[2025] JMSC Civ 43

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01832

BETWEEN	**KARREN WALLACE**	**CLAIMANT**
AND	**ADOLPH EWART**	**DEFENDANT**

IN OPEN COURT

Audrey Clarke instructed by Judith M. Clarke & Co., Attorneys-at-law for the claimant.
Suzette Campbell instructed by Burton-Campbell & Associates, Attorneys-at-law for the defendant

Heard: 14th January and 4th April 2025

Negligence - Liability for motor vehicle collision - Personal Injury - Assessment of Damages.

C. BARNABY J

BACKGROUND

[1] On 5th October 2019 there was a collision between the along the Goshen Main Road in the parish of St. Elizabeth between motor vehicle owned and driven by the Defendant and a public passenger vehicle (the Taxi). The Claimant alleges that she was a passenger in the taxi and that she suffered injury, loss and damage because of the collision. She accordingly pursues a claim in negligence for the recovery of damages.

[2] The Defendant does not contest liability for the collision but says he is unaware of the Claimant's involvement in it, her injuries, loss and damage. He therefore put her to proof.

[3] The claim was tried on 14th January 2025 and judgment reserved to 4th April 2025. On the latter occasion I promised to reduce into writing my reasons for decision delivered orally and now do so.

ISSUES

[4] Whether the Claimant was a passenger in the Taxi, whether the injury, loss and damage of which she complains were caused by the collision, and the quantum of damages payable to her arise for determination of the claim.

LIABILITY

Presence in the Taxi

[5] It is the Defendant's evidence on cross-examination that he called the police station at the time of the collision, but the police did not attend the scene at which he remained for over one hour (1). He made no further report of the collision. He also made no attempt to ascertain the identity of the passengers in the Taxi at the time of the collision nor did he memorialise the same. While he attributes his failure to ascertain the identity of the passengers and to physically record his observations at the collision site to bystanders coming onto the scene and not having paper to write, considering the Defendant's over thirty (30) years of experience as a police officer, I find his conduct to be demonstrative of a willful disinterest in making himself aware of the passengers in the Taxi and the impact of the collision.

[6] That observation of the Defendant's conduct notwithstanding, it is the Claimant who bears the burden of proving her claim which she is required to discharge a balance of probabilities.

[7] As observed in the Defendant's written submissions, the accounts of the circumstances giving rise to the collision are similar for both parties. This similarity

came belatedly for the Defendant who stated in his defence that the collision occurred when he was reversing from his driveway onto the Goshen Main Road. At trial there was an unopposed amendment to the defence to reflect that he drove forward onto the main road.

[8] In the written submissions filed on behalf of the Claimant, reference is made to that fact and it is submitted that the changed pleadings coincide with the Claimant's testimony and tend to support her claim that she was a passenger in the vehicle impacted by the Defendant's motor vehicle. It is also submitted that since the Defendant confirmed much of what the Claimant asserted relative to the event at trial, the court may reasonably find that she has satisfactorily proved her involvement in the collision.

[9] It is submitted on behalf of the Defendant that the similarity in the accounts of the collision by the parties is insufficient to prove the Claimant's involvement in the accident, particularly since persons gathered at the scene after the collision, making it impossible for the Defendant to identify who was involved in the accident as distinct from onlookers.

[10] It was further contended that having regard to the generality of the information provided by the Claimant, it could have been provided by any bystander who witnessed the collision. It is accordingly argued that the Claimant failed to discharge the burden placed upon her to establish on a balance of probabilities that she was a passenger on account of the following.

i. She failed to point out the driver of the vehicle involved in the accident at trial.

ii. She said she waited for one (1) hour - the witness' actual evidence is that she waited for about twenty (20) minutes - after the accident but there was no evidence that:

   a. she spoke to the driver of the Taxi;

   b. she wrote down the name or license plate number of the vehicle of the Taxi;

c. she wrote down the licence number of the Defendant's vehicle and gathered any information as to the owner or driver; or

d. noted any damage to the vehicles involved in the accident.

iii. It is unclear how the Claimant came to state the licence plate number of the vehicles involved in the incident as she made no notations at the scene and there was no evidence she was provided with it by the police when she allegedly went to report the incident.

iv. She only refers to the driver of the other vehicle involved in the accident as "the Defendant" leaving the court to infer or presume that she knows who the Defendant is.

v. She said she was seated behind the driver but could not say whether the Taxi was left hand or right hand driven.

vi. The Claimant stated in her Witness Statement that the Taxi in which she travelled was a "seven (7)" seater but disclosed in cross examination a total of nine (9) people seated in the vehicle; three (3) people on the back seat, four (4) on the middle seat, including herself, and the driver plus a passenger in the front of the vehicle. She gave no "real explanation" for the inconsistency except to say that she "probably miscounted at the time".

vii. She failed to call the driver of the Taxi to give evidence, which would have provided unequivocal evidence in deciding the issue of her involvement in the accident. Reference is made to the fact that although the Claimant filed a witness statement from the taxi driver he did not appear at trial and no explanation was provided for his absence. It is further submitted that if he was a reluctant witness a witness summons could have been secured.

The Defendant relies on the decisions in **Sinha v Taylor & Ors. [2022] EWHC 1096** and **Keefe v Isle of Man Steam Pocket**

Company [2020] EWCA Civ 63 in inviting the court to draw an adverse inference against the Claimant for the taxi driver's absence at trial.

[11] I will address the concerns in turn.

[12] It is correct that the Claimant did not point out the Defendant in the courtroom, but in fairness to her, she was never asked to do so. The name of the Defendant having been included in the title of the proceedings, I can see no difficulty arising on her referring to him in documents as the Defendant.

[13] As to the absence of evidence of conversations and notation in respect of ownership, control, licensing and vehicular damage, it was disclosed by the Claimant during cross examination that she had taken the Taxi at least ten (10) times prior to the accident, knew its driver by his first name and later came to learn his full name. As to the particulars of the Defendant and his vehicle, as said of the evidence which the Claimant has in fact given, evidence of conversations and the taking notes about the referenced particulars could be given by any bystander who happened on the collision. In any event, evidence of conversations and note taking at the scene of the collision, particularly where bystanders had gathered does not prove presence or absence in the taxi at the time of the collision.

[14] In the absence of evidence of notation of the particulars of the vehicles, or of being advised of such particulars when she allegedly attended to make a report to the police, how she came to state the license plate number of the vehicles involved in the incident is said to be unclear. No question was asked of the witness in this regard to enable clarity to be had. Like the Defendant who indicated on cross examination that he took mental notes of the surroundings and people after the collision, I do not find it improbable that the Claimant who says she was a passenger in the Taxi and therefore a witness to the collision, could have made a mental note of particulars of the vehicles while she remained at the scene for twenty (20) minutes.

[15] Further and in any event, there being no dispute that the Defendant's vehicle collided with the Taxi, I do not believe the absence of evidence in the foregoing regards is fatal to the Claimant establishing her presence in the Taxi at the time of the collision.

[16] The Claimant was asked in cross examination whether the Taxi was a left or right-hand vehicle to which she responded *"I am not really sure. I know that I was immediately behind him, I didn't take note of that."* This exchange followed a question about the claimant being seated behind the driver. There is nothing to suggest that the Claimant had anything more than a passing familiarity with motor vehicles and I therefore found nothing wrong with her saying that she was unsure whether the Taxi was a left or right-hand model.

[17] Some emphasis is placed on the Claimant describing the Taxi as a "seven (7) seater" in her witness statement, and the fact that nine (9) persons, inclusive of the driver were said to be in it on cross-examination. I think judicial notice can be taken of the fact that in this jurisdiction, a vehicle manufacturer's instruction as to carrying capacity is not always observed, particularly by vehicles which operate as taxis.

[18] The challenge for the Claimant regarding the various complaints is that there was clearly an inconsistency between the evidence in her witness statement and her evidence on cross-examination as to the number of passengers the Taxi. She said six (6) passengers, including herself in her witness statement and eight (8) on cross examination. When asked if the figure in her witness statement was correct, she responded that she *"probably miscounted at the time".* When asked which of the numbers is correct, she stated, *"I would say the eight (8) persons, now that I am thinking about it."* In circumstances where she has been put to proof of her presence in the taxi at the time of the collision, I regard evidence as to the number of passengers who were in the Taxi as material. To say that she *"probably miscounted at the time"* shows a lack of certainty on the witness' part as to the reason for the conflicting numbers. It was not put to the witness that the inconsistency was on account that she was lying about being a passenger in the

taxi however, nor was it put to her generally that she was not a passenger as alleged.

[19] The taxi driver was not present at trial although a witness statement was filed from him. Ms. Clarke merely advised that he *"has some challenges"* but that the Claimant would not delay the proceedings for that reason. The challenge was not disclosed by Counsel. No enquiries were made of the Claimant as to her failure to call other evidence to support her allegation that she was a passenger in the taxi. His absence from the proceedings is therefore unexplained.

[20] In **Sinha v Taylor & Ors**. [2022] EWHC 1096 a claim was brought against the two defendants for fraudulent representations by which the claimant was induced to invest in a company. The defendants did not serve any witness statements and did not seek any extension of time to do so. Their evidence was regarded as material and in the absence of any witness evidence it was inferred that they could not provide a credible response to the claimant's allegations. This was in circumstances where their case management information sheet indicated they both intended to give evidence, which intention was also implicit in a later email to counsel. The Defendants made no attempt to serve witness statements or give evidence on oath. In making the adverse inference, reliance was placed on **Royal Mail Group Ltd v Efobi** [2021] UKSC 33, [41] where Lord Leggatt JSC stated that whether or not to draw an adverse inference "*really is or ought to be just a matter of ordinary rationality*", using "*common sense*". He went on to indicate that

> *[r]elevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole.*

[21] In **Keefe v Isle of Man Steam Packet Company Ltd.** [2010] EWCA Civ 683 on which the Defendant also relies, the claimant seaman suffered hearing loss attributable to noise. The court allowed an appeal against the dismissal of the

claimant's claim in negligence where the trial judge formed the view that he had not proved that he was exposed to excessive noise levels for periods of over eight hours. An adverse inference was drawn against the defendant shipowner to whom the claimant was employed for many years because it had a duty to measure noise levels and had not done so. Ahead of so doing Longmore LJ remarked at paragraph [19] of the judgment that:

> *If it is a Defendant's duty to measure noise levels in places where his employees work and he does not do so, it hardly lies in his mouth to assert that the noise levels were not, in fact, excessive. In such circumstances the court should judge a Claimant's evidence benevolently and the Defendant's evidence critically. If a Defendant fails to call witnesses at his disposal who could have evidence relevant to an issue in the case, that Defendant runs the risk of relevant adverse findings* see British Railways Board v Herrington *[1972] AC 877, 930G, [1972] 1 All ER 749, [1972] 2 WLR 537. Similarly a Defendant who has, in breach of duty, made it difficult or impossible for a Claimant to adduce relevant evidence must run the risk of adverse factual findings. To my mind this is just such a case.*

[22] It is my view that both cases relied upon by the Defendant in submitting that an adverse inference should be drawn against the Claimant in this case are distinguishable from the instant. In both cases the adverse inference was drawn against a party to the litigation who failed to give relevant evidence. The subject matter of the default was within the relevant parties' control. It is true that the Claimant here demonstrated an intention to call the Taxi Driver by the filing and service of his witness statement form him, but the witness, whose evidence would have been material, did not attend the trial. That potential witness was not a party to the proceedings, and while steps could certainly have been taken to compel his attendance, the Claimant elected not to delay proceedings on account of his absence.

[23] While the absence of the driver of the Taxi was not sufficiently explained by the Claiamnt's Counsel and she was not asked about the absence of a corroborating witness, the Claimant gave a witness statement on her own behalf and made herself available for the testing of that evidence by cross-examination. It is therefore my view that this is not an appropriate case for drawing an adverse inference against the Claimant because an intended additional witness did not attend the trial.

[24] In all these circumstances, while the inconsistency as to the number of passengers in the vehicle causes me to doubt the reliability of the Claimant's evidence in that regard, I do not find that it negatively impacts her credibility as a whole. Further, the collision is not disputed, and the Claimant gave consistent and credible evidence otherwise about the conditions which existed at the time of the collision, the circumstances of the collision and its impact on her - which I will address subsequently. I accordingly find on a balance of probabilities that the Claimant was a passenger in the Taxi at the time of the collision as claimed.

Causation

[25] It is the Claimant's evidence in her witness statement dated and filed 4th October 2024 that

> *4. … as a result of the collision, the impact caused [her] to be pushed to from off [her] seat into the back of the Driver's seat. Initially, I felt pains in my right arm and hand as I used same to brace for the impact. [She] also felt some discomfort in the abdomen as [she] had recently undergone some abdominal surgery and the area was till tender.*
>
> *5. I subsequently realized that the fingers on my right hand was (sic) strained because of the bracing action at the time of the collision.*

> *6. The following day I was in severe pains in the region of my neck and shoulders. On Monday October 7, 2019, I went to Dr. Ukala. She is my regular General Practitioner…*

[26] I accept the Claimant's evidence in these regards.

[27] Dr. Reid-Ukala was accepted as an expert witness in the proceedings and her report dated 17th May 2024 admitted into evidence without her being called for cross-examination at trial. She also happens to be the Claimant's treating physician and saw her on the 7th October 2019. The statements in the report were also admitted by agreement without the need to call the doctor at trial for cross-examination.

[28] It is reported that on presentation the Claimant *"complained of severe pain in the neck, lower back and both shoulders, following a motor vehicle accident two (2) days prior. She was sitting in the middle row of a seven (7) seat taxi".* The report discloses the following findings on her examination of the Claimant:

> *… her vital signs were stable. She had tender muscle spasm to both shoulder and the neck. There was not tenderness to the lower back. She was assessed as having whiplash injury to the neck. She had X-Rays of the neck done which confirmed significant muscle spasm.*

[29] The report goes on to say that the Claimant *"continues to have painful spasm of the neck and shoulders requiring multiple follow up visits and prescription for muscle relaxant and pain medication. Ms. Wallace continues to have recurrent neck pain and stiffness as a result of her injuries. She will most likely have chronic neck pain as a result of her injury."*

[30] By agreement, statements in a report dated 2nd December 2019 under the hand of Tiffany Thompson, Registered Physical Therapist to whom the Claimant was referred by Dr. Reid-Ukala were also admitted as evidence in the proceedings. It is reported that the Claimant presented for management on 25th October 2019 complaining of a sharp pain to both shoulders rated 9/10 on the NRS with mild lower back pain. She was assessed on evaluation as having *"pain with all movements of the cervical spine along with trunk forward flexion. On palpation,*

she had tenderness to the right shoulder joint line, in addition to tenderness and muscle spasm to upper trapezius and cervical paraspinal muscles." The Claimant is stated as having attended five (5) sessions, the last of which was on 29th November 2019 when she reported being pain free. She was discharged on a home programme following evaluation as it was determined that she did not require further supervised management.

[31] Dr. Reid-Ukala does not specifically state in her report that the assessed injuries were caused by the collision. That notwithstanding, when the report is taken as a whole, it is my view that a sufficient nexus has been established between the collision and the assessed injury. The collision was the reason given by the Claimant for presenting with the complaint and upon examination, the assessment was made that the Claimant suffered whiplash injury to the neck. I accept that assessment from the treating physician.

[32] In an effort to challenge the Claiamnt's evidence that she suffered whiplash injury on the basis of the impact she described, it is submitted on behalf of the Defendant that *"for there to be whiplash injury* '*there ought to be evidence that a vehicle is shunted from the rear at a sufficient speed to cause the heads of those in the motorcar to move forward and backward in such a way as to be liable to cause "whiplash" injury.' "* As framed, the argument suggests that whiplash injury can only be sustained in the way indicated.

[33] The proposition in the Defendant's submission is attributed to dictum in **Richard & Anor. V Morris** [2018] EWHC 1289 (QB.) but having considered the authority, I do not find that it establishes any such principle. It is stated at paragraph 65 of the judgment thus.

> *The problem of fraudulent and exaggerated whiplash claims is well recognised and should, in my judgment, cause judges … to approach such claims with a degree of caution, if not suspicion. Of course, where a vehicle is shunted from the rear at a sufficient speed to cause the heads of those in the motorcar to move forwards and backwards in such a way as to be liable to cause "whiplash" injury, then genuine claimants should recover for genuine injuries sustained. The court would normally expect*

such claimants to have sought medical assistance from their GP or by attending A & E, to have returned in the event of non-recovery, to have sought appropriate treatment in the form of physiotherapy (without the prompting or intervention of solicitors) and to have given relatively consistent accounts of their injuries, the progression of symptoms and the timescale of recovery when questioned about it for the purposes of litigation, whether to their own solicitors or to an examining medical expert or for the purposes of witness statements. Of course, I recognise that claimants will sometimes make errors or forget relevant matters and that 100% consistency and recall cannot reasonably be expected. However, the courts are entitled to expect a measure of consistency and certainly, in any case where a claimant can be demonstrated to have been untruthful or where a claimant's account has been so hopelessly inconsistent or contradictory or demonstrably untrue that their evidence cannot be promoted as having been reliable, the court should be reluctant to accept that the claim is genuine or, at least, deserving of an award of damages.

[34] When the case is read, it is evident that the reference to being shunted from behind and moving backwards and forwards was specific to the mechanism of the collision alleged in that case. It does not stand for the proposition that there must be evidence of a vehicle being shunted from the rear at a sufficient speed to cause the heads of those in the motor vehicle to move forward and backward for there to be whiplash injury. The authority does not provide a basis for displacing the nexus which I have found to exist between the collision and the Claimant's injury or for rejecting the assessment of her treating physician Dr. Reid-Ukala, that the Claimant suffered a whiplash injury to the neck.

ASSESSMENT OF DAMAGES

[35] It is submitted on behalf of the Defendant that the Claimant has attempted to inflate her treatment beyond the sums claimed in her pleadings which is indicative of a

focus on recovery of compensation rather than recovery from injuries suffered. The submissions go further to say that her attempts impugn her overall credibility as a witness.

[36] On cross examination the Claimant said she attended physiotherapy more than five (5) times which differs from the indication in the physiotherapy report. When asked about the difference between her account and that stated on the report and whether she sought to have it corrected, the witness said she did not notice the number stated in the report. I accept that she had not. That does not cause me to regard her as an incredible witness.

[37] The Claimant also said in cross examination that she visited Dr. Reid-Ukala and purchased medication in respect of her injury more than twice. She has only referenced two (2) receipts for medication in her pleadings. Four (4) receipts were referenced as being for consultation and a medical report from the doctor.

[38] The Claimant indicted at trial that some of her receipts had been misplaced. Other than the initial visit on 7th October 2019, Dr. Reid-Ukala does not state the dates on which she saw the Claimant but having indicated in her report of 17th May 2024 that the Claimant continues to have recurrent painful neck and shoulder spasms requiring multiple follow up visits and prescriptions for pain medication and muscle relaxers, I do not think it improbable that she saw the doctor and purchased medication more than twice between the 7th October 2019 and her cross examination in January 2025.

[39] Further and in any event, I do not believe the deficiencies referenced are an attempt by the Claimant to mislead the court or exaggerate her injuries. If that was the intention, it would have been easily accomplished by reference to Dr. Reid-Ukala's prognosis in her report of 17th May 2024 that the Claimant would likely have chronic neck pain as a result of her injury. In her witness statement of 4th October 2024 however, while the Claimant speaks to continued suffering, she has, with candour indicated that she is not affected in significant way. I do not find the Claimant to be an incredible witness on account of the concerns raised in the submissions to shut her out of proving sauch damages as she is able to prove.

Special Damages

[40] Special Damages are required to be specifically pleaded and proved. The following items were pleaded and are proved pursuant to agreement for receipts to be tendered into evidence without their makers being called.

Pharmacy	$ 6,503.46
Doctor's Consultation and Medical Report	$11,000.00
Physiotherapy	$17,500.00
Police Report	$ 3,000.00
	$38,003.46

[41] Conference fee though pleaded has not been proved. Costs for transportation have also been pleaded but not proved. While there is authority which indicates that having regard to the vagaries of our public transportation system, the court has some latitude to allow reasonable costs for transportation, I believe proof of payment could and ought to have been supplied in this case. It was indicated by the Claimant on cross-examination that she asked someone to transport her whom she paid. When asked if she chartered a vehicle she answered "yes, but not really". When asked if she remains in contact with the person she answered yes. She stated however that she did not request anything from the individual to take to court to say she had paid. In the circumstances, I do not find that the absence of proof of payment was not due to the vagaries of our public transportation system to justify departure from the principle that items of special damages are to be specifically pleaded and proved.

[42] In all the circumstances, the sum of **Thirty-Eight Thousand Three Dollars and Forty-six cents ($38,003.46)** which has been proved is awarded as special damages.

General Damages

[43] The Claimant's injuries were set out in her Particulars of Claim thus:

i. *Tenderness to right shoulder joint line;*
ii. *Tenderness and muscle spasm to the upper trapezius and cervical paraspinal muscles;*
iii. *Cervical spine along with trunk forward flexion; and*
iv. *Whiplash injury to the neck.*

[44] Dr. Reid-Ukala assessed the Claimant as having whiplash injury to the neck. When the Claimant presented for management by physiotherapy she was assessed as having *"pain with all movements of the cervical spine along with trunk forward flexion. On palpation, she had tenderness to the right shoulder joint line, in addition to tenderness and muscle spasm to upper trapezius and cervical paraspinal muscles."* By the time of her last physiotherapy session on 29th November 2019 however, she was pain free and discharged from supervised management on a home programme. While Dr. Reid-Ukala's indication in her report of 17th May 2024 is that the Claimant continues to suffer and would likely have chronic neck pain as a result of her injury, it is the Claimant's evidence that she is not affected by her suffering to any great extent. Additionally, no evidence has been provided of her requiring further medical care beyond the date of discharge from physiotherapy.

[45] Counsel for the Claimant relies on **Dalton Barret v Poncianna Brown and Leroy Bartley** Claim No. 2003 HCV 1358, delivered on November 3, 2006; **Pauline Stone Myrie v Sonia Gordon Williams** [2014] JMSC Civ 133**;** and **Lynford Hendricks v Munair Harrison and The Attorney General of Jamaica** [2021] JMSC Civ 177 in submitting that Ms. Wallace should be awarded a sum in excess of One Million, Seven Hundred and Fifty Thousand Dollars ($1,750,000.00) for general damages.

[46] In the **Dalton Barret case** the claimant suffered from tenderness around the right eye and face, tenderness in the left hand and lumbar spine, pain in the lower back,

left shoulder and left wrist. He was also assessed as having contusions on the mouth, especially the upper lip and contusions to the lower back and left shoulder. He was diagnosed as having mechanical lower back pain and very mild cervical strain. General damages were awarded in the sum of $750,000.00 in November 2006 which updates to $2,784,031.41 using the current available CPI of 141.80 (February 2025).

[47] I am of the view that this is not an appropriate comparator as the injuries sustained by Mr. Barrett were far more severe than those suffered by the Claimant which recommends a significant downward adjustment.

[48] A similar view is taken of the **Lynford Hendricks case** where the claimant suffered whiplash injury, lumbar strain, neck pain and tenderness, cramps in hand, lower back pain which radiated to the back of his thighs, abrasions to forehead, chronic lumbar strain and chronic cervical strain. General damages were awarded in the sum of $2,000,000.00 in November 2021 which updates to $2,444,827.59.

[49] In **Pauline Stone-Myrie** the claimant sustained mild tissue injury in the region of the neck and bilateral sacroiliitis. General damages were assessed in September 2014 at $1,000,000.00, which updates to $1,639,306.36. The injuries sustained by Mrs. Stone-Myrie are similar but not on all fours with those sustained by the Claimant. The former suffered lower body injury by way of bilateral sacroiliitis. A downward adjustment of the award would be necessary.

[50] The sole case relied on by Counsel for the Defendant in submitting that general damages in the sum of $700,000.00 should be awarded to the Claimant is **Gaylia Johnson v Dalmin Fitzroy Jones** [2021] JMSC Civ 142. The doctor in that case initially made a preliminary finding of possible whiplash injury but later indicated that the diagnosis was not confirmed by the findings on x-ray. The court therefore found that the claimant suffered soft tissue injury to the cervical spine which manifested in tenderness but with no stiffness or restriction of movements. She was treated with pain medication and a cervical collar. Ms. Johnson was awarded damages in the sum of $600,000.00 in July 2021 which updates to $763,734.29. Ms. Wallace's injuries are more severe, it having been conslusively determined

that she suffered a whiplash injury to the neck. The award is fittingly adjusted upwards.

[51] Of the cases cited the **Pauline Stone-Myrie** and **Gaylia Johnson** cases appear to be the most useful in arriving at an appropriate award for general damages. Within that context but having regard to the fact that the Claimant was conclusively assessed as suffering whiplash injury to the neck which required physiotherapy for management, I find that an award of **One Million Two Hundred Thousand Dollars ($1,200,000.00**) is appropriate.

ORDER

1. Judgment for the Claimant is entered against the Defendant.
2. Special Damages assessed in the sum of **Thirty-Eight Thousand Three Dollars and Forty-six cents ($38,003.46).**
3. General damages assessed in the sum of **One Million Two Hundred Thousand Dollars ($1,200,000.00**).
4. Interest on special damages at 3% per annum from 5th October 2019 to 4th April 2025.
5. Interest on general damages at 3% per annum from 6th June 2023 to 4th April 2025.
6. Costs to the Claimant to be taxed if not sooner agreed.
7. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge