not in pain.

[38] The medical evidence comes from two reports from the Kingston Public Hospital and an orthopaedic expert. The first medical is from Dr. Denise Bennett from the Accident and Emergency Department at the Kingston Public Hospital. Her findings on examination were noted as the fact that the Claimant was in no obvious painful distress, she was ambulant with a steady gait, there was decrease range of motion to the right elbow secondary to pain, there was tenderness and swelling to the lateral aspect of elbow and tenderness to the sacrum. An x-ray revealed an avulsion fracture to the tip of the olecranon. The diagnosis was a fracture of the right elbow.

[39] The Claimant was placed in a back slab and referred to the orthopaedics unit.

[40] Dr. St. Juste from the orthopaedics department saw the Claimant on the same day of the accident. His diagnosis was that of a contusion to the elbow. He claimed he

did an x-ray. He did not mention the avulsion fracture to the elbow. He recommended analgesia and exercises.

[41] It is no surprise then that the Claimant, in her evidence, said she went to the May Pen Hospital for further treatment on the 15th March 2021. She said the cast was removed, but she continued to feel pain and it was swollen and it had a dent. She said she made further visits to the emergency room at the May Pen Hospital in 2021 as she was in pain.

[42] Thereafter the Claimant did not testify to receiving any form of treatment or care until she went to see the orthopaedic specialist in August of 2024. There is no evidence that the Claimant was referred to orthopaedic specialist care by any medical professional. Dr. Safiya Franklin mentions in her certification at the end of the report that the only instructions she received were from the Claimant and her counsel.

[43] When Dr. Franklin saw the Claimant, she assessed her as having right traumatic lateral epicondylitis of the humerus. This is essentially what is known as tennis elbow. There was no medical evidence from the said doctor as to what are the causes of this condition other than trauma and no questions were posed to the doctor regarding same.

[44] Following further investigations, the doctor diagnosed the Claimant has having right lateral epicondylitis of the humerus and early osteoarthritis of the right elbow. Of note, the doctor said that most incidents of this nature resolve with non-surgical treatment. The Claimant went for nearly 3 years with no evidence of her receiving any sort of medical treatment for her injury.

[45] The Claimant sought to explain that she did not seek medical care as she could not afford it. However, as far as the Court is aware, treatment at the hospital or the clinic is free of cost. So there is no justifiable explanation for her failure to seek treatment in the 3 year period in an effort to mitigate her losses.

[46] Indeed, as confirmed by Dr. Franklin in her answers to questions filed on the 7th July 2025, the Claimant has not returned to see her since she gave her instructions on conservative management of her injuries when she saw her on the 4th September 2024.

[47] I also find Dr. Franklin's answer at paragraph 4 of the responses curious. The question posed was whether early intervention would assist in the quick resolution of the type of injury suffered by the Claimant. The answer was "Not applicable". There was no subsequent explanation sought.

[48] The problem for the Defendant is that they did not specifically plead in their defence that the Claimant failed to mitigate her loss. The authority of *Geest Plc v Lansiquot*[8], a Defendant, where there are formal pleadings, must plead in their defence the fact that the Claimant did not mitigate their losses in order to rely on their failure to mitigate at the trial. Therefore, I will not take into account any evidence or arguments that tend to show that the Claimant did not mitigate her losses.

[49] The Claimant submitted the case of ***Ezekiel Barclay et al v Kirk Mitchell***[9]. But this case was not on all fours. The Plaintiff suffered fractures of the ulna, comminuted fracture of the upper left ankle, and a tri-malleolar fracture of the upper left ankle. He had to have surgery to repair the injuries and was assessed as having a 25% whole person disability. So I placed no reliance on this case.

[50] She also submitted the authority of ***Tennesia Samuels (bnf Calvin Samuels) v Grace Watt et al***[10]. In this case, the minor plaintiff suffered pain and swelling of the right elbow, displaced fracture of the olecranon and a T-Condylar fracture of

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[8] (2002) 61 WIR 212
[9] Unreported, Supreme Court of Jamaica, CLB 241/2000, July 13, 2001
[10] Khan's 6 p. 92

the distal humerus. She too underwent surgery and, when assessed 3 years later by Dr. Dundas, was found to have a varus deformation of 3 degrees of the elbow. He diagnosed her as having a malunion with irregularity of the trochlear, a small fragment scree in the olecranon and an osteophyte on the coronoid process of the ulna. Ultimately, he assessed her as having a 2% whole person impairment with the varus deformity being cosmetic in nature.

[51] She was awarded the sum of $900,000.00 on the 11th November 2005. That sum updates to $3.74m today after indexation.

[52] I would reduce this award as that Plaintiff suffered more serious injuries than the Claimant here. This Claimant had no surgery, was quickly discharged from hospital care, and had what I consider to be a relatively minor injury. In the circumstances, I would make a global discount of $1,240,000.00.

[53] Therefore, I would award the Claimant the sum of $2,500,000.00 as General Damages for pain and suffering and loss of amenities.

HANDICAP ON THE LABOUR MARKET

[54] I would make an award for handicap on the labour market. There is evidence that the Claimant is unable to work as a farmer presently due to her injuries and she is impaired when it comes to farming. Counsel for the Claimant made no submissions on what figure should be awarded. In the submissions she asked for loss of future earnings and future medical expenses. Future medical expenses was not pleaded as a head of damages nor was loss of future earnings and so those Claims will fail.

[55] For handicap on the labour market, the most appropriate method in this case seems to be the lump sum method[11]. There is a palpable lack of medical evidence that the injury to the Claimant has been devastating to her future employment

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[11] See the decision of *Ebanks v McClymont* (Unreported, Supreme Court of Jamaica, 2004 HCV 02172, March 8, 2007 at paragraph 54.

prospects. Dr. Franklin herself has stated that the Claimant has yet to reach maximal medical improvement. The Claimant is 56 years old. Her evidence is that she was earning $60,000.00 per week from her farming and selling of her produce for three days a week. She is still working as she sells clothing and other such items one day per week. But her farming income made up the bulk of her earnings.

[56] I have no idea from her what her operating expenses were and it seems that this figure represented gross income. Therefore, a proper estimate of her earnings really cannot be made.

[57] In my view, a figure of $300,000.00 seems appropriate for the Claimant under this head of damages in all the circumstances. No interest is to be awarded under this head.

CONTRIBUTORY NEGLIGENCE

[58] The question now arises as to whether or not the Defendant has properly pleaded contributory negligence and whether the Claimant did in fact contribute to his own unfortunate injury.

[59] The starting point on this question is the **Law Reform (Contributory Negligence) Act**. Section 3 of the Act provides as follows:

> *"Where any person suffers damage partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the Claimant's share in the responsibility for damage."*

[60] The finding of contributory negligence goes to reduce the damages to which the Claimant is entitled. The question must be addressed only if it is that liability is found against the relevant defendant.

[61] To be able to rely on contributory negligence, it must be properly pleaded[12].

[62] According to Morrison JA (sitting in the Court of Appeal of Belize) in the Belizean case of ***Madrid Cruz v Jose Alvarenga and Wendy Hernandez***[13]:

> *"In the instant case, in which it is common ground that Mr Cruz did not, in terms, plead contributory negligence in his defence, his position is not improved, in my view, by the bald statement in the defence that Mr Alvarenga was negligent.* ***A proper pleading of contributory negligence would require that, in a case such as this, particulars be given sufficient to enable Mr Alvarenga to deal with the specific contributory factor being alleged against him*** *(emphasis mine), whether it be that he was riding at an excessive speed, that he was unlicensed or that he was riding in the middle, instead of close the outer edge, of the right hand lane of Constitution Drive."*

[63] Once properly raised, the burden of proof is on the Defendant to show that the Claimant contributed to his loss[14].

[64] The Defendant must establish the following[15]:

1. The claimant had a duty of care to act reasonably to avoid harm to himself.
2. The claimant breached that duty of care through negligence or carelessness.
3. The claimant's breach of duty directly contributed to the harm or injury he suffered.

[65] In my view, the Defendant has properly pleaded contributory negligence. I consider that the Defendant has established, for the reasons set out above, that the Claimant did contribute significantly to her own injuries.

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[12] In the case of *Fookes v Slaytor* [1978] 1 WLR 1293, the Court of Appeal of England and Wales held that contributory negligence had to be specifically pleaded by way of defence to a plaintiff's claim of negligence.

[13] Unreported, Court of Appeal of Belize, Civil Appeal No 15 of 2011, delivered 28 June 2013, at para 80

[14] See Fraser JA (Ag) in *Kevron Turner et al v Johnica Marshall et al* [2024] JMCA Civ 26 at para 48

[15] Ibid at para 49

[66] In my view, the majority of the blame for the injury rests on the Defendant. I find that it was her action in stepping out into the road to avoid the heavy traffic on the sidewalk that cause the collision.

[67] She stepped out from between two parked vehicles, she failed to keep to the sidewalk even though, in my finding, she could have and she failed to walk on the side of the road facing the oncoming traffic if not utilizing the sidewalk. Had she done these things, the collision would have been avoided in all likelihood.

[68] I find her to be 70% to blame for the collision and I would reduce her award of damages accordingly.

DISPOSITION

1 Judgment for the Claimant against the Defendant.

2 Damages to the Claimant as follows:
   a. General Damages for Pain and Suffering and Loss of Amenities in the sum of $2,500,000.00 with interest thereon at 3% from October 1, 2023 (the earlies date in October as the Acknowledgment of Service named no specific date of service) to the 11th day of February 2026.
   b. Special Damages agreed in the sum of $135,992.00 with interest thereon at 3% from the 12th March 2021 to the 11th February 2026.
   c. Handicap on the Labour Market - $300,000.00 with no interest on same.

3 The Claimant is to recover 30% of the awards made.

4 Costs to the Claimant to be taxed if not agreed. If not agreed, then the Claimant is to recover 30% of the taxed costs.

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Dale Staple
Puisne Judge