



[2025] JMSC Civ. 76

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2016 HCV 00995

BETWEEN	PATRICK REID	CLAIMANT
AND	JOSHAUA BLACKWOOD	DEFENDANT

OPEN COURT

Ms. Shannon Young and Marsha Chambers, instructed by Nigel Jones and Company for the Claimant

Ms. Jayanne Williams, instructed by Dunbar and Co., Attorneys-at-Law for the Defendant

Negligence- Duty of Care of Driver of Public Passenger Vehicle to passenger - Breach of Duty of Care. -Whether the Defendant Driver breached his Duty of Care to his Passenger by putting the vehicle in motion while the passenger's body was only partially inside. Damages- Pain and suffering and Loss of amenities

HEARD: APRIL 30TH, MAY 1 AND JUNE 13, 2025.

THOMAS: J

INTRODUCTION

The Claim

[1] In this Claim, Mr. Patrick Reid, the claimant alleges that on or about October 14, 2013, at approximately 4:30 pm, he was traveling as a passenger and sitting beside the left rear door in a public passenger Toyota Corolla motor car with registration number PF

3391 driven and owned by the Defendant Mr. Joshua Blackwood. He further alleges that upon Mr. Blackwood stopping to let out a passenger, he had to exit the motor car to allow the passenger who was sitting immediately beside him in the middle to exit. He asserts that whilst attempting to re-enter the vehicle, the defendant drove off while one of his foot was still outside, causing him injuries and damage.

[2] He claims damages against the defendant for Breach of statutory duty and negligence. The particulars of Negligence and/or breach of statutory duty he alleges against the defendant are as follows:

- (a) Failed to keep any proper lookout or to have any adequate regard for the safety his passengers.
- (b) Failed to drive his vehicle in accordance with laws of the Road Code and the Road Traffic Act.
- (c) Failed to stop the vehicle in time or at all to avoid injury to the Claimant;
- (d) Drove without due care and attention.
- (e) Drove at a speed excessive in the circumstances.
- (f) Failed to stop, slow down, or in any other way so as to manage and/or control the said motor vehicle so as to have avoided injury to the Claimant, and
- (g) Drove the vehicle in a reckless manner
- (h) He also relies on the doctrine or Res Ipsa Loquitor.

The Defence

[3] In his Defence filed on the 15th of January 2018, the Defendant has admitted that he is the regular driver of the said vehicle, He, however, denies that he had any accident

involving the claimant. He further denies that he owes the claimant a duty of care and avers that he was not involved in any incident with the claimant on October 14, 2013. The defendant further denies that the claimant suffered injuries, loss and damage as a result of any incident involving himself or his vehicle.

The evidence

[4] In his evidence in chief, Mr Reid states that, he resides in Linstead in the parish of Saint Catherine and that on October 14, 2013, at approximately 5:00 pm while at a waiting spot, he saw the defendant's white station wagon taxi bearing registration number PF3391 approaching. When the taxi stopped, he noticed that there were three passengers inside, one in the front and two at the back, which made him enter from the left door.

[5] He says that after he entered, the defendant drove off. His intention was to go to Orangefield District to look at a four-bedroom dwelling house that he was to start constructing.

[6] He states that upon passing the Jericho Primary School and arriving in the vicinity of a business place called Little Rock, the passenger in the middle asked the defendant for a stop. He says seeing that he was on the left side, he came out of the taxi after it stopped to allow the other passenger to exit the vehicle.

[7] He says further, that when he started to re-enter, the vehicle, he placed only his right foot in, in an attempt to return to his seat in the car. He says that the defendant then started to drive off which caused him to shout out "Driver, you ago Kill me". He states that the car dragged him for approximately a chain (22 yards). He says, the vehicle then came to an abrupt stop which caused him to be thrown back and forth with the door swinging as well.

[8] He asserts that when the vehicle finally came to a stop, he took his right foot out the car, however, due to the dragging caused by the vehicle his legs were unable to bear

the pressure so, he went back into the vehicle. He states that persons in the vicinity had called to the driver and asked, “driver you ago kill the man?”

[9] Mr. Reid continued by saying that he then limped out of the taxi and went into another taxi, which had stopped where the accident occurred. He says he arrived at the office of Dr. Nesbeth Spence, located at 52 Fletchers Avenue, Linstead, St. Catherine, approximately 6:45 p.m., where he was treated and then he went straight home. He says that the following day he went to the Police Station and made a report of the accident.

[10] Mr. Reid asserts that as a result of the accident, he sustained serious injuries and incurred losses and expenses. He explains that the injury to his right ankle was extremely serious as he was unable to stand on it completely. His left hip had severe pain and also the left side of his neck, there was also swelling and minor bruises. He states that the medical expenses associated with the treatment as a result of the accident are as follows:

[11] (1) Medical Report - the sum of \$35,000.00

- For (15) Office Visits- the sum of \$22,500.00
- For (4) Cataflam injections, - the sum of \$5000.00
- For (4) Norflex Injections - the sum of \$6,200.00
- For (2) Wrist Wrap 8- the sum of \$2,300.00
- For (1) Cervical Collar - the sum of \$3,750.00
- For (1) Foot Wrap - the sum of \$1,150.00

[12] He says this is verified by invoice provided to him from the SMN Medical Centre dated July 10, 2015, with invoice number (53600650) in the sum \$75,900.00.

The Medical Evidence

[13] The medical report of Doctor Sandra Nesbeth reveals the following findings on examination of the claimant

- Severe spasm and tenderness in the neck.
- Whiplash – worst on the left than the right;
- Severe swelling and tenderness in the left and right shoulders with difficulty elevating and weight-bearing;
- Severe swelling and tenderness in the left and right wrists with difficulty flexing and extending;
- Severe spasm and tenderness in the lower back, with difficulty extending and flexing;
- Severe swelling in left and right hip with difficulty flexing, extending, internal and external rotation;
- Severe tenderness and swelling in the left thigh in the femoral muscle (muscle in the front) with difficulty extending and flexing;
- Severe pain and swelling in the left heel;
- Had frequent relapses during the first four months of his accident; and

He was discharged on September 30, 2014, a total of fifty (50) weeks

Cross Examination

[14] On the cross-examination, Mr. Reid says;

Three (3) more passengers plus himself were seated in the vehicle. They were all in the back, one close to him and two to the other side. He was on the left side. The passenger close to him asked for a stop. He came out to allow that passenger sitting beside him to exit. No one was excited from the right. When Mr. Blackwood drove off the car dragged him for about 1 chain. His hands were holding on to the top of the door of the motor car and it was his left foot that was being dragged.

[15] He says he was bawling out for Mr. Blackwood to stop. He says that Mr. Blackwood did not stop immediately but after approximately 2 seconds. He says that the car door was swinging back and forth when he was being dragged. He says he fell when the car stopped. He admits that it is not in his witness statement that he fell to the ground. He says that he fell on his right side, but he says he does not remember saying in his witness statement that when the car came to a stop, he took his feet off the car. After being shown his witness statement, he admits that is what he said in the statement.

[16] He also says that he cannot recall if he went back into Mr. Blackwood's car after he took his foot out of the car. He remembers Mr. Blackwood saying he was nervous and that he could not take him to the hospital. After his witness statement was shown to him, Mr. Reid admits that he said he went back into Mr. Blackwood's car because his foot could not bear the pressure. He, however says that Mister Blackwood did not drive off with him after he went back and sat in the car. He states that while he was back in the car it remained stationary for about 5 to 10 minutes. He says at that point, everybody else came out of the car. He says he did not pay Mr. Blackwood and that he limped towards another car which took him to the doctor.

[17] Mr. Reid denies knowing Mr. Blackwood before the accident. He asserts that he only used to see him pass by. He admits that he used to work at Alcan. He says he is now 74 years old and has worked at Alcan since 2012. He says he has never seen Mr. Blackwood working there. He denies that any female was at the back of the vehicle and

insist that it was the man whom he was sitting beside who asked the driver for a stop. He denies the suggestion that he only came out of the car at his designated stop. He also denies that he was not injured. On reexamination he says it was when the car came to a stop, he took his foot out of the car and then he fell on the ground.

The Defence case

[18] The evidence in chief of the defendant Mr. Blackwood, is as follows.

He is taxi driver & farmer. On an evening in 2013, at about 3:30 – 4:30 pm, he was transporting passengers, including Mr. Reid and a young lady. The young lady asked him for a stop. She was sitting in the back of the car. Mr. Reid was also sitting in the back of the car. He stopped. The lady came out of the car on the right side of the vehicle. The young lady closed the door after she came out. He collected his fare from her. After that, he started to drive off and heard a sound like a stumbling and somebody said “driver”. So, he “shadowed” his brake and then saw a man stumble to the left front door and handed him his fare through the left front door. That is when he saw Mr. Reid standing on the side of the road to left of the car.

[19] Mr. Blackwood acknowledges that Mr. Reid had been sitting at the left back door of the car when he stopped to let out the young lady. He is adamant that he was not told that anyone else was coming out of the vehicle. He maintains that it was only the young lady on the right side who asked him for a stop, so he never looked through the mirror to the left side. He says it was when he moved off, he heard like someone stumbled against the left back door of the car and it was the man who came around and give him \$100.00. He asserts that before he left Mr. Reid came back into the car.

[20] He says he continued on the journey with Mr. Reid fully back in the car and that the door was closed before he drove off. He contends that when Mr. Reid got back in the car he said nothing to him for the entire journey. He asserts that after he let off the passengers, he let off Mr. Reid somewhere in Orangefield, which is where his route ended. He states further that Mr. Reid paid him and walked away normally.

[21] Mr Blackwood says that the following morning, he saw Patrick Reid about 10 miles from Orangefield talking with a man, and that while in traffic, he saw the same man who informed him that Mr. Reid was at a Clinic and wanted to see him. He said he told the man to go away and continued on his route, but later on decided to drive to the clinic. He says when he got there, he saw Mr. Reid who ran back inside, so he decided to leave and go about his business.

[22] Mr. Blackwood further states that later that same day, in the evening, he was parked at the Linstead Post Office when the same man and Patrick Reid came there and accosted him. He says Mr. Reid informed him that he was coming from the doctor and wanted money to buy medication. He says he asked him how he needed that, because they were not in anything together. He also contends that because they were threatening him, he gave Mr. Reid \$2,000.00 and that he did not see Mr. Reid again until he sued him, claiming that he drove off the car with his one of his foot outside.

[23] Mr. Blackwood further contends that this was not the first confrontation that he has had with Mr. Reid. He states that he has known Mr. Reid from when they both worked at Alcan many years ago. He says that they had a lot of issues with each other while working there and have had many confrontations before. He asserts that Mr. Reid is not someone he trusts, based on his previous behaviour towards him.

[24] He insists that he never drove off the car while the door was open with Mr. Reid's foot outside of the car. He contends that had something like that occurred, he would have made the necessary reports such as to the police.

[25] On cross examination Mr. Blackwood says that he did not check this side mirrors before driving off. He agrees that if he did not check the mirrors he would not have known that someone was getting out of the vehicle nor was being dragged by the car. When he was asked if he drove off with the car door open his response was that he did not realize that it was open.

[26] He agrees that it was highly unlikely that if the door was closed, he would have heard someone speaking from the outside He says when he stopped, and the female

came out and handed him her fare three persons were then left in the back of the vehicle. He says he would know who was sitting behind him. He says when he drove off and came to a stop Mr. Reid was not outside the vehicle. When he was shown his witness statement he agrees that he said in the statements when he drove off Patrick Reid was on the outside

[27] He disagrees with this suggestion that the person who stumbled and fell was Patrick Reid. He disagrees with the suggestion that he was speeding with the door open. He denies visiting the clinic to see Mr. Reid. When his witness statement was shown to him, he admits that he visited Mr. Reid at the clinic the following morning. He agrees that he gave Mr. Reid \$2000 to purchase medication.

[28] He denies stating that he had had confrontations with Mr. Reid before that day. Having been shown his witness statement, he agrees that it is said in his statement that it was not the first time that he and Mr. Reid had a confrontation. However, he says what is in the statement is not true.

[29] When asked if it is his evidence that after he completed his journey, he let out Mr. Reid and he walked normally, he says that is not his evidence. When he was shown his witness statement, in particular, paragraph 3, line 4, he says this is not his statement as he did not say this. Mr. Blackwood further states that some of the things in the statement, “he *never knew about it*”. He denies that Mr. Reid was dragged by his vehicle and sustained injuries.

[30] On reexamination he says he did not read his statement before he signed it.

The Issues

[31] The issues that arise in this as in any case of negligence are;

- I. Whether the Defendant owed a duty of care to the Claimant
- II. Whether he has breached any such duty of care owed

III. Whether the Claimant has sustained injuries arising from any such breach

The Law

[32] The Locus Classicus as it relates to the law of negligence is the well-known case of ***Donoghue v Stevenson [1932] UKHL 100***. The principle as stated by Lord Atkins is this

“a reasonable care must be taken to avoid an act or omissions which a reasonable man can foresee may cause injury to a neighbour”.

[33] He further stated that your neighbour is “anyone who is directly affected by your actions”.

[34] Cases such as ***Esso Standard Oil SA Ltd & Anor v Ian Tulloch***, (1991) 28 JLR 553; ***Bourhill v Young [1943] 1 AC 92*** and ***Ena Pearl Nance v. British Columbia Electric Railway Company, British Columbia Electric Railway [1951] AC 601*** also expound the principle that;

“All road users owe a duty of care to other road users. The driver of a motor vehicle must exercise reasonable care to avoid causing injury to persons or damage to property. Reasonable care is the care which an ordinary skilful driver would have exercised under all the circumstances “

Submissions.

On behalf of the Claimant

[35] The submissions of Ms. Shannon Young counsel for the Claimant are summarized as follows

- I. There is a common law duty as well as a statutory duty for drivers of motor vehicle to exercise reasonable care while operating their vehicle on the road so as not to cause harm to others.
- II. *The injuries stated in the medical report corroborates the evidence given by the Claimant of the injuries he sustained; and are also*

consistent with the impact of a motor vehicle travelling at a very fast speed at the material time of the accident. Mr. Blackwood's evidence is that he never drove off while the car door was open. However, during cross examination, he accepts that Mr. Reid and another passenger were outside the vehicle when he drove off.

- III. *The evidence of Mr. Blackwood is that he never checked the left side of the vehicle before he drove off. He also agreed that it was highly unlikely that if the doors of the car were closed and he was driving at the same time that he would hear someone on the outside. A reasonable driver transporting paying passengers would not drive off without checking the doors and ensuring that the passengers are safely secured. This admission by the defendant is a clear failure by him to take reasonable care for the safety of his passengers including the Claimant.*
- IV. *During cross examination, Mr. Blackwood admits that the morning following the accident he visited Mr. Reid at the clinic and later that said day gave Mr. Reid two thousand dollars (\$2,000.00) to buy medication. The Defendant's assertion that he was never involved in an accident with the Claimant on October 14, 2013 is discredited by his own actions of visiting the Claimant the day after the accident and giving him money for medications. The accident report from the Investigating Officer (Exhibit 3) was not challenged by the defendant. The contents of the said police report do corroborate the claimant's version.*
- V. *The conflict in the evidence above given by the defendant is irreconcilable. On the defendant's own admission that he is not the author of his Witness Statement, little or no weight should be attached to his witness statement, and therefore the Claimant's evidence that on October 14, 2013, he sustained injuries whilst been transported as a passenger in the defendant's motor car/taxi should be accepted.*

On the doctrine of Res ipsa Loquitor she submits that

[36] The admission by Mr. Blackwood that he was not the one who wrote his witness statement and the fact that he is doubtful of the things inside the said witness statement affects the credibility of any explanation given by the defendant as to how the event actually occurred. Relying on the case of **Adele Shtern v Villa Mora Cottages Ltd and Monica Cummings** [2012] JMCA Civ, she quotes the following passage from the judgment of Morrison JA;

[57] “*Res ipsa loquitur* therefore applies where (i) the occurrence is such that it would not normally have happened without negligence (the editors of Clerk & Lindsell, *op.cit.*, para. 8-152 provide an illustrative short-list from the decided cases: “blades of sugar do not usually fall from hoist, barrels do not fall from warehouse windows, cranes do not collapse, trains do not collide and stones are not found in buns”); (ii) the thing that inflicted the damage was under the sole management and control of the defendant; and (iii) there must be no evidence as to why or how the accident took place. As regards the last criterion, the editors of Clerk & Lindsell (*op.cit.* para.8-154) make the important point, based on *Henderson v Jenkins & Sons*, that **“Where the defendant does give evidence relating to the possible cause of the damage and the level of precaution taken, the court may still conclude that the evidence provides an insufficient explanation to displace the doctrine”**.

[37] She points out that the motor vehicle was own and operated by the defendant at the material time. She posits that the accident is such that it would not normally have happened without the negligence of the defendant. She asserts that the defendant’s only line of defence is that he did not have any accident with the claimant. As such, she contends that the defendant has not provided sufficient evidence to displace the doctrine.

On Behalf of the Defendant

[38] The submissions Jayanne Williams, counsel for the defendant can be summarized as follows;

(i)“Negligence” means more than heedless or careless conduct, whether in omission or commission; it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing”. (She relies on the case of **Lochgelly Iron & Coal Co. Ltd. v. McMullan** [1934] A.C. 1; **Gilbert Kodilinye’s Commonwealth Caribbean Tort Law.**)

(ii) To determine whether a breach of duty has occurred, the court considers whether a reasonable person in the defendant’s position would have acted similarly. The court assessing the risk factors: the likelihood and seriousness of harm, the importance of the defendant’s conduct, and the cost and practicality of avoiding the harm. (She relies on the case of **Anns v. London Borough of Merton** [1977] 2 All E.R. 492 at 498)

(iii)The burden of proof in an action for damages for negligence rests primarily on the claimant, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible ... in order to succeed in a negligence action claiming damages

*for personal injury, the claimant must ordinarily bring evidence of an act done by the defendant, or an omission on the part of the defendant, which on a balance of probabilities, supports a finding of the defendant's negligence (She relies on the case of **Jamaica Public Service Company Limited v. Pamela Rance**, Civil Appeal No. 11/92:)*

(iv)“...Where there is evidence from both sides in a civil action for negligence involving a collision on the roadway and this evidence, seeks to put blame squarely and solely on the other party, the importance of examining with scrupulous care any independent physical evidence which is available becomes obvious. the person in charge of the vehicle was guilty of negligence in its management.... It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.”

[39] Counsel also submits that although the defendant is not disputing that a duty of care was owed, he maintains that the claimant has not proven on a balance of probabilities that the defendant failed to meet the standard of care. She takes the position that despite any shortcomings in the defendant's case the claimant has not presented credible, reliable, and convincing evidence sufficient to discharge his burden of proof.

[40] On the issue of credibility, counsel posits that the account of the accident as described by the claimant is highly improbable and contrary to biomechanical probability. She submits that the implausibility of the claimant's version appears to have become evident to him during the trial, leading him to alter his account. This shift she argues is reflected in multiple inconsistencies throughout his evidence. She further submits that The claimant was unable to give a clear and consistent answer on the critical point on which foot was dragged, substantially weakens his version of events. “His response that *'It must be the left is marked by uncertainty and speculation. Such uncertainty goes to the core of his credibility. A fundamental detail such as which limb was involved in a traumatic incident should not be a matter of guesswork.'*”

[41] She argues that the Claimant alleged that he began shouting “after a while of being dragged”, later stating it may have been more than two seconds after the vehicle started moving. Counsel submits that this delay was illogical and inconsistent with a natural

human response to danger, thereby undermining the plausibility of his account and casting doubt on his credibility.

[42] She further argues that it was during cross-examination, the claimant claimed for the first time that he fell when the vehicle stopped, but admitted this crucial detail was not in his witness statement and that he had never informed his attorneys or the Court about it.

[43] She submits that the claimant maintained that he fell out of the vehicle and landed on his right side with his right foot no longer in the vehicle, but when directed to paragraph 7 of his witness statement, where he stated he had taken his right foot out of the vehicle after the vehicle had stopped he was visibly unsettled, and when asked confirmed that the correct version was in his witness statement. This admission she submits undermines his credibility and reinforces the defendant's position that the claimant's evidence is not to be believed.

[44] Counsel further contends that

“the numerous inconsistencies throughout his evidence, supports the conclusion that he has been wilfully untruthful. As a result, his credibility as a witness is therefore fundamentally compromised, and the Court is invited to treat his evidence with the utmost caution. In re-examination, when asked to clarify the inconsistency between his claim that he fell on his side and his earlier statement that he removed his foot after it stopped, he insisted he fell out of the vehicle.” These vague and evasive responses did not resolve the discrepancies and only highlighted the unreliability of his account”.

[45] In concluding, counsel submits that “due to the numerous inconsistencies, contradictions, and implausible assertions by the claimant, his evidence is described as wholly unreliable and cannot be accepted. His shifting account, false testimony, and inconsistent responses demonstrate a persistent lack of credibility. The Court is urged to view his evidence with extreme caution and find that he has failed to discharge the burden of proof required on a balance of probabilities”.

[46] In relation to quantum, counsel states that if the Court finds that the claimant has discharged his evidential burden and proved his case on a balance of probabilities the following is proposed:

Special Damages

Medical Expenses - 75,900.00

[47] Counsel submits that.

“due to the inconsistencies in the claimant’s account, particularly regarding whether he fell on his right side or if his left foot was dragged the injuries to his left thigh and heel noted in the medical report should not be accepted.

[48] She also submits that although Dr. Sandra Nesbeth’s medical report indicates several injuries and a 50-week treatment period, and that the claimant was referred to physiotherapy, no evidence was provided to confirm that physiotherapy was pursued. Therefore, she argues that the claimant failed to mitigate his losses by not following through with treatment that might have reduced the severity and duration of his injuries.

[49] Counsel cites the following case on this head of damages namely, **Roger McCarthy v. Peter Calloo** [2018] JMCA Civ 7 where the claimant therein sustained acute back strain, post traumatic headache and acute whiplash injury with grade 2 whiplash disorder. The Court of Appeal awarded the sum of \$500,000 for this head of claim. This currently updates to \$742,902.21 using April 2025 CPI of 141.3. Counsel submits that the injuries noted in the cited case are greater than those sustained by the claimant before the Court and as such she submits that the sum of \$500,000.00 is an appropriate award.

[50] Counsel further submits that the matter does not meet the threshold of the Supreme Court and ought not have been brought before the court and as such any award for cost ought to be in keeping with the Parish Court Rules. She submits that interests of 3% on the Special Damages from the date of the accident to the date of judgment and interest of 3% on the General Damages from the date of service to the date of judgment is agreeable.

Discussion

Whether the Defendant owed a duty of care to the Claimant.

[51] There is no dispute that at the time of the incident the defendant, Mr. Blackwood was operating his motor vehicle as a public passenger vehicle. There is equally no dispute that Mr. Reid at the time was a passenger in Mr. Blackwood's motor vehicle. In the circumstance, therefore, there can be no doubt that Mr. Reid was a road user to whom Mr. Blackwood owed a duty of care.

Whether the Defendant breached his duty of Care to the Claimant.

[52] In my determination of the issues in this case I bear in mind that the responsibility rest on the Claimant to prove his case on a balance of probabilities. Having assessed the evidence. I find that the major issue in this case is one of credibility.

[53] I am cognizant of some apparent inconsistencies on the claimant's case. This is particularly in relation to whether during the incident he described, he fell to the ground after the vehicle eventually came to a stop.

[54] On cross-examination, he said he fell from the vehicle when it came to a stop but admits that in his witness statement there is no indication that when the vehicle stopped, he fell, but that he took his foot out of the vehicle. However, he does offer further context on reexamination wherein he says it was when the car came to a stop, and he took his foot out of the car, or his foot came out of the car that he fell on the ground. I consider this also against the background of his evidence in his witness statement that when the vehicle came to a stop his foot could not bear the pressure.

[55] I find his explanation quite plausible. Evidently, I do not share the view of counsel for the defendant that the evidence of the claimant on this issue gives rise to any serious contradiction on his case.

[56] There also appears to be some inconsistency in Mr. Reid's evidence as to whether or not he returned to the defendant's vehicle after the incident. In his evidence in chief as contained in his witness statement he states that he went back into the taxi as his feet could not bear the pressure. However, on the cross-examination he did say at first that he cannot recall if he went back into the defendant's car. However, having been shown his witness statement, he says he recalls going back into the defendant's car but also recalls the defendant saying he was too nervous to take him to the hospital. However, I consider these to be so minor that they do not affect the root of his case.

[57] The claimant remained consistent in his evidence that he did not continue his journey to his initial destination in the defendant's car but that he limped into another taxi in which he was transported to the hospital.

[58] Furthermore, I find Mr. Reid's account to be more credible and consistent on the material issues in this case. In particular, he has been consistent in his evidence that as a passenger travelling in the defendant Mr. Blackwood's public passenger motor car he had to exit the motor car, in order to facilitate the exit of another passenger. He has been consistent in his evidence that the defendant drove off during the course of him trying to re-enter the vehicle with one part of his body still on the outside. He has been consistent in his evidence that he was dragged by the defendant's motor vehicle with part of his body on the outside and part that his right foot still inside the vehicle and that he suffered injuries during the process.

[59] I do not share her view of counsel for the defendant, in the absence of any evidence supporting her position, that biometrically the accident could not have happened in the way described by the Claimant. In fact, the injuries of the claimant, as observed and noted by Dr. Sandra-Marie Nesbeth in her medical report, are consistent with his version of the incident. I note in particular the doctor's observation were on the very date that the claimant alleges that the accident occurred. I also note her observation of severe tenderness and swelling in the left thigh; severe pain and swelling in the left heel and that the whiplash was more concentrated to the left side of the claimant than to his right side of the neck. This is consistent with his version that only his right foot was in the vehicle

while the other parts of his body to include his left foot were on the outside of the vehicle while he was being dragged. In any event, no alternate explanation has been proffered. As such I am of the view that his injuries were not fabricated. Consequently, I accept the aforementioned evidence of the claimant as the truth.

[60] Furthermore, the defendant Mr. Blackwood has not refuted the evidence of Mr. Reid that a passenger exited his car on the left side. He is only insisting that he was not made aware that this passenger was exiting as it was the passenger on the right who asked him for a stop.

[61] Mr. Blackwood has not denied that Mr. Reid also exited the vehicle at this point because he says he saw Mr. Reid standing on the outside when he claimed to have heard a stumbling sound. Additionally, I consider it to be quite significant that Mr. Blackwood admits that the motor vehicle was in motion when he heard the stumbling sound. This also suggest the sound of someone not standing up firmly but losing balance.

[62] It also suggests that the stumbling sound became audible to Mr. Blackwood only on account of the person's body coming or being in contact with the moving vehicle. I also take note that Mr. Blackwood on his own evidence did not indicate that he pressed his brake in an attempted to stop immediately on hearing the stumbling sound, but that he "shadowed his break" This is consistent with the evidence of Mr. Reid that he was dragged for about 2 seconds.

[63] Mr. Blackwood's evidence that on hearing the stumbling sound he also heard someone said "driver" is also consistent with Mr. Reid's evidence that he was shouting out "Driver, you ago kill Me" I reject the evidence of Mr. Blackwood that it was the other male passenger who had exited the car stumbled against the car just to pay his fare. In my view no one would put himself in danger of being injured by a moving taxi in order to pay his fare, regardless of how honest he is. I reject Mr. Blackwood's assertions that there was no accident involving his motor vehicle and Mr. Reid.

[64] In any event Mr. Blackwood has been so discredited on cross examination that I do not accept his version of the incident as truthful. In his witness statement he presented

the claimant as someone with whom he has had a history of confrontation as former co-workers, intimating that this claim was borne out of mere spite. Yet when he was confronted with his statement on cross examination, he denied making any such statement.

[65] Additionally, in his witness statement he said after the incident he set down Mr. Reid at his designated stop and that Mr. Reid was walking normally. This statement he also denies on cross examination. In fact, he says this statement is not true.

[66] Nonetheless, Mr. Blackwood's insistence that he did not look through his rear view or left side mirror before moving off because he was not told that anyone else apart from the passenger on the right was coming out of the vehicle does not absolve him of his duty of care to the claimant.

[67] The cases of ***Robson v North Eastern Railway Company*** (1876) 2 Q.B.D. 85, and ***Icolyn Lawes v The Jamaica Urban Transit Company and Metropolitan Management Transport Holdings Limited*** [2013] JMSC CIV 24 are authorities for the principle that the operators of public passenger vehicles owe a duty of care to their passengers to ensure that they enter and exit safely.

[68] In the case of ***Robson***, a train stopped at a location that was not a designated stop. The claimant, a passenger, fearing the train would move on before she alighted, sustained injuries when she attempted to alight with parcels in her hands. The court found in these circumstances that the defendants had breached their duty of care.

[69] In the case of ***Lawes v The Jamaica Urban Transit Company and Metropolitan Management Transport Holdings Limited***, the claimant was injured in the process of mounting the bus steps when the driver shut the door and moved off. The court found that the defendant failed to ensure that the claimant safely boarded the bus and as such the company had through the driver, its agent breached its duty of care to the claimant.

[70] Therefore, the law evidently places a duty of care on the carriers of passengers to take all reasonable precautions to ensure the safety of their passengers while they are in, entering or exiting, the vehicle.

[71] Mr. Blackwood, as a driver of a public passenger vehicle, had the responsibility to be prudent in exercising due care and attention to his passengers. In discharging this obligation, he had the responsibility to ensure it was safe to resume the journey of transporting them. He should have had in his contemplation that despite the fact that one passenger had asked him for a stop, there was the possibility that others would have been getting off at the same stop.

[72] That is, having stopped to allow a passenger to exit, it was his responsibility to ensure that the other passengers were safely on board before driving off to continue his journey. It is no excuse to say the left car door was opened without him realizing it. He would have placed the claimant in a dangerous position when having stopped, he drove off the motor vehicle without checking his side and rear-view mirrors in order to ensure that it was safe to do so.

[73] Additionally, this is where I find the principle of *Res Ipsa Loquitur*, raised by counsel for the claimant to be applicable. To my understanding the principle expressed is this; In circumstances where the defendant has exclusive control over the thing that caused the accident; this type of accident would not normally have occurred without negligence on the part of the defendant, and the defendant offers no, or insufficient explanation for the cause of the accident; the court can draw the inference of negligence from the circumstances of the accident. (See the case of **Adele Shtern v Villa Mora Cottages Ltd and Monica Cummings** [2012] JMCA Civ 20)

[74] In the instant case, the defendant has simply denied that the accident occurred. However, the evidence of the claimant supported by the medical evidence confirms to this court that the accident did in fact occur. Additionally, various admissions and inconsistencies that I have already highlighted on the part of the defendant also support the credibility of the claimant's case.

[75] As such, and as pointed by counsel for the claimant the defendant was exclusively in control of the motor vehicle that caused the accident. This type of accident would not normally occur without negligence, that is, the driver of the vehicle not keeping a proper look out and not paying due care and attention. Nonetheless, the defendant has proffered

no explanation as to why he could not have heard the sound of movement behind him while the door opened and the passenger on the left exited.

[76] The case of ***Foskett v Mistry*** [1984] R.T.R. 1, CA. which been relied upon in several local authorities makes it clear that

“A driver who fails to notice in time that the actions of another person have created a potential danger is usually held to be negligent”.

[77] Consequently, I find that the claimant has proven on a balance of probabilities that the defendant has breached his duty of care to him by driving off his motor vehicle in which the claimant was a passenger with the claimant’s body only partially inside the vehicle. I find that the claimant has proven on a balance of probabilities that a as result of the aforementioned act of the defendant he suffered injuries. As such I find that the defendant is liable in damages to the claimant.

Assessment of Damages

Special Damages

[78] In her submission counsel for the Claimant has posited that the Claimant should be awarded \$78,500 for special damages. This includes a cost of \$3000 for the cost of police report, which despite a receipt being tendered in evidence for this item, this item was not included in his pleadings for special damages. As such, this cost will not be awarded.

[79] The following special damage has been pleaded and proven by the Claimant

Medical Expenses \$75,900

GENREAL DAMAGES

Pain and Suffering and Loss of Amenities

The Medical Evidence

[80] Doctor Sandra Nesbeth states that the Claimant presented himself to her on the 14th of October 2013. She diagnosed him with the following injuries:

1. Severe spasm and tenderness in the neck – whiplash – worst on the left than the right.
2. Severe swelling and tenderness in the left and right shoulders with difficulty elevating and weight bearing.
3. Severe swelling and tenderness in the left and right wrists with difficulty flexing and extending.
4. Severe spasm and tenderness in the lower back, with difficulty extending and flexing.
5. Severe swelling in the left and right hip with difficulty flexing, extending, internal and external rotation.
6. Severe tenderness and swelling in the left thigh in the femoral muscle (muscle in the front) with difficulty extending and flexing.
7. Severe pain and swelling in the left heel.

[81] She further reports that; X-rays were requested, three (3) weeks' sick leave given with Cataflam and Norflex injections. A cervical collar was given to stabilize the injured neck muscles. He was also given a wrap for both wrists and the left foot, to decrease the pain and stabilize the injured muscles. He had to be given Cataflam injections twice weekly for the first two weeks and then once weekly for another week. His sick leave was extended for another three weeks. He was given oral Daflon, calcium, and fish oil to reduce the swelling and inflammation respectively. He was referred to physiotherapy. He

was cautioned to only supervise and not participate in any manual labour as this would aggravate his injuries.

[82] He had frequent relapses during his first four months of his accident. The fact that he is a sixty-four (64) years male who is lactose intolerant, only compounded his recuperation.

[83] He was finally discharged on the 30th of September 2014, after a total of fifty (50) weeks, with no residual damages.

[84] Counsel for Claimant submit the following cases for the court's consideration

- (i) **Stacey Ann Mitchell v Carlton Davis and Others** C.L.1998 M 315 at page 146 Volume 5 Ursula Khan (ii) **Evoni Mclean v Pepsi Cola Bottling Co. Ltd and Kirk King [2014] JMSC Civ. 55**

Where the injury and award are as follows;

[85] The injuries of the claimant in the case of ***Stacey Ann Mitchell v Carlton Davis and Others***, were; severe tenderness in back of head and neck, laceration to back of head, marked tenderness and stiffness of the lower spine, continuous pains-back of neck and across waist, swollen and painful left arm with difficulties in lifting weight and she was awarded \$550,000.00 for General Damage.

[86] The injuries to the claimant in the case of ***Evoni Mclean v Pepsi Cola Bottling Co. Ltd and Kirk King*** were.

Mild whiplash injury, mild soft tissue injury to the right shoulder, mild mechanical lower back pains and resolved triggering of fingers both hands. On April,4, 2014 the claimant was awarded \$2,000,0000 for pain and suffering and loss of amenities. Using the April 2025 Consumer Price Index of 141. 3 the award updates to **\$3,454,800**

[87] Counsel for the defendant submits the single case of ***Roger McCarthy v. Peter Calloo [2018] JMCA Civ 7***. In that case the claimant sustained the following injuries;

Acute back strain, post-traumatic headache and Acute Whiplash Injury with grade 2 whiplash disorder.

[88] The Court of Appeal awarded the sum of \$500,000 for this head of claim. This currently updates to \$742,902.21 using April 2025 CPI of 141.3.

[89] However, of the three cases submitted, I find the cases of **Evoni Mclean v Pepsi Cola Bottling Co. Ltd and Kirk King** [2014] JMSC Civ. 55 and **Roger McCarthy v. Peter Calloo** [2018] JMCA Civ 7, to be of greater relevance to the instant case as they are more current and the injuries are relatively comparable to those suffered by the Claimant in the instant case. I have observed that the recent cases usually demonstrated more consistency in awards.

[90] However, do make the observation as counsel for the claimant submits that Mr. Reid's injuries appear to be more extensive than those of the claimant in the *Evoni Mclean* case. I notice also that these injuries to include the whiplash were referred to as mild in the Evon Mclean case whereas all the Claimant's injuries in the instant case were referred to as severe.

[91] Counsel points out that the report of Dr. Sandra Nesbeth stated that due to the injuries suffered by Mr. Reid, he was unable to participate in any manual labour as a mason, as this would aggravate his injuries. Counsel highlighted frequent relapses that the claimant suffered during the first four (4) months after the accident. As such she posits that an award of \$4,000,000 would be appropriate.

[92] I also make the observation that whereas the injuries in the **Roger McCarthy v. Peter Calloo** appear to be more severe than in the case of **Evoni Mclean v Pepsi Cola Bottling Co. Ltd and Kirk King**. In the former case they were described as acute and grade 2 whiplash disorder. However, the award in the latter case is much higher than the former. In my view the award to the claimant would lie in between these two awards.

[93] Additionally, I support the position taken by counsel for the Claimant that the injuries suffered by the claimant in the instant case were more wide spread, that is to the neck, back, thighs, hips, shoulders and wrist than those of the claimant in the Mclean

case and the **Roger Clarke** case where the injuries were concentrated to the right shoulder, lower back and hands; and the back and head respectively.

[94] I also take into account the submissions of counsel for the Defendant that the Damages to be awarded in the instant case should be reduced on the basis that the claimant failed to mitigate his injuries. She has staked this claim on the assumption that the claimant did not attend the therapy to which he was referred by Doctor Nesbeth. However, I failed to see the basis on which she would have arrived at such a conclusion.

[95] There is no such indication in the doctor's report and no such suggestion was put to the claimant on cross-examination. While it is my view that the award in the **Mclean** case may have been too high in light of the more recent Court of Appeal decision in the **Roger Clarke** case, in light of my findings that the injuries of the claimant in the present case are more serious I believe he should receive a greater award than that awarded in the Mclean case. Consequently, I consider an award of \$1,500,000 to be appropriate. Consequently, I make the following orders.

[96] Orders

Judgement for the Claimant on the Claim

Damages are awarded as follows

Special Damages	\$75,900
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Interest at the rate of 3% from the date of the accident to the date of Judgment

General Damages

Pain and Suffering and Loss of Amenities \$1,500,00

**Interest at the rate of 3% from the date of the service of the Claim
Form to the date of Judgment**

Cost to the Claimant to be agreed or taxed

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Andrea Thomas
Puisne Judge