IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV04168

BETWEEN	**KAREN KIRLEW**	**1ST CLAIMANT**
AND	**RAYMOND KIRLEW**	**2ND CLAIMANT**
AND	**PIXLEY IRONS**	**DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. SU2023CV02527

BETWEEN	**DOMINIC KIRLEW**	**CLAIMANT**
	(A minor by mother & Next friend, Karen Kirlew)	
AND	**PIXLEY IRONS**	**DEFENDANT**

IN OPEN COURT

Keon Green and Andrew Folkes instructed by Earle & Wilson, Attorneys-at-law for the claimants
Ishia Robinson and Travis Ebanks, Attorneys-at-law for the defendant

Heard: 13th December 2024 and 10th April 2025

Negligence - Liability for motor vehicle collision at intersection - Personal Injury - Contributory negligence - Assessment of damages.

C. BARNABY, J

BACKGROUND

[1] The Claimants have brought a claim in negligence arising out of a motor vehicle collision at the intersection of Marcus Garvey Way and Royes Street in St. Ann's Bay on 12th November 2017. The collision occurred between a Honda Stream

driven by Mrs. Karen Kirlew and a Mitsubishi Pajero driven by the Defendant, Mr. Pixley Irons. Mr. Raymond Kirlew and Master Dominic Kirlew were both passengers in the motor vehicle driven by Mrs. Kirlew.

[2] It is contended by the Claimants that they were travelling along Marcus Garvey Way and on reaching its intersection with Royes Street (the Intersection), the Defendant who was driving on Royes Street failed to stop and so negligently collided in the vehicle driven by Mrs. Kirlew. The Claimants describe Marcus Garvey Way as the major road and Royes Street as the minor road. The Defendant's negligence is particularised in this way.

a) Failing to drive at a reasonable speed on a wet surface;

b) Failing to heed the presence of the Honda Stream;

c) Driving too fast in all the circumstances;

d) Failing to stop, slow down, swerve, or employ any other reasonable way to manage or control his vehicle so as to avoid the collision;

e) Exposing the Claimant[s] to unnecessary risk of injury;

f) Failing to take any or any reasonable care in all the circumstances to carry out his operation in such a manner so as not to expose the Claimant[s] to reasonably foreseeable risks or injury;

g) Failing to maintain sufficient control over the said motor vehicle;

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

i) Failing to keep any or any proper lookout;

j) Colliding twice in the Honda Stream;

k) Failing to see the Honda Stream in sufficient time or at all so as to avoid the collision;

l) Failing to pay any or any sufficient regard to other users of the roadway;

m) Entering the main road, Marcus Garvey Way, from Royes Street, a minor road when it was unsafe so to do;

n) Entering the main road, Marcus Garvey Way, from Royes Street, a minor road without first ascertaining or ensuring that it was safe so to do;

o) Failing to give way to traffic on Marcus Garvey Way, which was the main road.

[3] The Defendant denies that he was negligent as alleged or at all and says that while he was proceeding through the intersection, the left quarter panel and left doors of his vehicle were impacted by the vehicle driven by Mrs. Kirlew, pushing his vehicle

into a wall on the left side of the roadway. He says that there was no indication - whether by stop sign, signpost or otherwise - that Royes Street was a minor road to require motorists travelling on it to stop at its intersection with Marcus Garvey Way. He accordingly disagrees that the former was a minor road and the latter a major road, at the material time.

[4] Mr. Irons contends that the collision was caused solely and or materially contributed to by the negligence of Mrs. Kirlew, which he particularises as follows.

a) Driving at an improper speed in the circumstances;

b) Driving in a reckless and dangerous manner;

c) Colliding into the left quarter panel and left doors of the Defendant's motor vehicle;

d) Failing to have any or any adequate regard for road users and in particular the Defendant;

e) Failing to see and/or observe the presence of the Defendant's motor vehicle at the intersection in sufficient time or at all;

f) Proceeding into the intersection at a time when it was unsafe so to do;

g) Failing to stop before entering the intersection;

h) Failing to keep any or any proper lookout in the circumstances;

i) Failing to stop, swerve and/or manoeuvre [the Honda Stream] in such a way as to avoid collision.

[5] He counterclaims for special damages in the amount of $744.562.50.

[6] On 13th December 2024, the trial of the consolidated claims came on for hearing before me and judgment, which is now delivered, was reserved to today's date.

LIABILITY FOR THE COLLISION

[7] The parties bear the burden of proof on their respective claims, which is discharged on a balance of probabilities. The claim being in negligence they are required to prove the existence of a duty situation, breach and damage.

[8] Neither the collision, the involvement of the parties nor the general area of the collision are disputed. There is therefore no dispute that the drivers of the motor vehicles involved in the collision owed a duty of care to each other and the

passengers in Mrs. Kirlew's motor vehicle. The duty was to take reasonable care in their use of the road.

[9] Issue is joined on whether the collision occurred because of a breach of that duty by either or both drivers. At the center of that dispute are:

(a) which, if any, of the roads at the Intersection was a major road;

(b) whether there was a stop sign at Royes Street at the time of the collision; and

(c) whether each driver took reasonable care in proceeding across the Intersection.

[10] The Claimant's' evidence is that Marcus Garvey Way is a long thoroughfare which starts at the clock at St. Ann's Bay Main Street. They also say that Marcus Garvey Way and Royes Street are major and minor roads respectively, and that there is usually a stop sign on Royes Street, which is often hidden. Mr. Irons says that both roadways are minor roads that accommodate traffic flowing in either direction. He further stated that at the time of the collision, there were no road signs to alert motorists to stop or give way at the intersection of Royes Street and Marcus Garvey Way.

[11] Other than their say so, the Kirlews have not provided evidence which is capable of supporting the allegation that Marcus Garvey Way and Royes Street were designated major and minor roads respectively, at the time of the collision.

[12] Mr. and Mrs. Kirlew also gave evidence that Royes Street is one of three smaller roads leading off Marcus Garvey Way, no evidence was presented on where Royes Street terminated from that point, whether it intersected with another road, or also flowed from Main Street.

[13] I take judicial notice of the fact that Main Street, as its name suggests, is the major road through the town of St. Ann's Bay, along which there are several minor roads. While it is possible that among these "minor" roads some may be regarded as "major", in the absence of documentary evidence or evidence of indicators on each roadway which suggest they are to bear either designation in relation to each other,

I am unable to find that as between Marcus Garvey Way and Royes Street, the former was the major road at the time of the collision.

[14] Both Mr. and Mrs. Kirlew say in their witness statements that there is usually a stop sign at Royes Street, which is often hidden. They do not say whether the stop sign was present at the time of the collision, nor have they stated that there were any other signs or indicators present which would hint at Royes Street's designation as a minor road. In fact, on cross examination Mrs. Kirlew could not recall seeing a stop sign at the Intersection at the material time and Mr. Kirlew said he could not *"definitely say that a sign was there."* On this evidence, I am not satisfied on a balance of probabilities that there was a stop sign on Royes Street or any other indicator which would suggest that Royes Street was a minor road in relation to Marcus Garvey Way, thereby requiring the Defendant to yield to Mrs. Kirlew at the Intersection.

[15] Considering the foregoing, it is my view that both Mrs. Kirlew and Mr. Irons had a duty to approach and proceed across the intersection with reasonable care for themselves and other road users. Although said of the defendant in **Kern Francis v Peter Depass et al** [2015] JMSC Civ 255, I find this pronouncement by K. Anderson, J on the duty owed at an intersection to be equally applicable to Mrs. Kirlew and Mr. Irons who each had

> *[69] … a duty to exercise reasonable care in determining whether it was safe to proceed through the intersection and in that respect, [they were] required to not only stop at that intersection, but also, look and listen carefully, while there, before making the decision as to whether it was safe to proceed into the intersection and then so proceeding.*

[16] In so proceeding, *"[81] a reasonable and prudent driver is [also] required to anticipate what other road users may do at any moment in time."* While K. Anderson, J goes on to say that "*one is not, as a vehicle driver, expected to take precautions against a wholly unlikely risk, or against an occurrence that could not possibly have been reasonably anticipated",* he went further to cite with approval this dictum from Lord Uthwatt in **L.P.T.B. v Upson** [1949] 1 All ER 60 (H.L.).

> *'I … dissent from the view that drivers are entitled to drive on the assumption that other users of the road, whether drivers or pedestrians, will behave with reasonable care. It is common experience that many do not. A driver is not of course bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take.' Also, in* Berrill v R.H.E. *[1952] 2 Lloyd's Rep. 490, at 492, per Slade J: 'You are not bound to foresee every extremity of folly which occurs on the road. Equally, you are certainly not entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. You are bound to anticipate any act which is reasonably foreseeable, that is to say, anything which the experience of road users teaches them that people do, albeit negligently.'*

[17] It is Mrs. Kirlew's evidence that she has lived in the St. Ann's Bay area for fourteen (14) years, and that on the day of the collision at about 9:30 a.m. she was driving her vehicle in which her husband, Mr. Kirlew and her son Master Kirlew were passengers. They were on their way to church and were all wearing their seat belts. While descending Marcus Garvey Way it started drizzling slightly. Upon reaching the Intersection she slowed down, looked to her left and right and there was no oncoming vehicle. She accordingly proceeded to cross the intersection.

[18] This conduct was confirmed on cross-examination where she said she slowed at the Intersection because she wanted to check that the road was clear. She was going *"approximately less than 20 km*". She positioned her vehicle to see the left and right of Royes Street, looked left and then right. She did not see the Defendant's vehicle after looking to her right. Thereafter she proceeded to check if the intersection was clear. Less than a minute after she looked right the collision happened. The Defendant approached from the right.

[19] It was also Mrs. Kirlew's evidence that she was about midway into the Intersection when she suddenly saw the Defendant's vehicle travelling westerly on Royes Street, speeding towards her. She states that there was no time for her to take any evasive action and the Defendant's vehicle collided directly into the front side of her vehicle. The Defendant's vehicle then spun around and collided into the right

rear section of her car, causing it to be flung into a fence post to her left, where it finally stopped. When questioned about the breadth of the Intersection and the time it would take to cross it, the witness indicated that it was about 15 feet, and agreed that it would take “approximately less than five (5) seconds” to drive that distance.

[20] She disagreed with the suggestions put to her that she did not look right when she approached the Intersection; that she did not slow down; that because she thought Marcus Garvey Way was a major road she did not slow down at the Intersection; that she was speeding at the time of the collision; and that she was the one who collided in the left quarter panel and left doors of the Defendant’s vehicle.

[21] Mr. Kirlew’s evidence is materially the same as that of his wife Mrs. Kirlew as to how the family came to be on the roadway, the conditions of the road, and the actions taken by Mrs. Kirlew before proceeding into the Intersection. On cross-examination, he disclosed that his wife was driving at about 20 to 25 km per hour before reaching the Intersection and slowed to about 15 km per hour. While he admitted that he did not look to his left or right and was therefore unable to say if there was a vehicle coming from Royes Street, he disagreed with these suggestions.

(a) That he did not see Mrs. Kirlew look right and left on approaching the Intersection.

(b) That Mrs. Kirlew did not slow down at the Intersection.

(c) Mrs. Kirlew was speeding at the time of the collision.

(d) Mrs. Kirlew collided in the left doors and left quarter panel of the Defendant’s motor vehicle.

[22] Mr. Irons’ evidence is that at about 9:30 am, he was driving his vehicle along Royes Street in a westerly direction with his grandson in the front passenger seat. On cross-examination, Mr. Irons indicated that he is from St. Mary but had driven on Royes Street and Marcus Garvey Way prior to the collision and was familiar with the correct use of the Intersection. At the material time, he was driving to a wreath

laying ceremony which started at 10 o'clock. He was not late for the function nor was he speeding.

[23] He contends and repeats on cross-examination, that he was travelling at approximately 35 km/h and upon approaching the Intersection, he cut his speed to 10 km/h, and proceeded slowly through the Intersection. On cross-examination, he said that when he entered the Intersection Mrs. Kirlew's car was not there. He disagreed that Mrs. Kirlew's car was already descending into the intersection when he collided into it or that her car had entered the Intersection before his.

[24] On reaching the middle of the Intersection, he said he felt an impact to the left side of his vehicle which pushed his vehicle into a fence wall on the right side of the roadway. On cross-examination, he said he was not able to break or swerve to avoid the collision. He said he took no evasive action when he saw the Claimant's car coming towards him because it was too late at that time. He nevertheless goes on to say later in his cross-examination that he tried to swerve from the Claimant's vehicle and his vehicle slammed into the right-hand side of the road embankment. This response came when Mr. Irons was asked to account for the damage to the right of the Claimants vehicle, at which point he appeared ill-at-ease.

[25] Mr. Irons agreed that the vehicle he drove was heavier than Mrs. Kirlew's vehicle, but disagreed with the suggestions that he failed to stop at the Intersection; that he was prevented from taking the necessary steps to avoid the collision because he was driving at an excessively high speed; that Mrs. Kirlew's car was in the intersection first; that because he was speeding he couldn't avoid the collision; and that he was the cause or sole cause of the collision.

[26] Mr. Irons was shown the Assessor's Report which went into evidence by agreement and admitted that of the almost twenty (21) items of damage listed to his vehicle, only three (3) were damages to the left of the vehicle. He said that was because it was the point of impact.

[27] On the evidence presented, there is no dispute that Marcus Garvey Way is on a slope or that it was drizzling and the road wet. When these conditions are taken together with the fact that there were no obvious indicators that either road was a

major road in relation to the other, great care was required of Mrs. Kirlew and Mr. Irons in entering and crossing the Intersection. On the evidence, it appears to me that both failed to take reasonable care in doing so.

[28] I found Mr. and Mrs. Kirlew to be honest witnesses and accept their evidence that the latter slowed upon reaching the Intersection, looked to her left and right and saw no oncoming vehicle. There is no evidence of her having stopped at the Intersection before proceeding into it. Mr. Irons' evidence is that he proceeded slowly through the intersection and he also gave no evidence of stopping before proceeding (although he disagreed with the suggestion put to him in cross-examination that he had not). There is also no evidence that Mr. Irons looked right or left to satisfy himself that no vehicles were coming along Marcus Garvey Way in the vicinity of the Intersection. On the evidence I find it to be more probable than not that Mrs. Kirlew entered the intersection ahead of Mr. Irons.

[29] The intersection being only 15 feet, requiring less than less than five (5) seconds to drive that distance, it begs the question, how did Mr. Iron's vehicle come to be in the intersection and collide with the Mrs. Kirlew's vehicle if she had looked left, then right and had not seen him to the right? This is answered on the enquiry into allegation that Mr. Irons was speeding.

[30] On the parties' evidence, Mr. Irons appears to have been going slightly slower than Ms. Kirlew in his approach to and in crossing the Intersection. Neither driver's stated speed could be characterised as inappropriate or excessive. When I consider the damage to Mr. Irons' vehicle as particularised in the Assessor's Report however, I find it difficult to believe that he was proceeding slowly through the Intersection or at 10 km/h as he claims.

[31] Additionally, Mr. Irons' Mitsubishi Pajero is objectively heavier than Mrs. Kirlew's Honda Stream. Mr. Irons so admitted in cross-examination. While he initially said on cross-examination that he did not take evasive action to avoid the collision, Mr. Irons went on later to say that the road was wet, and he tried to swerve from the Claimant's vehicle and the front of his Pajero slammed into the right-hand side of the road embankment. This account suggests that Mr. Irons lost control of his

vehicle, and I find it to be more probable than not that this was on account that he was travelling through the Intersection at speed which was not reasonable for the prevailing road conditions.

[32] In all these circumstances find that there were breaches of duty on the parts of Mrs. Kirlew and Mr. Irons.

[33] Pursuant to section 3(1) of the **Law Reform (Contributory Negligence) Act**:

> *[w]here any person suffers damage as the result 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 the damage…*

[34] While Mrs. Kirlew breached the duty to stop at the intersection, it is my judgment that she exercised greater care in using the Intersection as she not only slowed down on reaching it but also looked left and right to see that there were no oncoming vehicles before proceeding into it. This is to be contrasted with Mr. Irons who, in addition to giving no evidence of stopping to observe conditions at the Intersection, gave no evidence of looking left and or right before proceeding into it, at a speed which I found - on a balance of probabilities - was not reasonable for the prevailing road conditions. I accordingly find that it is just and equitable to apportion liability for the collision at 20% to Mrs. Kirlew and 80 % to the Defendant.

ASSESSMENT OF DAMAGES

The Claim

[35] I was advised at the trial that there was agreement for the following medical reports to be admitted into evidence, and they were so admitted:

(d) Medical Report of Dr. Jessica Whyte Lewis dated 1st May 2018 and Addendum thereto;

(e) Medical Report of Dr. Linton Francis in respect of Karen Kirlew dated 1st May 2018; and

(f) Medical Report of Dr. Linton Francis in respect of Raymond Kirlew dated 1st May 2018.

General damages

Karen Kirlew

[36] The Medical Report of Dr. Linton D. Francis dated 1st May 2018 was admitted into evidence. He saw Mrs. Kirlew on 13th November 2017. She complained of being involved in the collision, pain on both sides of her neck, pain in her upper back, pain across her anterior chest which increased with deep breathing and pain in the right costal area which increased with deep breathing. She experienced pain and tenderness in the area stated when they were palpated or percussed. She was prescribed anti-inflammatory analgesics as well as muscle relaxants, and a cervical collar was fitted to stabilize her neck. She was diagnosed as suffering from whiplash injury to the neck secondary to motor vehicle collision and multiple trauma secondary to motor vehicle collision.

[37] While Mrs. Kirlew said she saw Dr. Francis after the date stated in his report and that she was prescribed sick leave, the same has not been stated in the medical report admitted in evidence and there is no sick leave certificate.

[38] It is also her evidence that she still has nagging pain in her neck, which she says is on account of the collision. There is no medical evidence to substantiate this claim and on Mrs. Kirlew's own admission she has not returned to the doctor as she tends not to rely too much on pharmaceutical drugs. She also says that she is still traumatised, especially when she drives past the area of the collision and has flash backs of it, and the thought that she almost lost her life and that of her immediate family. There is no evidence of her having required and received further

medical care in these regards. These allegations of continued suffering are unsubstantiated.

[39] Counsel for the Claimants rely on three authorities in submitting that the sum of $1,200,000.00 is an appropriate award for general damages. They are **Pamela Thompson & Ors. v Devon Barrows & Ors**., Claim No. CL. 2001/T143 delivered December 22, 2006; **Lascelles Allen v Ameco Caribbean Incorporated and Peter Perry**, Claim No. 2009 HCV 03883 delivered 7th January 2011; and **Delores Briscoe v Jamaica Urban Transit Company Limited an Anor.** [2015] JMSC Civ 200. The Defendant also relies on **Pamela Thompson** and **Roger McCarthy v Peter Calloo** [2018] JMCA Civ 7 in submitting than an award of $650,000.00 for general damages is appropriate.

[40] The claimant in **Pamella Thompson** suffered a mild whiplash injury to the neck and complained of pains in neck, lower back and shoulder. She was awarded the sum of $250,000.00 as general damages which updates to $925,587.47, using the current CPI of 141.8 (February 2025). The injuries in that case appear a little less severe than Mrs. Kirlew's injury to require an adjustment upward.

[41] In **Lascelles Allen** an award of $600,000.00 was made as general damages which updates to $1,323,172.63. Mr. Allen suffered injury to his side, neck and back. He was diagnosed with whiplash injury and was fully recovered within four months of the collision. When updated the award stands at $1,323,172.63. While the injuries are comparable, there is no medical evidence which shows that Mrs. Kirlew had any prolonged suffering. An adjustment downwards is therefore appropriate.

[42] The medical report accepted by the court in **Delores Briscoe** showed that the claimant complained of neck pain radiating to her right arm and hand, with numbness, paraesthesia and weakness in the right upper limb. She also had headaches. The doctor found notably moderate limitation of flexion, extension and lateral rotation of her neck, with some weakness in the right upper limb. The claimant was assessed as having moderate whiplash of her neck. She was prescribed oral and topical analgesics as well as a soft collar for two weeks. The Claimant was awarded $700,000.00 as general damages in September 2015

which updates to $1,126,674.23. The whiplash injury in this case seems similar to Mrs. Kirlew but there were additional injuries and unlike Ms. Briscoe, there is no indication in Dr. Francis' report about the duration for which Mrs. Kirlew was required to wear the collar. An adjustment downward is appropriate.

[43] **Roger McCarthy** concerned an appeal from the decision of a judge of the Parish Court. Among the grounds of appeal is that the learned judge erred in awarding the sum of $800,000.00 as general damages for negligence. The treating physician observed a contusion to the claimant's face, and he was assessed as suffering acute back strain, posttraumatic vertigo with headache and acute whiplash injury with grade 2 whiplash associated disorder. The medical report disclosed no permanent disability. The award was reduced to $500,000.00 in May 2017, which updates to $745,531.02. The injuries here appear more severe than Mrs. Kirlew's but on the indication from the Court of Appeal that the sum awarded which was contemplated by the learned Parish Court Judge but not reflected in her order *"was not inappropriate",* and in the context of the other authorities cited for whiplash injury, I am inclined to adjust the award upward.

[44] On consideration of all the authorities, an award of $1,000,000.00 for general damages to Mrs. Kirlew appears to be appropriate. This is to be reduced by 20% on account of her contribution to the collision.

Raymond Kirlew

[45] Dr. Linton D. Francis in his medical report dated 1st May 2018 indicated that he saw and examined Mr. Kirlew on 15th November 2017. Mr. Kirlew complained that he was involved in the collision and of pain across the lower back which became progressively worse. On examination, Dr Francis found pain to deep palpation and percussion over the muscles of the lower back which increased on flexing of the truck. Mr. Kirlew was diagnosed as having lumbar strain secondary to motor vehicle collision and was treated with anti-inflammatory analgesics, muscle

relaxants and relative rest. It is Mr. Kirlew's evidence that he still has pain in his back which he attributes the collision. He has not revisited the doctor however as he tends not to rely too much on pharmaceutical drugs. There is accordingly no evidence of his having required and received further medical care. He admitted in cross-examination that he had no physiotherapy.

[46] Two authorities were relied on by Counsel for the Claimant in submitting that $1,575,000.00 should be awarded to Mr. Kirlew for general damages. **Ava-gaye Smith v Henry's Transit Limited and Anor.** [2016] JMSC Civ. 112 and **Ventrice Brown v Henry Marshall et al** [2017] JMSC Civ. 68.

[47] In **Ava-gaye Smith** the claimant was diagnosed with upper back strain and strain to the left shoulder for which she received one physiotherapy treatment and was discharged, as she had minimal pain. She did not attend further physiotherapy sessions due to her work schedule. General damages in the sum of $800,000.00 was awarded in June 2016, which updates to $1,281,807.91. The injuries suffered by Ms. Smith were more serious than Mr. Kirlew's and required management by physiotherapy. A downward adjustment is therefore appropriate.

[48] The **Ventrice Brown** case is a consolidated claim where Falenso Smith was a claimant. Mr. Smith suffered a mild headache secondary to flexon extension injuries (neck injuries caused by sudden, forceful movements) and mild lower back strain. The sum of $1,200,000.00 was awarded to him as general damages in May 2017 which updates to $1,853,594.77. Mr. Brown's injuries are more severe than Mr. Kirlew's, appearing as it does, to include "whiplash" type injury. An adjustment downward to reflect that significant difference is required. I find that an award of $850,000.00 for general damages is appropriate in the circumstances of this case and is to be apportioned 20% and 80% between Mrs. Kirlew and the Defendant respectively.

Dominic Kirlew

[49] It was pointed out at the commencement of the trial, during a side bar with Counsel, that none of the witness statements spoke to injury to the minor claimant. Counsel for the Defendant advised that no issue is taken with his involvement or injury in the matter. Both Counsel confirm that the main questions for the court relate to the mechanism of the collision, responsibility for it and contribution. The assessment in respect of Master Kirlew proceeds on this basis.

[50] Master Kirlew was seen by Dr. Whyte-Lewis on the day of the collision. In addition to abrasions to the forehead and right forearm, a superficial laceration to the right great toe was observed. He was diagnosed as having a superficial laceration to the right great toe which was treated with medication.

[51] The Defendant relies on **Taniesha Campbell v Atlas Armoured Service Ltd et al** [2017] JMSC Civ 26 and **Daniel Thompson v Sean Stewart and Winchester Watson** [2022] JMSC Civ 84 and submits that while the cases are not on all fours, they are instructive and provide a reasonable measure of similarity. The sum of $350,000.00 is submitted as a reasonable award for general damages.

[52] In the **Taniesha Campbell et al case,** the award made to Dalton Anderon is cited. That claimant suffered bruises over his left shin and knee without restriction in range of movement and was awarded $150,000.00 in February 2017 which updates to $233,479.70.

[53] The claimant **Daniel Thompson** complained of bruises to his left elbow, pain to his right knee and reported a pain score of 4 out of 10. He was diagnosed with soft tissue injuries to his left elbow and right knee, treated with analgesics and muscle relaxants and sent home. $150,000.00 was awarded as general damages in June 2022, which updates to $174,630.54.

[54] The injuries sustained by the claimants in the cases relied upon by the Defendant are less serious than the injuries which Master Kirlew suffered, and an upward adjustment is therefore required.

[55] The Claimant relies on **Marian Brown et al v Dennis Patterson et al** [2016] JMSC Civ. 62, and the assessment made in respect of the 3rd claimant Lynford Kerr in

submitting an award of $450,000.00 for general damages. Mr. Kerr suffered a wound, or abrasion below the mid right leg anteriorly, a wound and laceration to anterior aspect of the left leg, superficial abrasion with swelling to the face and laceration to the left leg which measured at 5 cm. The sum of $350,000.00 was awarded for general damages in March 2016, which updates to $565,261.10. The Claimant concedes that the injuries in this case are more serious than those suffered by Master Kirlew. Abrasions and a superficial laceration are far less serious than the injuries suffered by Mr. Kerr, and it is my view that the award is appropriately adjusted downwards to $400,000.00 which is to be apportioned 20% and 80% between Mrs. Kirlew and the Defendant respectively, according to their contribution to the collision.

Special damages

[56] It is trite that special damages are to be specifically pleaded and proved. While the Claimants claim special damages by way of medical expenses, they were not the subject of evidence in the witness statement and no documentation was tendered into evidence in proof of these claims. The same observation is made in respect of the claim for transportation expenses. In the circumstances, there can be no award to the Claimants for special damages.

The Counterclaim

Special damages

[57] The Defendant does not counterclaim for general damages but claims special damages in the amount of $744,562.50 which is comprised of Total Loss of $730,000.00 and Assessor's Fees in the amount of $14,562.50.

[58] It is the Defendant's evidence that his vehicle was assessed by Claim Centers of Jamaica Ltd and deemed a total loss. The Damage Assessment Report dated 21st November 2017 together with receipt of the same date in the amount of $14,562.50 was admitted in evidence by agreement. The report shows a total loss of $730,000.00. The Defendant has proved the special damages sought on the counterclaim and it is accordingly awarded in the sum of $744,562.50, reduced by 80% on account of his contribution to the collision.

[59] It is in all the foregoing premises that I make the orders below.

ORDER

Karen Kirlew

1. Judgment for the Claimant on the claim.
2. General damages in the sum of **One Million Dollars ($1,000,000.00)**, reduced by 20% based on her contribution to the collision.
3. Interest on general damages at 3% per annum from the 29th October 2020 to today's date.
4. The Claimant is to recover 80% of her costs in the claim against the Defendant, which costs are to be taxed if not sooner agreed.

Raymond Kirlew

5. Judgment for the Claimant on the claim.
6. General damages in the sum of **Eight Hundred and Fifty Thousand Dollars ($850,000.00**) apportioned between Karen Kirlew and the Defendant at 20% and 80% respectively.
7. Interest on general damages at 3% per annum from the 29th October 2020 to today's date.

8. The Claimant is to recover his costs in the claim apportioned between Karen Kirlew and the Defendant at 20% and 80% respectively, which costs are to be taxed if not sooner agreed.

Dominic Kirlew

9. Judgment for the Claimant on the claim.
10. General damages in the sum of **Four Hundred Thousand Dollars ($400,000.00)** apportioned between Karen Kirlew and the Defendant at 20% and 80% respectively.
11. Interest on general damages at 3% per annum from the 29th October 2020 to today's date.
12. The Claimant is to recover his costs in the claim apportioned between Karen Kirlew and the Defendant at 20% and 80% respectively, which costs are to be taxed if not sooner agreed.

Pixley Irons

13. Judgment for the Defendant on the counterclaim.
14. Special damages are awarded to the Defendant in the sum of **Seven Hundred and Forty-four Thousand Five Hundred and Sixty-two dollars and Fifty Cents ($744,562.50)**, reduced by 80% based on his contribution to the collision.
15. Interest on special damages at 3% per annum from 12th November 2017 to today's date.
16. The Defendant is to recover 20% of his costs against Karen Kirlew on the counterclaim, which costs are to be taxed if not sooner agreed.
17. The Claimants' Attorneys-at-law are to prepare, file and serve this Order.

Carole S. Barnaby
Puisne Judge