



[2026] JMSC Civ 58

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION**

CLAIM NO. 2018HCV01338

BETWEEN	PAUL MATTISON	CLAIMANT
AND	GARFIELD RICHARDS	FIRST DEFENDANT
AND	GASTON BROWN	SECOND DEFENDANT

IN OPEN COURT

Ms Shanese Green instructed by Messrs. Kinghorn & Kinghorn for the Claimant

Ms Racquel Dunbar instructed by Dunbar & Co. for the Defendants

Heard: May 21, 2025 & May 11, 2026

**NEGLIGENCE – MOTOR VEHICLE COLLISION – LIABILITY– BURDEN OF PROOF–
CONFLICT BETWEEN PLEADINGS AND WITNESS STATEMENT**

WINT-BLAIR J

The Pleadings

- [1] The claimant pleaded that, while he was lawfully driving along Washington Boulevard, motor vehicle registration number 6751 HE, which was proceeding in the same direction in the middle lane, made a sudden left turn, causing or permitting a collision with the claimant's vehicle.
- [2] The particulars of negligence allege, among other things, that the first defendant drove too fast, drove recklessly and carelessly, failed to keep a proper lookout, failed to apply his brakes in sufficient time or at all, failed to maintain a safe speed, drove without due care and consideration for the claimant and other road users,

and failed to stop, slow down, swerve or otherwise operate the bus so as to avoid the collision.

- [3] The defendants' case is that the first defendant was lawfully travelling in the left lane and was making a left turn onto Ziadie Avenue from that lane when the claimant drove into the rear left section of the bus.

Issues

- [4] The issues are:
- i. Whether the claimant has proved, on a balance of probabilities, that the first defendant caused the collision by negligence;
 - ii. Whether the claimant caused or contributed to the collision by his own negligence;
 - iii. Whether the second defendant is liable for the acts of the first defendant; and
 - iv. If liability is established, what damages should be awarded?

The Evidence

The claimant's case

- [5] The claimant's evidence is that Washington Boulevard has three lanes heading towards Spanish Town. He stated that he was driving in the left lane. The first defendant was travelling in the same direction in the middle lane.
- [6] In his witness statement, the claimant stated that, on reaching the vicinity of Ziadie Gardens, the first defendant switched from the middle lane into the left lane. In doing so, he came too close to the claimant's vehicle and stopped, resulting in the collision.
- [7] The claimant accepted that the front right section of his vehicle struck the left rear section of the bus. He said there was damage to the right light, the right side of the

bumper, and the grille of his vehicle. He said the bus sustained damage to the left side of the bumper and the left taillight.

- [8]** The claimant stated that he felt fine immediately after the accident and did not seek medical attention at once. Approximately one week later, he began to feel pain in his neck and lower back. He attended Oasis Health Care Limited, where he was treated and referred for physiotherapy. He attended a few physiotherapy sessions.
- [9]** In cross-examination, the claimant said the collision occurred at about 2:30-3:00 am and that his headlights were on because it was dark. He was heading home, having started work at 3:00 pm the day before, and had gone to visit a bereaved co-worker. The claimant said that the bus made a sudden left turn from the middle lane, and the vehicles were close together. Ten to fifteen seconds passed after the bus passed him on the right. He could not show the Court where, in his witness statement, he had said that the bus made a sudden left turn from the middle lane. The bus stopped in the left lane.
- [10]** He disagreed that the bus was in the middle lane before the collision, and that it was travelling in the left lane before the collision. He denied that the bus was already in the left lane before the collision. He denied that the bus was three-quarters of the way onto Ziadie Avenue when the collision occurred. He also denied that he had been travelling behind the bus before impact, that he had been speeding, or that he had failed to take steps to avoid the collision. He denied that the bus driver indicated his left turn, as well as that he collided with the back of the bus while making the left turn. The damage to the claimant's vehicle was to the right light, right side fender, right bumper, grille cracked on the right side and the radiator.
- [11]** The claimant admitted that the impact was to the rear and that the left-rear of the bus struck the right-front of his vehicle. He admitted that the bus was pushed onto the right side of Ziadie Avenue. He explained that the bus driver moved it there

after the collision. He accepted that this detail was not contained in his witness statement.

The first defendant's case

- [12] The first defendant's evidence is that the accident occurred at approximately 4:00 a.m. He was driving the second defendant's Toyota Hiace bus, transporting workers. The second defendant had employed him for approximately three years. He stated that he was travelling on Washington Boulevard in the left lane towards Spanish Town. He intended to turn left onto Ziadie Avenue to drop off a passenger. He was travelling at approximately 25 km/h, activated his left indicator, and proceeded to make the left turn.
- [13] According to the first defendant, when about three-quarters of the bus was already on Ziadie Avenue, he felt an impact on the left rear section of the bus. He said the impact pushed the bus to the right side of Ziadie Avenue. He stated that the claimant's vehicle was damaged to the front, including the radiator, headlights, bumper, bonnet and fender. In cross-examination, however, he accepted that his evidence that the radiator was damaged was an assumption based on the bonnet resting on it.
- [14] The first defendant accepted that there were passengers on the bus, including a team leader seated at the front. None of those passengers was called as a witness. He explained that he had not expected the matter to go to court and that, by the time it did, he was no longer working in that area.
- [15] His evidence on timing was also challenged. He accepted that he picked up passengers at Rainforest Seafoods at approximately 11:00 p.m. He accepted that he would have dropped off four passengers by approximately 12:30 a.m. He further accepted that, in the absence of traffic, the journey from Heroes Circle or Allman Town to Washington Boulevard would take less than one hour. He nevertheless maintained that the accident occurred at approximately 4:00 a.m.

Submissions

The claimant's submissions

- [16] Counsel for the claimant submitted that both drivers owed each other a duty of care. Counsel relied on **Boss v Litton**,¹ **Jowayne Clarke and Anthony Clarke v Daniel Jenkins**,² and section 51(2) of the Road Traffic Act.
- [17] Counsel submitted that the case turns on credibility. It was argued that the claimant's account should be accepted because he consistently maintained that he was in the left lane and that the first defendant came from the middle lane into his path. Counsel also relied on the fact that the first defendant did not call any of the passengers on the bus to corroborate his account.
- [18] On damages, counsel submitted that the claimant suffered whiplash injury to the neck and lower back strain. Counsel relied on **Jhamiellah Gordon v Jevon Paul Devere Chevannes**³ and **Talisha Bryan v Anthony Simpson and Andre Fletcher**,⁴ and submitted that an award in the range of \$2,250,000.00 to \$2,500,000.00 would be appropriate. Counsel submitted that special damages should be awarded in the sum of \$61,670.00, comprising medical expenses of \$54,670.00 and transportation expenses of \$7,000.00.

The defendants' submissions

- [19] Counsel for the defendants submitted that the claimant bears the burden of proving his case on a balance of probabilities. Counsel submitted that the claimant failed to prove that the collision occurred in the manner alleged.

¹ 1832] 6 C & P 407

² Claim No. 2001/C211 delivered 15/10/2010 Sarah Thompson James, J

³ 2016] JMSC Civ 79

⁴ [2014] JMSC Civ. 31

- [20] Counsel submitted that there is a material inconsistency between the claimant's pleaded case and his witness statement. The pleaded case is that the first defendant made a sudden left turn from the middle lane. The witness statement says that the first defendant changed from the middle lane into the left lane, came too close to the claimant's path, and stopped. These accounts of the accident are materially different.
- [21] It was further submitted that the physical damage supports the defendants' version. The damage was to the front-right section of the claimant's vehicle and the left-rear section of the bus. Counsel submitted that, in substance, this was a rear-end collision, and that rear-end impact is prima facie evidence of negligence on the part of the following driver.
- [22] Washington Boulevard is wide, with three lanes heading towards Spanish Town, and there was little traffic at that hour. Counsel argued that the claimant ought to have seen the bus and avoided the collision by stopping or swerving.
- [23] On damages, if liability is found, special damages were proved only in the sum of \$54,670.00. Counsel submitted that general damages should be assessed at \$800,000.00 and relied on **Roger McCarthy v Peter Calloo**.⁵

Burden and standard of proof

- [24] The burden of proof rests on the claimant throughout. It is for the claimant to prove, on the balance of probabilities, that the first defendant owed him a duty of care, that the duty was breached, and that the breach caused the collision and the injury complained of. The burden does not shift merely because the court identifies weaknesses in the defendants' evidence. Weaknesses in a defendant's account

⁵ [2018] JMCA Civ 7

may assist the claimant, but they do not relieve the claimant of the obligation to prove his own case.

[25] Where the court is faced with two competing versions of a motor vehicle collision, the court must test each version against the pleaded case, the evidence given, the physical damage, the surrounding circumstances, the probabilities, and the absence or presence of corroborating evidence.

[26] The court must be satisfied that the claimant's version is more probable than the defendant's version. If the evidence leaves the court in a state of doubt, or if the probabilities are evenly balanced, the claimant bears the burden of proof.

Duty of care

[27] There is no dispute that both drivers owed each other a duty of care. Each driver was required to drive with reasonable care, keep a proper lookout, maintain proper control of his vehicle, and take such steps as were reasonably necessary to avoid a collision.

[28] Section 51(2) of the applicable Road Traffic Act (now repealed) provides:

"Notwithstanding anything contained in this section, it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid a collision, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection."

[29] Both drivers are responsible for preventing a collision. Neither can blame the other. The court needs to assess the actions of both drivers based on the evidence.

Causation

[30] In **Clements v Clements**,⁶ the court stated the ordinary test for causation in negligence, which is that the plaintiff must demonstrate, on the balance of probabilities, that the injury would not have occurred 'but for' the defendant's negligent act. The test is to be applied in a practical and common-sense way. Before causation can be determined, the claimant must first prove the negligent act relied on.

The pleaded case

[31] The defendants submit that the claimant has failed to prove the case he pleaded. The particulars of the claim allege that the first defendant, while proceeding in the same direction in the middle lane, made a sudden left turn and caused the collision. That was the pleaded manoeuvre which the defendants were required to address in their defence.

[32] The claimant's witness statement describes the accident differently. In it, he states that the first defendant changed lanes from the middle lane to the left lane, came too close to the path of the claimant's vehicle, and came to a stop.

[33] A sudden left turn from the middle lane is not the same as a movement from the middle lane into the left lane followed by a stop. The difference is material because it concerns the very manoeuvre said to have caused the collision. Pleadings define the issues for trial and give the opposing party fair notice of the case to be met. A claimant may not plead one case and then seek to prove another at trial.

[34] While the inconsistency between the pleadings and the witness statement does not dispose of the claim, as the court must still examine the evidence as a whole, it is a significant factor in assessing whether the claimant has discharged the

⁶ [2012] 2 SCR 181

burden of proof. In a case that relies heavily on the testimony of the two drivers, providing a reliable, detailed account of the accident is central to credibility and proof. The claimant is not entitled to cure the pleadings by giving evidence in his witness statement.

The Approach to Fact-Finding

[35] This case hinges on credibility, the vehicles' relative positions at the time of the collision, and evidence of any objective assessment of the damage. Where accounts conflict, the court must analyse the totality of the evidence and determine which version accords with logic, common sense and the physical evidence.

[36] The question of whether the defendants are liable is a question of fact that must be decided based on the credibility and reliability of the evidence presented by the parties. The substance of the evidence is generally to be approached with reason, logic and common sense. In resolving the issues of fact, Lindo, J in the case of **Moore v D'Aguilar & anor**⁷ said:

"[29] In this case where there are diametrically opposed accounts of the accident, the court has a duty to analyse the available evidence and decide which of the accounts is more likely.

[30] Having considered the facts of this case and the submissions of both Counsel, I recognize that the issue of liability rests on the credibility of the parties and the plausibility of the accounts given by them..."

[37] On remoteness in **Roe v Ministry of Health and Others; Woolley v Same**⁸ Lord Denning stated that:

*"The first question in every case is whether there was a duty of care owed to the plaintiff; and the test of duty depends, without doubt, on what you should foresee. There is no duty of care owed to a person when you could not reasonably foresee that he might be injured by your conduct: see **Hay (or Bourhill) v Young and Woods v Duncan** ([1946]) AC 426, per Lord*

⁷ [2017] JMSC Civ 118

⁸ [1954] 2 All ER 131

Russell of Killowen, and ibid, 437 per Lord Peter.) The second question is whether the neglect of duty was a “cause” of the injury in the proper sense of that term: and causation, as well as duty, often depends on what you should foresee.”

[38] The answer to whether there is a sufficient proximity between the parties to establish a duty of care is yes. As road users, each owed a duty of care to the other.

Discussion

[39] If the first defendant was already in the left lane, had indicated, and was turning left when the claimant struck the rear left section of the bus, then the claimant has not proved negligence by the first defendant. On that version, the evidence would more naturally support a finding that the claimant was following too closely, failed to keep a proper lookout or failed to stop in time.

[40] If, however, the first defendant moved from the middle lane into the left lane in close proximity to the claimant's vehicle and stopped or slowed in the claimant's path, then the rear impact would not be the only determining factor. The collision could also be explained by the first defendant's unsafe movement into the claimant's driving lane. The evidence is that it was nighttime, and there is no evidence of pedestrians or traffic. There is no reason to accept that the claimant was not able to see the defendant's vehicle.

[41] The claimant consistently maintained in his oral evidence that he was in the left lane and that the first defendant entered the middle lane and came into his path. He also accepted that the front right of his vehicle struck the left rear of the bus. The claimant cannot rely on the evidence in the witness statement that he has not pleaded. In this case, the court is being asked to find negligence based on the mechanics of the collision. His inconsistent account has weakened his statement of case.

[42] Secondly, the claimant gave no evidence of how he avoided the collision. He denied speeding and failing to avoid the accident; no evidence of braking,

swerving, distance, speed, or reaction time was provided. Section 51(2) imposed on him a duty to take such action as may have been necessary to avoid a collision.

[43] Thirdly, the physical damage and the claimant's admission that the front right section of his vehicle struck the left rear section of the bus are more consistent with the defendants' position that this was a rear-end collision. Although the fact of a rear-end collision is not dispositive of the issue of liability, it is evidence that the claimant has not addressed. There is an inference that the following driver was too close to the vehicle in front, which led to the collision, and this inference has not been rebutted.

[44] Fourthly, the claimant's explanation that the bus was later driven to the right side of Ziadie Avenue was not contained in his witness statement. That does not make the explanation improbable, but it affects the weight to be attached to it, particularly because both parties relied on the final resting position of the bus.

[45] Having considered the totality of the evidence, I am not satisfied that the claimant's account has been proved to the requisite standard; however, the court must examine whether the defendants' evidence is so weakened that the claimant's version becomes more probable. I turn to that evidence.

The first defendant's evidence

[46] The first defendant's evidence timeline is unsatisfactory. He accepted that he picked up passengers at approximately 11:00 p.m., that he would have completed certain drop-offs by approximately 12:30 a.m., and that it would take less than one hour to get from Heroes Circle or Allman Town to Washington Boulevard. Yet he maintained that the accident occurred at approximately 4:00 a.m., leaving a significant length of time unexplained. I take that into account as affecting the reliability of his recollection. It weakens his evidence, but it is not evidence that supports the claimant's case. The defendant said in his witness statement that he put on his left indicator to make the turn from Washington Blvd onto Ziadie Ave. In

cross-examination, he said he checked his mirror and admitted that this was not in his witness statement.

[47] He said the claimant's vehicle slammed into his, and no other vehicles were involved in the collision. However, there were vehicles behind him in his lane and in the lane beside him. He assumed the claimant's vehicle's radiator was damaged because the bonnet was resting on it. He also pointed to splinters on the road from the claimant's headlights, both of which were broken, while admitting that his own taillight was also broken. He distinguished between the lights, one red and one white. Admittedly, none of these details appeared in his witness statement.

[48] These matters reduce the weight to be attached to his evidence about the extent of the claimant's vehicle damage. They do not, however, displace the evidence that the front right section of the claimant's vehicle struck the left rear section of the bus.

[49] The first defendant also did not call any of the bus passengers who may have assisted the court on issues of lane position and turning; a failure to call them does not reverse the burden of proof. It weakens the defendants' case, but it does not prove the claimant's case. The question remains whether, on his evidence, the claimant has established that the first defendant caused the collision by negligence.

The rear-impact evidence

[50] The defendants' strongest point is the physical impact. The claimant's vehicle struck the left rear of the bus with its front right section. A rear-end collision is not, in itself, conclusive of negligence by the following driver. There may be cases where the leading vehicle suddenly cuts across or stops in the following driver's path. In such a case, the rear impact may be caused by the leading driver's unsafe manoeuvre.

- [51] However, the claimant must prove that this is such a case. It is not enough to assert that the bus came across from the middle lane. That assertion must be supported by evidence sufficient to overcome the physical inference arising from the admitted point of impact, which points to a rear-end collision.
- [52] In the present case, the claimant's evidence does not sufficiently explain the mechanics of the accident. The pleadings allege a sudden left turn, and the claimant did not provide sufficient detail regarding distance, speed, braking, swerving, timing, or the opportunity he had to avoid the collision with the bus. The physical damage remains consistent with the defendants' version that the bus was ahead and turning left when struck from the rear left.
- [53] The first defendant gave evidence that is not without difficulty; however, he does not bear the burden of proof. In deciding whether the claimant has proved his case, the physical damage and the lack of a precise and consistent account from the claimant lead to a finding that he has not done so.

Finding on liability

- [54] Having considered the evidence as a whole, I find that the claimant failed to keep a proper lookout and failed to exercise reasonable care to avoid the collision. He ought to have been proceeding with sufficient caution and given himself the time necessary to stop if the need arose. The claimant's inconsistency as to how the collision happened, his lack of detail regarding any action to avoid the collision, the admitted point of impact, and the absence of sufficient evidence to displace the inference arising from the rear-end collision mean that the claimant has not discharged his burden of proof.
- [55] The weaknesses in the first defendant's evidence reduce its weight. But neither separately nor cumulatively assists the claimant's case. I am not satisfied that the claimant has proved, on a balance of probabilities, that the first defendant caused the collision and therefore find that the claimant has failed to prove negligence

against the first defendant. It follows that the claim against the second defendant also fails.

[56] Orders:

1. Judgment for the Defendants.
2. Costs to the Defendants to be taxed if not agreed.

Wint-Blair, J