[2025] JMSC CIV 07

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV 01698

BETWEEN	**ANN-MARIE LOGAN**	**CLAIMANT**
AND	**MARLON LAWRENCE**	**FIRST DEFENDANT**
AND	**DEVON BENNETT**	**SECOND DEFENDANT**
AND	**STANFORD WALCOTT**	**THIRD DEFENDANT**
AND	**CAMIEL SOARES**	**FOURTH DEFENDANT**

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV 01665

BETWEEN	**CANDICE HINDS**	**CLAIMANT**
AND	**MARLON LAWRENCE**	**FIRST DEFENDANT**
AND	**DEVON BENNETT**	**SECOND DEFENDANT**
AND	**STANFORD WALCOTT**	**THIRD DEFENDANT**
AND	**CAMIEL SOARES**	**FOURTH DEFENDANT**

Mr Teddison Maye-Jackson instructed by Kinghorn & Kinghorn for the Claimants

Mr Obiko Gordon instructed by Frater, Ennis & Gordon for the First and Second Defendants

Ms Racquel Dunbar instructed by Dunbar & Co. for the Third and Fourth Defendants

NEGLIGENCE – MOTOR VEHICLE COLLISION – ONE VEHICLE ON THE WRONG SIDE OF THE ROAD–DAMAGES- THIRD AND FOURTH DEFENDANT ABSENT TRIAL PROCEEDS - DEFENDANTS ADOPTING CLAIMANT'S STATEMENT OF CASE FOR EVIDENCE IN CHIEF

Road Traffic Act, 1938, section 51(1)(a)

HEARD: September 16, 17, 18, 19, 2024 & January 30, 2025

WINT-BLAIR J

[1] This trial of these claims commenced in the absence of both the third and fourth defendants. Ms Dunbar elected to cross-examine the claimants as she had no evidence in chief to present. Her intended course was to rely on the evidence of Ann-Marie Logan for how the collision occurred and for the case to be determined on its merits.

[2] Mr Gordon objected to that strategy contending that he had no notice of this intended course of action. Further, the third and fourth defendants sought to rely on a witness statement from a claimant who had sued them which was at cross-purposes with their case. The remedies available under the Evidence Act were not being employed and finally, the ancillary claim was not being pursued.

[3] The court ruled that the trial would proceed without any evidence from the third and fourth defendants. As there was no application of any sort from Ms Dunbar with respect to their witness statements, to my mind in that circumstance, the issue of notice was irrelevant. Submissions on the evidence would take place in the usual course at the close of the trial. The third and fourth defendants having filed their defence were entitled to rely on the evidence presented to the court. The court will consider all of the evidence presented in arriving at a decision. The case

of **Igol Coke v Nigel Rhooms**[1] citing **Hummerstone & Anor v Leary & Anor**[2] is the authority for this approach. The parties agreed nineteen items of documentary evidence, the court ordered that they be marked as exhibits one to nineteen. There were no other exhibits.

[4] These claims arise from a motor vehicle collision on September 5, 2012, at about 7:00 pm along the Richmond Main Road, in the parish of St. Ann. It is not disputed that both claimants were passengers in a Probox motor car registered PE 7791 owned by Camiel Soares and driven by the third defendant as a taxi. There were five passengers in that taxi which was driving towards Runaway Bay. The other driver was Marlon Lawerence, he was driving an Isuzu motor truck registered CG 3280 owned by Devon Bennett.

[5] Ann-Marie Logan's witness statement was ordered to stand as her evidence in chief. In that witness statement, she said that she was seated in the back seat of the Probox and was the second person to the right of the driver. She was not wearing a seatbelt. On Richmond Estate Main Road a truck travelling in the opposite direction was overtaking a long line of traffic. Suddenly there was a loud crashing sound and a massive impact. The truck hit into the front of the vehicle causing it to spin around two times and overturn on the right side. She did not recall seeing a horse on the road nor did she recall the driver swerving to avoid hitting anything that would cause the collision between both vehicles.

[6] A soldier truck was passing, soldiers took her out of the car through the left window to the St Ann's Bay hospital where she was rushed into emergency, examined and sent to do an x-ray. She received injuries to her neck, back and right hand and was in severe pain. She was admitted to the hospital for two weeks.

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[1] [2014] JMCA Civ 54
[2] [1921] 2 KB 664

[7] Mr Gordon cross-examined the witness and elicited responses which showed that the vehicle she was in and others on the road had its headlights on, she could see so she did not agree that there was low light, though the sun had set. She was on her phone and held her head up before the accident happened. Ms Logan said she held down her head a couple of seconds before the collision and did not lift it again until after. This was a different action than holding down her head to use her phone. It was put to the witness that she made no mention of holding her head down in her witness statement and she agreed. She also agreed that she could not say how the driver was operating the vehicle while her head was down.

[8] Both sides of the road have a soft shoulder in the vicinity of Llandovery. She saw the truck coming. It was overtaking the line of traffic, about five cars from the taxi which may have made a little swerve when the truck was coming. There was nowhere to go and that is why the truck hit the car. When she first saw the truck it was about sixty-three feet away (pointed out.)

[9] She sat in the middle of the Probox taxi with three persons on the rear seat of what was a right-hand drive vehicle. She had a clear view of the road. When she first saw the truck it was positioned in her lane, approaching fast, the taxi had nowhere to go. It went to the left on the soft shoulder to avoid the truck and overturned in a ditch to the left.

[10] The vehicle was travelling at regular speed which means it was not speeding and her driver did not reduce his speed up to the point of the collision. She knew the vehicle was going fast or slow by the breeze she felt. When confronted with the amended particulars of claim in which it was pleaded that the third defendant was driving at too fast a rate of speed she agreed.

[11] The witness disagreed that a horse crossed into Mr Walcott's path, or that he swerved to his right to avoid hitting it. She didn't know why he swerved because her head was down looking at the phone. Further, she disagreed that Mr Walcott

lost control and ended up on the soft shoulder of the opposite lane or that he attempted to manoeuvre the vehicle back onto his lane and collided into the truck.

[12] Ms Logan did not know where exactly on the road the collision took place or where the truck stopped after the collision. She recalled that the gentleman who died in the collision was seated at one of the rear windows.

[13] Candice Hinds gave evidence that she does not recall what happened on the day of the collision. She lost consciousness for a short while and splinters got into her eyes. She was taken to St. Ann's Bay Hospital. She felt pains in her neck and back and was admitted for one day for observation. Cross-examination was unremarkable.

[14] Marlon Lawrence, a truck driver, whose witness statement stood as his evidence in chief said that on the material date at about 6:00 pm, he was driving an Isuzu motor truck along the Llandovery Main Road at about fifty kilometres per hour, within the speed limit. As he passed the traffic light at Richmond, he saw the motor vehicle driven by Mr Walcott travelling at great speed in the opposite direction towards him, it swerved to his (Mr Lawrence's) left ending up on the soft shoulder of Mr Lawrence's lane. He first saw the taxi when it was some four car lengths away. There was a car in front of the truck which swerved onto the left soft shoulder to avoid a collision.

[15] The witness said he applied his brakes in an attempt to avoid the collision. The other vehicle was out of control and headed in his direction. Mr Walcott swerved back onto the road to his left and the right rear of the taxi collided into the front of the truck, spun out and overturned. The truck ended up on the right side of the road on the soft shoulder because the collision caused the steering wheel to "let loose."

[16] Mr Lawrence said he got out of the truck on the left side as the right side was too damaged. He walked to the taxi where he saw a crowd taking passengers out of the car and to the hospital. The police arrived on the scene about thirty minutes

later. Mr Devon Barrett, the owner of the truck arrived and the first, second and third defendants spoke to the police on the scene. The third defendant said he "saw a horse and he swerved from it. The horse was going across the road." Mr Barrett asked him, "how can you swing from a horse into incoming vehicle?" Mr Barrett received no response.

[17] In cross-examination for the claimants, Mr Lawrence said that there was a line of traffic going towards St Ann's Bay. He denied overtaking a line of traffic or being in a rush. He denied that the truck was in the right lane and that the collision occurred in the right lane. Mr Lawrence disagreed that he was overtaking, that he collided with the taxi and that it was this which led to the truck ending up on the right soft shoulder. He disagreed when it was put to him that because of the line of traffic, the taxi could not have gone over to the right. The witness denied that his truck collided with the right rear of the taxi or that the taxi was in the left lane and attempted to go further left and the truck collided with the right rear of the taxi. He also denied speeding.

[18] Mr Lawrence did not agree that the taxi swerved to its left onto the soft shoulder. He said the taxi swerved to its right when it was some four car lengths away from the truck. He first saw the taxi two minutes before the collision but this was not enough time to avoid a collision. It was dark but the road was visible for more than four car lengths. He denied seeing the taxi first at four car lengths away, instead saying he first saw the taxi when it was eight car lengths away in its correct driving lane. It was put to him that in his witness statement, it says that he first saw the taxi when it was about four car lengths away, the witness said that this was when the driver of the Probox swerved.

[19] Mr Lawrence said he did not see a horse on the road. In further cross-examination, he testified that a car length is 10 feet. Both vehicles ended up on the left soft shoulder to Runaway Bay after the collision. The truck was closer to St Ann's Bay after the collision. Based on the position of the vehicles, the truck passed the taxi before it came to a stop some two car lengths away. The soft shoulder on the right

was wide enough for the Probox taxi to fit without blocking the driving lane. The truck was about five feet wide. The truck crossed over the left lane and ended up on the right shoulder. The right rear of the Probox hit the right corner of the front of the truck where the headlights are.

[20] The witness said he was doing a delivery on the day of the accident. He worked for a business in St Ann's Bay at the time and would deliver building materials island-wide. He had to park the truck at the business place after working from 8:30 am to 5:00 pm. He had a full workday on the day of the accident. He denied being tired that day, that the collision happened on his right side of the road and that he was rushing to get back to park the truck and go home.

[21] Devon Bennett, a businessman gave evidence in his witness statement which stood as evidence in chief. He said he owned the truck registered CG 3280 and on September 5, 2012, sometime in the afternoon he received a call from Marlon Lawrence. He went to the Llandovery Main Road in the vicinity of Richmond and there saw the third defendant. While on the scene in the presence of Mr Lawrence and a policeman, Mr Walcott said he lost control of the motor vehicle when he tried to swerve from a horse and that is how he collided into the truck. Mr Barrett said he asked Mr Walcott why he hadn't swerved to his left instead of going into the motor vehicles heading in the opposite direction to his right. He received no response.

[22] In cross-examination by Mr Jackson, Mr Bennett said he saw a multiple-vehicle accident when he went to the scene. He arrived at about 7:00 pm he did not see a horse; he saw the truck it was not on its correct side of the road. He arrived on scene and saw the police, the statement made by the second defendant came from Mr Walcott and was not word of mouth. In cross-examination by Ms Dunbar, Mr Bennett admitted that the truck was not insured on the date of the collision.

Submissions

[23] The claimants submitted that the evidence of Ann-Marie Logan sets out what transpired on the date of the accident and that she remained unshaken after strident cross-examination. The duty of care owed to the claimant by the first defendant as a driver is not in doubt. This duty was breached when Mr Lawrence overtook a line of traffic when it was not safe to do so resulting in the collision with the vehicle driven by Mr Walcott. The traffic on the road at the time of the collision as given by the claimant is supported by the first defendant as both said there was a line of traffic heading towards St Ann's Bay. The presence of this line of traffic made it highly unlikely that Mr Walcott swerved onto his right soft shoulder and re-entered the roadway without colliding with any other vehicle but the truck. It is equally as unlikely that the truck was travelling in its left lane at a reduced speed only to be the subject of a collision causing Mr Lawrence to lose control and end up on the soft shoulder on its opposite side.

[24] Mr Jackson contended that the court should note that Mr Lawrence lived in Salem, St Ann, he had passed his home to reach his destination. He was to return the truck and this accounts for his haste. Counsel argues that any conversation about a horse can be discounted as Mr Bennett was not there when the collision took place. That conversation was not tested as the third defendant was absent and the claimants do not give evidence of the presence of a horse. It therefore carries no weight.

[25] Counsel contended that the first defendant is not a credible witness. The first defendant's version of events leading up to the collision is specious at best and both himself and the second defendant should be held liable in negligence. It is undisputed that the first defendant was the servant and/or agent of the second defendant and it is undisputed that the claimants suffered injuries as a result of this collision. The test for negligence has been met by the claimants.

[26] Ms Logan suffered injuries to her neck, back and right hand and had pain all over her body. She was diagnosed as having disc herniation with spinal cord impingement on the date of the accident at the St Ann's Bay Hospital.[3] Approximately one month later she was diagnosed with cervical disc prolapse with mild subluxation.[4]

[27] It was submitted that in the case of **Richard Henry v Marjoblac Limited**,[5] the claimant suffered from blunt trauma which resulted in muscle spasms. He was awarded the sum of $1,036,244.45 as general damages in March 2017. The court found that while the claimant suffered a great deal of impairment, his other injuries were limited. The award updates to $1,558,901.80. In the case of **Lloyd Bell v Alcar Construction & Haulage Co. Ltd and Deon Barker**[6] the claimant, Michelle Bell suffered from cervical strain with a whole person disability of 2%. She received a reduced awarded as she did not mitigate her loss by wearing the cervical collar she had been prescribed. The award of $1,700,000.00 in January 2018 updates to $2,455,357.14.

[28] It is submitted that Ms Logan's injuries are more severe than those sustained in the above cases. While no disability rating was assigned to her, the injuries she sustained are closer in nature to those of Michelle Bell and in the circumstances and award of $2,500,000.00 is reasonable as general damages. Agreed special damages total $83,201.46.

[29] Candice Hinds lost consciousness at the time of the collision. Splinters went into her eyes and she felt pain in her neck and back. She suffered from numbness in her body and blurred vision diminishing her quality of life after the collision. She

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[3] Exhibit 1
[4] Exhibit 2
[5] [2017] JMSC Civ 42
[6] [2018] JMSC Civ 3

was diagnosed with whiplash and a cerebral concussion on the date of the accident.[7]

[30] In the case of **Claudius Hamilton v Kevin Marshall and Geovaughnie Holness**,[8] the claimant was diagnosed with sub-conscious blunt head injury, whiplash, chronic post-traumatic headaches and was awarded the sum of $1,700,000,00 as general damages in May 2014. The award updates to $2,829,903.15. A reasonable award would be $2,500,000.00 as Ms Hinds' injuries are similar to those of Claudius Hamilton. Agreed special damages total $54,000.00.

[31] Any deduction under the Law Reform (Contributory Negligence)Act ought not to exceed 20% of the award. The claimants were passengers in a public passenger vehicle. No evidence exists as to whether they were afforded the necessary safety features. There is also no evidence that they wilfully neglected to use any available safety features.

The First and Second Defendants

[32] The first and second defendants submitted that the case is simply this, the claimants have irreparably damaged the overall credibility of their case. At trial, the claimants chose to support the case of the absent fourth defendant which was a stark departure from their statement of case as set out in the amended particulars of claim. In both amended particulars of claim filed on behalf of each claimant, it is asserted that the third defendant was driving at too fast a rate of speed, failed to see the truck within sufficient time, failed to apply his brakes within sufficient time, and failed to stop, slow down, swerve or otherwise conduct the operation of the said motor vehicle so as to avoid the collision.

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[7] Exhibit 16
[8] [2014] JMSC Civ 81

[33] Ms Logan is the only eyewitness to the accident and on the claimant's case, she said in cross-examination that the third defendant was not driving at too fast a rate of speed, his speed "*was just regular"*. She disagreed that the taxi she was in was speeding. The claimants' respective cases rest solely on the account of Ms Logan and she is an unreliable witness as she did not actually see the accident. She saw "*a truck travelling in the opposite direction overtaking a long line of traffic. Suddenly there was a loud crashing sound and massive impact. I then realized that the truck hit the front of the vehicle*". The reasonable inference to be drawn is that the witness did not see the impact as it happened rather, she heard it. Further, this witness said her head was down at the time of impact. There is therefore no ambiguity about whether she saw the collision as she did not.

[34] Ms Logan was either distracted or not paying attention as she also did not see a horse immediately before the accident as her evidence was that she was holding down her head. Later on in cross-examination, Ms Logan said she held her head up and she could see the truck coming. When read in conjunction with her evidence in chief the reasonable inference to be drawn from her evidence is that one event followed the other.

[35] The witness also could not say what actions were taken by Mr Walcott leading up to the collision. This means she has failed to refute the first defendant's case in that she could not say whether Mr Walcott swerved, in what direction he did so and whether he attempted to manoeuvre back onto the road into his lane.

[36] Ms Logan in chief says, "I then realized the truck hit into the front of the vehicle." Whereas the police report tendered by the claimants said damage to the third defendant's vehicle was to the left side. No witness was called to reconcile this discrepancy. It was also suggested that it was the first defendant's truck that collided into the right rear of the third defendant's car with which Ms Logan disagreed. There is therefore no definitive answer on the claimant's case as to where on the third defendant's vehicle the impact occurred.

[37] The witness could not situate the collision. Given the evidence that her head was down twice leading up to the collision, she gave inconsistent testimony about the position of the third defendant's vehicle. Her evidence in chief would support the inference that a head on collision was about to take place whereas in cross-examination the witness said, "maybe the taxi made a little swerve." When asked at what point, she replied, "maybe when the truck was coming but he had nowhere to go." It was argued that this answer is speculative at best and inconsistent with the earlier evidence that there was space on the soft shoulder for the Probox to fit without blocking the driving lane. This evidence from the first defendant was unchallenged.

[38] This means that the third defendant's vehicle could have fit onto the soft shoulder without impeding traffic and had somewhere to go contrary to the witness' assertion that it had nowhere to go. Further, the claimant testified to seeing the truck two to three minutes before the accident which gave the third defendant plenty of time to pull over.

[39] The evidence was that the Probox went further left onto the soft shoulder. The point of impact would then be squarely on the soft shoulder and not in the third defendant's lane. This is fatal to the claimant's case because it requires the first defendant to not only be overtaking and be in the incorrect lane but to collide with the third defendant by swerving right after overtaking prior to the collision in order to bring the truck onto the soft shoulder. Additionally, it was never suggested to the first defendant in cross-examination that he swerved to his right after allegedly overtaking a line of traffic. What was suggested to the first defendant was that he was overtaking and it was because he was doing so in the right lane that he hit the Probox. It was put to the third defendant that when he hit the Probox it was in its correct lane. Any assertion by Ms Logan that the third defendant swerved is a departure from the claimants' statement of case.

[40] A collision on the soft shoulder does not support the assertion that the front of the third defendant's vehicle was impacted unless the first defendant was also on the

soft shoulder. These are contradictory versions which undermine the claimant's case. Ms Logan could not say where the collision took place and she is not a reliable witness and was plagued by a failing memory of the accident which took place in 2012. She also could not see as well as she claimed as it was about 7:00 pm. The headlights were on and the lighting was not of good quality.

[41] Delay is a factor in this trial, the accident occurred on September 5, 2012. The amended claim form was filed on August 15, 2013. The claimants witness statements were filed on March 16, 2023. The claimants have been dilatory in prosecuting their claim. This affects the fairness of the trial, counsel relied on the dictum of Morrison, JA(as he then was) in **Ronham & Accessories Ltd v Christopher Gayle and Mark Wright**.[9] The inordinate delay in this case has raised the likelihood of inaccurate or wrong information being relied upon.

[42] The first and second defendant's case remained consistent and reliable throughout the trial and was not shaken by cross-examination. The words used by the third defendant in the presence of the first and second defendants are unchallenged and the court may accept that the words were said. The words are not relied on for the truth of its contents, but to show the guilty conscience on the third defendant's part in his attempt to explain his conduct leading up to the accident. The claimants have failed to prove negligence on the part of the first and second defendants. Should the court find that the first and second defendants are contributorily liable then their liability should be limited to 10%.

[43] On quantum, counsel relied on **Peter Marshal v Carlton Cole and Alvin Thorpe**[10] in which the claimant suffered moderate whiplash, sprain, swollen and tender left wrist and left hand, moderate lower back pain and spasm. General damages were

[9] [2010] 10 JJC 0801 at [27], [28]
[10] Claim No. 2006 HCV 1006 at page 109 of Recent Personal Injury Awards, Volume 6 by Ursula Khan

awarded in October of 2006 in the sum of $350,000.00. This updates using the CPI of February 2024 to $1,244,240.84.

[44] In **Trevor Benjamin v Henry Ford**[11] the claimant suffered soft tissue injuries. General damages were awarded in March 2010 in the sum of $700,000.00 and this updates to $1,584,333.33.

The Third and Fourth Defendants

[45] The third and fourth defendants submit that they did not have to call any evidence in order to present their defence and relied on **Radcliffe Myles (Claiming on behalf of the Estate of Winston Myles) v Attorney General of Jamaica**[12] and **Olga James-Reid v Stephen Clarke & David Davis**.[13]

[46] The third and fourth defendant had no case to answer based on the evidence of the claimants. Ms Logan exonerates Mr Walcott from any blameworthiness as she testified that when the truck overtook the line of traffic, Mr Walcott had nowhere else to go. She said that the Probox was so far over on the left at the time of the collision that it fell into a ditch on the left side of the road. Mr Lawrence agrees that this is where the Probox ended up after the collision. His truck ended up on that same soft shoulder as well. This was on Mr Walcott's left side of the road.

[47] On a balance of probabilities, the only logical version of events is that Mr Lawrence was overtaking a line of traffic and in order to do so he drove in Mr Walcott's left lane colliding into the Probox and causing it to overturn in the ditch on the left side of the road. The truck also ended up on the left shoulder.

[48] It is submitted that the version given by Mr Lawrence makes no sense as his evidence, and that of Ms Logan, was that the road was straight. When he first saw

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[11] Claim No. 2005 HCV 02876
[12] [2013] JMSC Civ 193
[13] Claim No. J004 of 2001 delivered on October 5, 2007

the Probox, it was on its proper left side of the road. He claims that he saw Mr Walcott swerve into his lane onto the soft shoulder (Mr Lawrence's side of the road) when it was four car lengths away, then back to the Probox's left lane and then the collision occurred. He never saw the horse that Mr Walcott talked about. Had that swerve occurred as he said it did, then he ought to have seen a horse going across the road as well. This means that the police report correctly outlines what took place that day as the swerve from the horse took place before Mr Lawrence came along.

[49] In the case of **Street v Berry**[14], the Court of Appeal found that it was irrelevant that one vehicle had entered the opposite lane prior to the collision. The important fact was that it had already returned to its correct lane when the other vehicle encroached and collided with it there. The collision having taken place in that party's correct left lane meant that the encroaching party was negligent and therefore liable for the accident.

[50] This is precisely the instant situation and therefore it is Marlon Lawrence who was negligent. He gave no evidence of having stopped in time to avoid the accident. He was speeding and did not stop the truck until it was some twenty feet from the point of impact.

[51] On damages, it was submitted that for Ann-Marie Logan, special damages were proven in the sum of $89,352.86 and the award for general damages should be $1,800,000.00. There was no supporting case cited. For Candice Hinds it was submitted that special damages were proven in the sum of $54,000.00 and similarly general damages ought to be awarded in the sum of $1,500,000.00 without reference to any authority.

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[14] (1966) Gleaner Reports 270

Discussion

[52] It is the claimants who have the onus of satisfying the court on a balance of probabilities that the necessary elements of negligence have been established. The claimants must prove (a) The existence of a duty of care owed to the claimants by the defendant; (b) a breach of that duty of care; (c) that damage which is not too remote resulted from that breach. It is trite law that all users of the road owe a duty of care to other users of the road. A driver is required to exercise reasonable care in order to avoid injury or damage to other road users. Reasonable care as it relates to driving is the care which an ordinary skilful driver would exercise in the circumstances. Such care of course includes keeping a proper look out and observing all the rules of the road.

[53] In this case, the claimants have pleaded negligence against both drivers. It is for them to prove facts from which liability could properly be inferred. Both claimants sustained injuries and blamed both drivers, asserting that both were responsible for causing their injuries and thus liable. The claimants are entitled to recover damages and costs against the first and second defendants jointly and/or severally.

[54] Ms Logan gave evidence that the third defendant was not driving too fast, his speed was just "regular." She described knowing when a vehicle she is in is speeding, by the breeze. She maintained that Mr Walcott was not speeding. She did not say the third defendant failed to apply his brakes in sufficient time, to stop, slow down, swerve or otherwise conduct the operation of the said motor vehicle so as to avoid the collision as has been pleaded. She said that when she first saw the truck it was positioned in her lane, approaching fast, the taxi had nowhere to go and it went to the left onto the soft shoulder to avoid the truck. The car ended up overturned in a ditch to the left. She outlines the overtaking truck leaving nowhere for the Probox to go. Ms Logan does not ascribe blame to Mr Walcott despite her pleadings.

[55] The first defendant did not see a horse which ought to have run across his lane and caused other vehicles in that lane to take evasive action. That was also not his evidence. He said the right rear of the taxi collided with the front of the truck, spun out and overturned and that the right side of the truck was so damaged he could not exit through the right door. He also said the truck was damaged on the right front where the headlight is. The right front and the right side of the truck are different points of impact. The damage sustained as a result of the collision is an indication of the point of impact. Damage to the right front of the truck is more consistent with the collision described by Ms Logan. Damage to the left side of the Probox is more consistent with it having overturned on its left side as it was hit on the right side.

[56] Mr Lawrence does not give the court any assistance as to how the collision occurred. He states that the Probox was speeding and swerved to its right when it was some four car lengths away from the truck. How did that action affect his driving? He said he applied his brake, at what point? Were there other vehicles ahead of him, was his vehicle closest to the Probox; did this swerve take place directly in front of his vehicle and if so what actions did he take as a result? Why did he say that the Probox was out of control?

[57] Mr Lawrence testified that the Probox seemed to be out of control and was headed in his direction. Mr Walcott swerved back onto the road to his left and the right rear of the taxi collided into the front of the truck, spun out and overturned. These actions by Mr Walcott as given in evidence by Mr Lawrence do not take into account the line of traffic on the road that evening. In my view, it is because of the presence of that line of traffic that the Probox could not have gone over onto the right side of the road without colliding with other vehicles as there is no such evidence. Mr Barrett said he saw a multi car collision when he arrived on scene yet this was not explored nor is it the evidence of any other witness.

[58] There was no mechanical evidence regarding the loose steering wheel alleged by Mr Lawrence which caused his truck to go onto Mr Walcott's left side of the road.

Mr Lawrence did not qualify himself as having any expertise or experience with auto mechanics such that the court might consider his opinion that there was a mechanical defect as a result of the collision which rendered the steering wheel on his truck "loose."

[59] I reject the evidence of Mr Lawrence and accept the evidence of Ms Logan as to how the collision occurred. She was a credible witness who gave evidence of what she could recall. She was not shaken in cross-examination and in my view was a reliable witness.

[60] Each side alleged speeding on the part of the other driver, speeding without more does not amount negligence. (See **Tribe v Janes**[15] and **Barna v Hudes Merchandising Corp**[16]). Speed is only negligent if it prevents the offender from reacting reasonably in a case of emergency. In this case, speeding increased the serious nature of the collision, one passenger in the taxi died as a result.

[61] The evidence I accept as establishing the facts discloses that whatever Mr Walcott may have done prior to the collision in respect of a horse is of no moment as there is no evidence of how any such action affected Mr Lawrence.

[62] It is open on the facts to find that it was Mr Lawrence who overtook a line of traffic by driving into Mr Walcott's left driving lane thereby obstructing the right of way of the taxi. The collision between both vehicles occurred in Mr Walcott's left lane. I say this as the collision took place when the Probox was in its left driving lane, causing it to overturn and come to rest in a ditch on Mr Walcott's side of the road. The truck came to rest on that same side of the road after collision. The side of the road on which the accident took place is critical to the determination of liability. This can be ascertained by the place both vehicles came to rest after the collision.

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[15] (1961) 105 Sol Jo 931

[16] (1962) 106 Sol Jo 194.

The cause of the collision was the overtaking by Mr Lawrence when it was unsafe to do.

[63] In the case of **Randy Hitchins v Gavel Whitter and Patrick Green**,[17] Batts, J citing **Street v Berry** made the following statement which I find appropriate to refer to in this case:

> *"It must be a rare case indeed in which a Defendant who finds himself on the incorrect side of the road at the point of collision contests liability. Indeed the words of the Jamaican Court of Appeal in Street v Berry (1966) Gleaner Report 270 bears repeating per Eccleston JA at page 281. "Now in his findings in no.3 it would be quite irrelevant to theorize as to what had occurred just prior to the accident because if the learned Resident Magistrate accepts that the accident happened on the plaintiffs side of this white line, then it would be quite irrelevant if the plaintiff had been driving across that line before so long as he had got to his correct side of the road, before there was an accident."*

[64] The motorist changing lanes had the greater duty of care. Mr Lawrence drove his vehicle into the path of the Mr Walcott's motor car thus causing a collision on the Mr Walcott's side of the road and both vehicles ended up on that same side of the roadway after the collision. Though Mr Lawrence saw the Probox motor car he took no evasive action to avoid the accident although he had the soft shoulder to pull over onto.

[65] It is the duty of a driver to maintain a proper lookout. A driver who fails to observe in time that another person's actions have created a potential risk is usually

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[17] [2014] JMSC Civ. 221

negligent (see **Foskett v Mistry**[18]). The driver must be alert to other vehicles that are or could be on the road, whether ahead, behind, or alongside.

[66] The common law rule states that when two vehicles approach each other from opposite directions, each driver must keep to the left or near the side of the road to allow the other to pass. Failing to follow this rule is considered prima facie evidence of negligence. This common law principle is upheld by section 51(1)(a) of the Road Traffic Act, 1938 which governs these claims states:

> *"The driver of a motor vehicle shall observe the following rules – a motor vehicle: (a) meeting or being overtaken by other traffic shall be kept to the near side of the road." If a driver is on the wrong side of the road and is forced to react quickly due to approaching traffic which leads to a collision, that driver will be held liable. This is due to the negligence of him driving on the incorrect side of the road."*[19]

[67] I say this as Mr Lawrence blames Mr Walcott for leaving his driving lane and hitting the truck. He does not accept that horse or no horse, Mr Walcott was on his proper left side of the road before the collision. The truck having posed an obstruction in the driving lane of the Probox, did not leave Mr Walcott with much choice but to swerve to the left.

[68] The entire sequence of events was a natural and probable consequence of Mr Lawrence's choice to overtake a line of traffic, a manoeuvre which would be fraught with risk under normal circumstances but yet he went on to increase that risk by continuing to drive on the incorrect side of the road all the while failing to return to his side of the road in time.

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[18] [1984] R.T.R. 1, CA
[19] Henlon v Pink & Ors [2017] JMSC Civ.144

[69] On a balance of probabilities, in my view, it was the unsafe manoeuvre of overtaking a line of traffic when the vehicle driven by Mr Walcott was approaching in its lawful driving lane and the failure of Mr Lawrence to return to his correct side of the road which points to negligence. The negligence was in the unsafe operation of the truck by Mr Lawrence. I find that the collision was solely caused by the negligence of the first defendant, the servant and/or agent of the second defendant. The claimants are therefore entitled to judgment against the first and second defendant on the issue of liability.

Assessment of Damages

[70] I will now turn to the issue of damages. Counsel very helpfully agreed items admitted as exhibits 1 to 19 in respective of the items of special damages claimed by both claimants.

[71] Ms Logan in her amended particulars of claim dated August 15, 2013, itemised the following receipts to support her particulars of special damages:

a) Receipt from St Ann's Bay Hospital in the sum of One Thousand Dollars ($1000.00.)[20]

b) Receipt for Police Report in the sum of One Thousand Dollars ($1000.00.)[21]

c) Receipts from North Coast Imaging for MRI Services in the sum of Thirty- One Thousand Dollars ($31,000.00.)[22]

d) Receipt from St Ann HealthCare Complex in the sum of Five Thousand, Five Hundred Dollars ($5,500.00.)[23]

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[20] Exhibit 4
[21] Exhibit 6
[22] Exhibits 7 & 8
[23] Exhibits 9 & 10

e) Receipts from R and J Pharmacy were particularized in the sum of $10,739.87. The three agreed physical receipts admitted into evidence from R & J Pharmacy total Fourteen Thousand, Five Hundred and Five Dollars and Seventy-Six Cents ($14,505.76.)[24] Exhibit 11 comprises two receipts which do not state what was purchased, they only state “prescription”, these two receipts total $8,701.46.

f) Receipt from Lizmel Pharmacy in the sum of Six Thousand, One Hundred and Fifty One Dollars and Forty Cents ($6,151.40.)[25]

g) Receipt from Dr Devanand Jillapalli in the sum of Thirty Five Thousand Dollars ($35,000.00.)[26]

h) Household Helper in the sum of One Hundred and Forty Four Thousand Dollars ($144,000.00.)

i) Transportation Expenses in the sum of Ten Thousand Dollars ($10,000,00.)

[72] In her evidence, the claimant sought to include the following item which though agreed upon, was not particularized in her pleadings:

a) Receipt from Kingston Public Hospital (KPH) in the sum of One Thousand Dollars ($1000.00) for a medical report.[27]

[73] It is trite law that special damages must be specifically pleaded and proved (see the cases of **Ratcliffe v Evans**[28] , **Akbar Limited v Citibank NA**[29] , and **Alcoa Minerals of Jamaica Incorporated v Marjorie Patterson**[30] .

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[24] Exhibits 11, 11A & 12
[25] Exhibit 13
[26] Exhibits 14
[27] Exhibit 5
[28] (1892) 2 QB 524 per Bowen LJ
[29] [2014] JMCA Civ 43 at [61]
[30] [2019] JMCA Civ 49 at [68] – [74]

[74] The relaxation of the principle is relevant to the issue of proof of special damages. This was discussed in the case of **Julius Roy v Audrey Jolly**,[31] per Harris JA where she stated that the requirement for proof is not an inflexible principle, as:

> *"… there may be situations, depending on the circumstances of the case, which accommodate the relaxation of the principle. In some cases, the incurring of some expenditure may not be readily capable of strict proof. As a consequence, the court may assign to itself the task of determining whether strict proof is an absolute prerequisite in the making of an award."*

[75] The authorities do not indicate any relaxation of the rule for specific pleadings in relation to special damages, but rather, the possibility of relaxation of the requirement for proof.[32] Although mentioned in the list of documents[33], the receipt was never pleaded in the Amended Particulars of Claim which could have been corrected by filing a Further Amended Particulars of Claim. This application for an amendment could have been done at any point before the conclusion of the trial.

[76] In **Michael Thomas v James Arscott and another**,[34] Rowe P, discussed the use of the words "and continuing:"

> *"In my opinion special damages must both be pleaded and proved. The addition of the term 'and continuing' in a claim for loss of earnings etc. is to give advance warning to the defendant that the sum claimed is not a final sum. When, however, evidence is led which established the extra amount of the claim, it is the duty of plaintiff to amend his statement of claim to reflect the additional sum. If this is not done the court is in no position to make an award for the extra sum."*[35]

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[31] [2012] JMCA Civ 63 at [38]
[32] Trudy-Anne Silent Hyatt v Rohan Marley [2023] JMCA Civ 24
[33] dated July 8 2022
[34] (1986) 23 JLR 144 (CA)
[35] pages 151 to 152

[77] There was a failure to plead the sum of $1,000.00 at any point in time before the conclusion of the trial. However there was a receipt admitted into evidence to substantiate the cost associated with this expense. Given that there was evidence in the witness statement that Ms Logan went to the KPH and obtained a medical report which is an agreed item of evidence before the court, the receipt in evidence substantiates the sum paid for that report and will be allowed as an item of special damages though not pleaded. The receipt in evidence forms part of the items agreed by the parties and cannot be said to have taken any party by surprise. The law has developed to allow for the court to consider the sufficiency of the allegation and whether it has been marked out in the statement of case so much so that the other side is put on notice of the intended expense to be claimed. I find that the statement of case of Ann-Marie Logan was sufficient and required no amendment in this regard.

[78] As such special damages pleaded and proven by the agreed exhibits total Ninety-Five Thousand, One Hundred and Fifty Seven Dollars and Sixteen Cents ($95,157.16.)

[79] The claim for household help has not been set out in sufficient detail for the court to arrive at a figure. There is no indication as to how long Ms Logan needed help, who she employed, how much was paid to that worker and what was done. The figure allowed for household help cannot be substantiated and so no award will be made.

[80] While transportation costs to and from the medical appointments and pharmacies were incurred, Ms Logan gave no evidence as to how much these trips cost, I find that there were a minimum of eight trips based on the receipts in evidence for visits to various places. I find that the sum claimed is not unreasonable within the

parameters set out in the well-known case of **Desmond Walters v Carlene Mitchell**.[36]

[81] On general damages, Ms Logan in her witness statement suffered injuries to her neck, and back, and had severe pain in her right hand. She had pain all over her body, and was admitted to the hospital for two weeks. She had a MRI done. She was unable to look after herself in the hospital because of the excruciating pain in her right hand and body. Her sisters did so on their visits. She was in pain after being discharged from the hospital, her sisters stayed with her to help.

[82] Ms Logan was referred to the KPH for further treatment of her right hand. She received a medical report from the KPH and saw Dr Devanand Killarpalli, Consultant Neurologist by way of referral from the KPH. She employed help to do housework, wash, cook and bathe her as she was unable to use her right hand. This was uncomfortable for her. She saw Dr Tanya Hamilton of Coastal Surgical Associates because of the continuous pain in her right hand. She travelled by taxi to her doctors and did not receive receipts but incurred over Ten Thousand Dollars ($10,000.00) in transportation costs. She relies on the medical reports of Dr R. James dated November 27, 2012 and Dr K. Wade dated February 22, 2018.

[83] The medical report of Dr R. James, St Ann's Bay Hospital indicates that Ms Logan was 42 years old on the date of the collision. She was examined on September 6, 2012 and admitted on that date, she was discharged on September 20, 2012. The findings were power decrease throughout right upper limb with numbness in the fingers. MRI C5-C6-C7 disc herniation with spinal cord impingement. She was treated with a cervical collar and analgesics and referred for a follow-up at the neuro-surgery clinic at the KPH.

[36] (1992) 29 JLR 173

[84] The medical report of Dr. K. Wade of KPH found that upon examination Ms Logan had right upper limb monoparesis. The diagnosis after investigation was cervical disc prolapsed, mild subluxation. She was treated initially conservatively, neck pain and numbness to right hand /NCS/EMC showed chronic C7/8 radiculopathies. Surgery options were discussed with a decision from the patient pending. The prognosis was guarded with ongoing disability to be determined.

[85] In the case of **Peter Marshal v Carlton Cole and Alvin Thorpe**[37] the claimant suffered moderate whiplash, sprain, swollen and tender left wrist and left hand, moderate lower back pain and spasm. General damages were awarded in October of 2006 in the sum of $350,000.00. This updates using the CPI of February 2024 to $1,244,240.84. I find that the injuries suffered by Ms Logan are more serious than the case cited here however there were no additional medical reports related to ongoing pain, resultant disability or surgical procedure.

[86] In the case of **Lloyd Bell v Alcar Construction & Haulage Co. Ltd and Deon Barker**[38] the claimant, Michelle Bell suffered from cervical strain with a whole person disability of 2%. She received a reduced award as she did not mitigate her loss by wearing the cervical collar she had been prescribed. The award of $1,700,000.00 in January 2018 updates to $2,455,357.14.

[87] Ms Logan did not provide evidence of a disability rating, however, the injuries suffered by Michelle Bell are somewhat comparable with those of Ms Logan. The award of $1,700,000.00 in 2018 updates to $2,945,018.10 and this sum will be reduced by $400,000.00 as there is no disability rating before the court.

[88] Ms Hinds in her amended particulars of claim dated August 15, 2013, itemised the following receipts to support her pleadings for special damages:

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[37] Claim No. 2006 HCV 1006 at page 109 of Recent Personal Injury Awards, Volume 6 by Ursula Khan
[38] [2018] JMSC Civ 3

a) Receipt Palm's Medical Complex in the sum of One Thousand Dollars ($53,000.00)[39]

b) Receipt from St Ann's Bay Hospital in the sum of One Thousand Dollars ($1000.00)[40]

[89] Special damages have been proven in the sum of Fifty Four Thousand Dollars ($54,000.00) based on both agreed receipts which were admitted as exhibits.

[90] On general damages, Ms Hinds gave evidence that she lost consciousness on the accident scene, she heard voices, she could not recall how she got to the St Ann's Bay Hospital. Splinters got into her eyes; the nurses tried washing them out. She had neck and back pain and was admitted for one day for observation. She has no recollection of most of what took place on the date of the accident and has not worked since. She can neither stand nor sit for long periods of time. She is more comfortable lying down. Sometimes she feels numbness in her entire body and in pain, her eyes also get blurry.

[91] Ms Hinds relies on the medical reports of Dr Alistair Bell dated October 13, 2012, Dr Micas Campbell dated July 28, 2016 and Dr Richard Bennett dated April 4, 2018. The report of Dr Bennett said she was examined on September 5, 2012, admitted on that date and discharged the next day. The diagnosis was whiplash injury and cerebral concussion. She was treated with muscle relaxants, analgesics and a soft collar with follow-up in the orthopaedics clinic. Dr Bell diagnosed Ms Hinds with a whiplash injury and cited the history of cerebral concussion. The intended report of Dr Campbell was not provided to the court.

[92] In the case of **Claudius Hamilton v Kevin Marshall and Geovaughnie Holness**,[41] the claimant was diagnosed with sub-conscious blunt head injury,

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[39] Exhibit 17 & 18
[40] Exhibit 19
[41] [2014] JMSC Civ 81

whiplash, chronic post-traumatic headaches and was awarded the sum of $1,700,000.00 as general damages in May 2014. The award updates to $2,557,700.34. The court makes the following orders as a consequence of the foregoing:

[93] Orders:

1. Judgment for the claimant Ann-Marie Logan against the first and second defendants jointly and/or severally.

2. Ann-Marie Logan is awarded general damages in the sum of $2,445,018.10 with interest thereon, at the rate of 3% per annum from April 18, 2013, to the date of delivery of this judgment.

3. Ann-Marie Logan is awarded special damages in the sum of $105,157.16 with interest thereon at a rate of 3% per annum from September 5, 2012 until the date of delivery of this judgment.

4. Ann-Marie Logan is awarded costs to be taxed if not agreed.

5. Judgment for the claimant Candice Hinds against the first and second defendants jointly and/or severally.

6. Candice Hinds is awarded general damages in the sum of $2,557,700.34 with interest thereon, at the rate of 3% per annum from April 18, 2013, to the date of delivery of this judgment.

7. Candice Hinds is awarded special damages in the sum of $54,000.00 with interest thereon at a rate of 3% per annum from September 5, 2012 until the date of delivery of this judgment.

8. Candice Hinds is awarded costs to be taxed if not agreed.

9. The Ancillary Claim is struck out.

10. Costs in Claim 2013HCV01698 awarded to the third and fourth defendants against the first and second defendants to be taxed if not agreed.

11. Costs in Claim 2013HCV01665 awarded to the third and fourth defendants against the first and second defendants to be taxed if not agreed.

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Wint-Blair J