



[2026] JMSC Civ 66

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV03588

BETWEEN	IVY WILLIAMS	CLAIMANT
AND	JAMAICA URBAN TRANSIT COMPANY LIMITED	DEFENDANT

IN OPEN COURT

Michael Hylton K.C. and Daynia Allen instructed by Hylton Powell, Attorneys-at-law for the Claimant

Ashley Campbell instructed by Georgia Hamilton and Co., Attorneys-at-law for the Defendant

Heard: May 26, 27 and 28, 2026

Negligence - Liability for motor vehicle accident - Assessment of Damages - Treatment ongoing - Maximum Medical Improvement not reached - No disability rating

C. BARNABY, J

BACKGROUND

[1] This claim for damages is grounded in negligence and arises out of a most unfortunate accident on the morning of 25th November 2022 when the wheels of a bus owned and operated by the Defendant, Jamaica Urban Transit Company Limited (the JUTC) came into contact with the person of the Claimant, Mrs. Ivy

Williams. It is common to the case of both parties that the accident occurred in the vicinity of Burger King on Barbican Road after the bus had stopped near the entrance of that establishment to pick up passengers.

ISSUES

[2] The JUTC does not dispute that a duty of care was owed to Mrs. Williams as a road user in the operation of its bus, or that as a consequence of the accident Mrs. Williams suffered some injury, damage and loss. The issues for the court at the commencement of trial were:

- (i) whether the accident was caused by the breach of the duty owed by the JUTC;
- (ii) whether the accident was caused or contributed to by Mrs. Williams' own failure to take reasonable care for her own safety; and
- (iii) the quantum of damages payable.

[3] It was rightfully and commendably conceded by Counsel Mrs. Campbell in closing arguments - which I will endeavour to demonstrate later in these reasons - that some of the particulars of negligence pleaded by the Claimant had in fact been established on the evidence. She did not say which, but that is of no moment as any one or more of them is sufficient to ground the JUTC's liability in negligence. The issue of liability for the accident is therefore reduced down to whether Mrs. Williams was contributorily negligent.

LIABILITY FOR THE ACCIDENT

[4] Issues (i) and (ii) are conveniently addressed under this head.

- [5] As submitted by Mr. Hylton K.C. in his very brief opening remarks at the start of trial, and again in closing submissions, determination of liability in this case is entirely dependent on the version of events which the court accepts as being more probable. This is on account that the versions pleaded in prosecution and defence of the claim are diametrically opposed.
- [6] The facts relied upon by Mrs. Williams are that she was in the company of two other prospective passengers including a Ms. Fagan, who was a witness in these proceedings; that those two persons boarded the bus; and that when she started to enter the bus its doors started to close, which stopped her from boarding and caused her to fall. The driver then drove off and ran over both her legs and feet. Those facts are denied by the JUTC.
- [7] In contending that the accident was caused or significantly contributed to by Mrs. Williams, the JUTC relies on the following assertions.
- (i) While the bus was proceeding northerly on Barbican Road in the vicinity of Lane Plaza and approaching the entrance to Burger King, its driver Mr. Jarrett heard screams from two persons running on the opposite side of the road summoning the bus to stop.
 - (ii) Mr. Jarrett stopped the bus and checked his rearview mirror, although he had poor visibility as the area was dark and poorly lit.
 - (iii) The two persons crossed the road behind the bus and Mr. Jarrett opened the front door and both persons entered the bus.
 - (iv) At no time was Mrs. Williams within the vicinity of the bus door to enter it, aboard the bus partially or otherwise, nor did she begin to board the bus.
 - (v) Only one of Mrs. Williams' foot was injured.

- [8] Mrs. Williams bears the burden of proving her claim, including the facts on which she relies to ground her contention that the Defendant was negligent. She is required to do so at the ordinary civil standard, which I find discharged.
- [9] In addition to her own evidence, Mrs. Williams relies on the evidence of Ms. Fagan in proof of her case. I found Ms. Fagan to be a forthright and honest witness. It is her evidence in chief that on the morning of the accident she, Mrs. Williams and a man known to her as Bald Head signaled the JUTC bus to stop; that the bus stopped close to the entrance of Burger King and that all three crossed the road and approached the bus. Her evidence in these regards was unshaken in cross-examination and is accepted.
- [10] It is also Ms. Fagan's further evidence that she entered the bus and then Bald Head entered right behind her. She assumed that Mrs. Williams entered the bus behind Bald Head. The driver started to drive off but stopped suddenly after noises and screams came from outside the bus. She exited the bus and saw Mrs. Williams on the ground with her feet wounded. Ms. Fagan confirmed on cross-examination that she did not know if Mrs. Williams had entered the bus behind Bald Head and admitted that she could not say where Mrs. Williams was standing after she, Ms. Fagan had entered the bus. Her evidence in these regards is also accepted.
- [11] Mrs. Williams' position after crossing the road and in relation to the bus are material to the dispute. Although Ms. Fagan was unable to speak to either of these matters, Mrs. Williams did. Her testimony of the events leading up to the accident was consistent with the facts relied upon in her pleaded case.
- [12] Consistent with Ms. Fagan's evidence, it is Mrs. Williams' evidence that she was in the company Ms. Fagan and man when the bus was stopped. It is also her evidence that they all crossed the road together behind the bus and that Ms. Fagan and the man boarded the bus when it stopped. She goes further to say that she started to enter the bus when its doors started to close which prevented her from boarding and caused her to fall. The bus drove off, running over both her legs and feet.

- [13] Mrs. Williams was not successfully impeached on cross-examination and having seen and heard her, I found her to be a forthright and credible witness. I accordingly accept her evidence as to how the accident occurred, a version which is entirely probable.
- [14] It was suggested to Mrs. Williams in cross-examination that when the bus stopped she did not do anything to alert the driver to her presence. This was the premise of Mrs. Campbell's submissions that Mrs. Williams was contributorily negligent. I do not find the suggested failure to be probative of contributory negligence on Mrs. Williams' part.
- [15] Mrs. Williams disagreed with the suggestion and indicated that she was right behind the gentleman who boarded the bus and would not know that the driver did not see her. Mr. Jarrett having stopped to admit the persons with whom she travelled, I do not consider it unreasonable that Mrs. Williams did nothing further to alert him of her presence at the door of the bus, particularly in circumstances where she and Ms. Fagan say, which I accept, that the place was not dark.
- [16] Having accepted the version of events testified to by Mrs. Williams and Ms. Fagan, the entirely different version put forward by the JUTC as to how the accident occurred, which was previously referenced, must be rejected.
- [17] Learned Kings Counsel Mr. Hylton in submissions referred to instances where the evidence led on behalf of the JUTC contradicts its pleadings, specifically that it:
- (a) pleaded that the entrance to Burger King was approached by the bus at approximately 5:00 a.m. while Mr. Jarrett's evidence in his witness statement and confirmed on cross-examination is that he departed the Rockfort Depot - which I note is some way from Barbican Road - at approximately 5:30 a.m. and was headed to Barbican Square where his duty would start at 5:55 a.m.; and

(b) pleaded that the two passengers picked up at the entrance to Burger King agreed to be transported to Mr. Jarrett's destination of Barbican Square, while Mr. Jarrett in cross-examination stated that he does not know where they were going but that he dropped them off at the intersection of Widcombe and Barbican, and admitted that the two persons were not going to Barbican Square.

[18] While learned Kings Counsel is correct in his observations, the inconsistencies were not proved at trial to enable me to conclude that Mr. Jarrett's evidence in these or any material respect should be regarded as incredible.

[19] Learned Kings Counsel nevertheless submits, which I accept, that fundamentally the case for the JUTC is intrinsically incredible.

[20] The JUTC does not plead any facts in the alternative to that earlier referenced in its defence of the claim which are essentially that Mrs. Williams was not seen before she was discovered bleeding on the asphalt and was not present within the vicinity of the bus door to enter it at any time, aboard the bus partially or otherwise, nor did she begin to board the bus. It curiously goes on to particularise negligence on the part of Mrs. Williams to include "... (c) *[a]pproaching and walking immediately alongside a bus when it was unsafe so to do [; and] (d) [w]alking in the path of the bus wheel...*" The particulars are inconsistent with the facts relied upon in defending the claim; and have not been proved on the evidence advanced by the JUTC.

[21] The gravamen of Mr. Jarrett's evidence is that Mrs. Williams was not seen in the vicinity of Lane Plaza and Burger King or the bus. The question of learned Kings Counsel Mr. Hylton on cross-examination was therefore inevitable - "*where did this lady magically come from?*" to which the witness answered, "*I don't know*". When asked "*Could it be that she chased down the bus from behind?*" the witness said he could not recall. Considering this evidence and the inconsistency in the pleaded case of the JUTC, I am compelled to agree with the submission that its case is

intrinsically incredible, and that the only credible version of the accident with which the court has been left is that put forward by Mrs. Williams.

- [22] Further and in any event, if a different view is to be taken of the submission made by Learned Kings Counsel, it is my view that a finding of negligence is in fact open on the evidence advanced on behalf of the defendant, which makes unassailable the concession by Mrs. Campbell in closing that some particulars of negligence on Mrs. Williams' pleadings were established on the evidence before the court.
- [23] On Mr. Jarrett's evidence he had seen who we learnt are Ms. Fagan and Bald Head beckon him to stop, saw them cross the road behind the bus and enter the bus. He saw no other person within the vicinity of the door or standing at the door to board, and on a check of his left rearview mirror saw no person approaching with a view to board. He checked his right rear-view mirror to see if the road was clear before proceeding to drive off with the door of the bus fully shut. A little after driving off he heard a shout and immediately brought the bus to a stop. He parked the bus and went outside to make enquiries. Using the flashlight on his phone, because the place was dark, he saw a silhouette toward the left rear section of the bus. When he got closer he realised it was a lady on the asphalt with blood flowing from her right foot.
- [24] On consideration of the above evidence and in the absence of any evidence that Mr. Jarrett reversed the bus, it appears to me to be more probable than not that Mrs. Williams had certainly reached to the left side of the bus and had navigated along some part of its left side. Unless she is to be found to have magically appeared, I can think of no other plausible explanation for the location and condition in which she was found by Mr. Jarrett when he parked the bus and made enquiries outside of it. In these circumstances I would find it to be more probable than not that Mrs. Williams could certainly have reached the door of the bus and started to enter it, when the bus drove off from the Burger King entrance effectively preventing her from boarding and causing her to fall.

- [25] Mr. Jarrett appeared to me to be a compassionate man and while I accept his evidence that he did not see Mrs. Williams before he discovered her injured on the asphalt, it does not mean that she was not present and positioned in the manner she says, when the bus door started to close.
- [26] It is also the evidence that Mrs. Williams was wearing dark clothing, and she agreed with the suggestions put to her in cross-examination that because she was wearing such clothing and because Ms. Fagan and the gentleman were standing on the step of the bus it could be hard for the driver to see her at the door.
- [27] It is Mr. Jarrett's evidence that the area was dark. If this evidence is to be accepted, that, together with his evidence at trial that the light inside the bus was not working on the morning of the accident required heightened vigilance on his part when he elected to stop to pick up passengers when the bus was not "in service" at a place which was not designated for that purpose. It appears to me on Mr. Jarrett's version of events, that there was a real risk that passengers that he did not or could not see might attempt to board the bus, which materialised here. Mr. Jarrett being aware of these conditions which affected visibility that morning, he nevertheless took that risk.
- [28] Relying solely on his hearing and sight of two (2) persons crossing from Lane Plaza, once those persons entered the bus he closed the bus door and drove off. Although the light in the bus was not working, which is problematic for the JUTC in itself, it is also Mr. Jarrett's evidence that he had a lighting device. There is no evidence that he engaged that source of light, even at the door, to confirm there were no other persons attempting to board. I consider that to have been a reasonable step to have taken in all the circumstances known to Mr. Jarrett which affected his visibility. In these circumstances, it is my view that there would have been a failure to take a reasonable step which would have enabled him to see Mrs. Williams boarding the bus and ensuring that the doorway was clear before closing the bus door.

[29] In all the foregoing circumstances, I resolve the question of liability in favour of Mrs. Williams, and find the JUTC wholly liable for the accident.

QUANTUM

Special Damages

[30] The sum of \$2,453,468.53 is agreed as special damages.

[31] Mrs. Williams also claims the sum of \$3,350,000.00 for additional loss of earnings from 1st November 2023 to 27th May 2026. This has not been agreed, and Mrs. Campbell submits that it should not be allowed. In so contending, she asked the court to consider that Mrs. Williams would be 72 years old on 25th December of this year and would have passed the retirement age. I observe that the Claimant would have been 68 and on the cusp of 69 in November 2023 and past the retirement age in any event. Mrs. Campbell also relies on the fact that it is Mrs. Williams' evidence that she had been working with her employer at the time of the accident since 1991 but has provided no evidence from the employer of the sums paid to her, or that she would have continued in employment up to this time if the accident had not occurred.

[32] In response, Ms. Allen submitted that Mrs. Williams, who was a domestic worker, was not employed by a formal organization that requires retirement by a certain age. She went further to submit that there was nothing to suggest that Mrs. Williams would not have been able to continue to work but for the accident. She also relied on the fact the claimant's evidence as to her earnings at the time of the accident was not challenged, and that at the time of the accident, the claimant was on her way to work at 68 years old. It was conceded that there was no evidence from Mrs. Williams' employer that she would have continued to be kept in employment but Ms. Allen submits that there is enough evidence in proof of her claim for additional

loss of earnings from 1st November 2023 to 27th May 2026 to enable the additional award to be made.

- [33] Attainment of the retirement age does not prevent employment. When I consider Mrs. Williams' injuries and the evidence of her continued suffering, I am prepared to find that it would affect her ability to work but I have not been placed in a position to determine the extent of the impact. There are two possible options: that her injuries left her unable to work from 1st November 2023 (almost a year after the accident) to 27th May 2026 to claim loss of earning for the period as she now does, or that her injuries left her handicapped on the labour market. While Dr. Ingram's reports gives Mrs. Williams' occupation as "*unemployed*", there is no indication that this status is the result of the injuries sustained in the accident.
- [34] Even if I were to find that the injuries sustained in the accident left Mrs. Williams entirely unable to work, there is also the question of proof. Loss of earnings is an item of special damages, and unless agreed, in addition to being specifically pleaded it is required to be specifically proved. While the evidence provided by Mrs. Williams of her earnings is unchallenged, she has not presented any evidence of loss of her employment. While there is some latitude to relax the requirement for proof of special damages, when I consider Mrs. Williams' evidence as to the history she enjoyed with the employer at the time of the accident, it appears to me that loss of employment on account of the accident was capable of strict proof with some effort. There is no evidence of any effort being so made. In these circumstances, a departure from the requirement for the strict pleading and proof of items of special damages does not recommend itself. The claim for additional special damages in the sum of \$3,350,000.00 is accordingly refused.
- [35] Special damages having been agreed in the amount of \$2,453,468.53, that sum is awarded to the Claimant.

General Damages

- [36] Mrs. Williams' evidence is that both her feet were injured in the accident. While the Defendant pleaded that only one of Ms. William's foot was injured in the accident, Mr. Jarrett conceded in evidence that he observed injury to both feet. I find that both feet were injured.
- [37] The Claimant relies on Medical Reports from Dr. Ephraim Ingram of the University Hospital of the West Indies (UHWI) who was appointed an Expert Witness in these proceedings on 28th November 2024. His reports dated 7th June 2023 and 2nd September 2025 were agreed and admitted into evidence.
- [38] Dr. Ingram had available to him at the time of preparation of his report dated 7th June 2023 Mrs. Williams' UHWI medical file. In recounting her history of impairment, Dr. Ingram outlines that she was taken to the hospital on the day of the accident where she was found to have lacerations to the right leg, ankle and foot with exposed muscle tendons and bone; and wounds to the lateral aspect of the left ankle. X-rays done revealed displaced fracture of the right medial malleolus. She experienced unprovoked seizure while in the emergency department, was admitted to hospital and had wound the irrigation and debridement. She was commenced on antibiotics and analgesics, and on 2nd December 2022 she had further wound irrigation and debridement, application of right ankle spanning external fixator and missed split-thickness skin grafting of the wounds to her right leg, ankle and foot. He goes on to say that she subsequently received further inpatient care with analgesics, antibiotics, physiotherapy and wound care. Mrs. Williams was discharged from inpatient management on 23rd December 2022 and is being followed up in the Orthopedic and Plaster Surgery Out-patient Departments of the hospital.
- [39] Dr. Ingram saw Mrs. Williams in consultation on 6th March 2023 for evaluation of injuries received in the accident and for preparation of his medical report. On presentation, she complained of pain to the right foot for two (2) weeks, intermittent

discharge of pus from one pain site and no constitutional symptoms. On examination, while Mrs. Williams had no obvious distress, she was using a wheelchair for mobilization, her right ankle-spanning external fixator was in place and there was a small amount of pus expressed from a single pain site to the dorsum of the right foot. Her skin grafting recipient site was healing satisfactorily, and the donor site (right thigh) was healed. The Claimant was diagnosed with a degloving injury to the right leg, ankle and foot with Grade III B open fracture of the right medial malleolus, soft tissue injury to the left ankle, pin-site infection to the right foot and delayed union of the right medial malleolus. At this point, she was noted to have had a guarded prognosis. At the time of preparing this report, Dr. Ingram noted that the claimant was unable to receive a disability rating as she was still a patient.

- [40]** The Further Expert Report from Dr. Ingram dated 2nd September 2025 shows that the claimant presented on the 18th July 2025 complaining of pain to both feet most days, swelling to both feet that fluctuated in severity, feelings of instability to the right ankle, drainage of pus from right foot two weeks prior which had stopped six (6) days before presentation, and pain to the right hip sometimes with intermittent stiffness. On examination, he noted that Mrs. Williams ambulated with a cane and had an antalgic gait without cane. There was swelling to both feet and legs up to distal $\frac{1}{2}$ on left and distal $\frac{4}{5}$ on right with pitting oedema bilaterally. He also noted bilateral subtalar inversion. The graft site medial right ankle and foot was healed, pin-site scars were observed to the right leg, scar to the lateral aspect of the left ankle and full active range of motion in the knees. Varying ranges of motion of the different aspects of the ankle and subtalar range of motion between 5° and 30° were also noted.
- [41]** Mrs. Williams continued to be diagnosed with degloving injury to the right leg, ankle and foot with Grade III B open fracture of the right medial malleolus, soft tissue injury to the left ankle and she was also given a current diagnosis of healed right medial malleolus, post traumatic osteoarthritis of both ankles and right talonavicular joint, and chronic osteomyelitis of the right 1st metatarsal bone. Dr. Ingram

opines that Mrs. Williams has a poor prognosis and indicated that he was still unable to provide a disability rating on the basis that she was still a patient.

- [42] The injuries diagnosed in both reports are attributed to the accident. At trial Mrs. Williams ambulated with a cane and required the assistance of her son to move from her seat in the courtroom into the witness box. It is her evidence, which is unchallenged that she has difficulty walking and still feels pain in her feet.
- [43] Counsel for the Claimant relies on the cases of **Jennifer Williams v Jamaica Urban Transit Company Limited and Anor** [2021] JMSC Civ 170 and **Travis Thomas (an infant by mother and next friend M. Stoner) & M. Stoner v M. Shaw and Smith & Steward Distributors Ltd** C.L 1998 T 157 reported in Khans Volume 5 at page 61 in submitting that an award in the sum of \$8,000,000.00 would be appropriate for general damages.
- [44] In the **Jennifer Williams case**, the claimant was involved in a motor vehicle accident on 15th October 2010. She suffered from head injury with loss of consciousness, chest and right upper limb injury. On examination, it was found that she also suffered abrasions to her forehead, tenderness over the sternum, degloving injury to right arm, deformity to arm and forearm and weak pulse in right wrist hand. She was diagnosed as having a concussion with a Grade 3C open fracture of the humerus. She was treated with arterial repair and debridement of the arm. She received daily dressings and antibiotics and had split skin grafting. She was sent to physiotherapy for six (6) months and was discharged from orthopaedic out-patient clinic in July 2011, some nine (9) months after the accident.
- [45] On examination on March 20, 2017, she was found to have a traumatic scar to the distal right arm, 7cm proximal to the elbow joint involving the medial aspect of the cubital fossa, anteriorly extending almost circumferentially around to the lateral condyle dorsally, as well as tethering of skin anteriorly. There was a healed skin graft to lateral elbow posteriorly, and surgical scars from the application of an external fixator. Her range of motion was described as 18 degrees to 120 degrees

flexion in the right elbow and 0 degrees to 135 degrees flexion in the left elbow. There was altered sensation of the index and middle fingers, power was 5/5 and she experienced painful paraesthesia with gripping at full power. While able to perform her daily activities, that claimant continued to experience pain and numbness in the affected limb along with a limited range of motion. She was assessed as having a 7% upper extremity disability and 4% whole person disability. General damages in the sum of \$5,000,000.00 was awarded in October 2021, which updates to \$6,353,448.28 using the most recent CPI of 147.4 (April 2026).

- [46] In comparing the injuries sustained by the claimant in the above claim and Mrs. Williams here, I find that there are notable similarities, including the existence of degloving injuries, open fracture injuries, significant soft tissue injuries and the need for skin grafting and prolonged treatment. While I note that Jennifer Williams sustained a Grade 3C open fracture as compared to the present claimant's Grade III B open fracture, I also note that the present claimant was additionally diagnosed with chronic osteomyelitis, post-traumatic osteoarthritis affecting both ankles and the right talo-navicular joint, bilateral swelling and impaired mobility requiring the use of a cane.
- [47] A significant distinguishing feature however is that in the instant case, Mrs. Williams has not reached maximum medical improvement which has prevented a PPD rating being given by her orthopaedic surgeon. One might be inclined to the view that in the absence of a PPD rating any award here should be reduced. I do would not agree with that view.
- [48] I am aware of the decision of my brother Staple, J in **J.S. (a Minor who sues by his Next Friend Paula Dixon) v Wessell Williams** [2024] JMSC Civ. 116 where two (2) femur fractures and evidence that the claimant was still not able to walk were considered as being reflective of some form of permanent impairment in the absence of assessed PPD. The learned judge was no doubt emboldened in taking that approach in reliance on this dictum from Kangaloo, J.A. in **Theophilus Persad et al v Seepersad et al** (Unreported) Court of Appeal of Trinidad and Tobago, Civil

Appeal Nos 136 and 137/2000, delivered February 28, 2002 at pp 7-8, which was cited in the judgment.

*On the issue of “permanent partial disability” I have noted that doctors generally in their medical reports resort to an assessment of a plaintiff’s disability in terms of a percentage figure. I have no doubt that the origin of this practice is to be found in the Workmen’s Compensation Act where the amount of compensation payable to a workman injured at work is determined by a mathematical formula, one element of which is the percentage of incapacity caused by the injury. In the Act the term used is “partial disablement” which is defined solely by reference to earning capacity. ‘Permanent partial disability’ is not a term of art in the context of the assessment of damages at common law and one wonders whether doctors have a common understanding of what it means as they tend to give percentage assessments which differ markedly, as in the instant case. The case of **Victor Cornilliac v Griffith St. Louis (1965) 7 WIR 491** sets out the matters to be considered by a Court in assessing damages for personal injury. They are as follows:*

- (a) The nature and extent of the injuries sustained;*
- (b) the nature and gravity of the resulting physical disability;*
- (c) the pain and suffering endured;*
- (d) the loss of amenities suffered; and*
- (e) the extent to which consequentially, the plaintiff’s pecuniary prospects have been materially affected.*

The “permanent partial disability” percentage is relevant to consideration (e) and possibly in a very general way to (b). An explanation of the effect of injuries on a person’s earning capacity in words as opposed to figures, would be of greater use to the Courts in their assessment of damage at common law. It is suggested respectfully that doctors set out in their reports, together with the basis for their conclusions, their opinion on how the injury suffered is likely to affect the lifestyle and earning capacity of the

injured Plaintiff, and leave percentages of incapacity for Workmen's Compensation cases.

[Emphasis in original]

- [49] The Board in **Seepersad v Persad and anor** [2004] UK PC 19 at para 10 agreed with the court's disapproval of the practice by medical witnesses of expressing a claimant's disability in terms of a percentage of incapacity.
- [50] While I would not go so far to say that percentages of incapacity should be left for Workmen's Compensation cases or that such indications lack utility in the assessment of damages, agreeing as I do with the observation of Phillips JA, at paragraph 31 of **Richard Sinclair v Vivolyn Taylor** [2012] JMCA Civ 30, that "*... the percentage PPD is a good guide for making an award and for making comparisons in order to arrive at some uniformity in awards*", I find great merit in the suggestion by Kangaloo, JA. It is accordingly my view that whether or not a disability rating is given, medical witnesses should endeavour to indicate how injuries suffered are likely to affect the lifestyle and earning capacity of an injured claimant in order to provide the best assistance to the court which is assessing damages.
- [51] There are many cases where claimants have been appropriately compensated on the basis of comparison with cases where there are similar injuries and adjustments made to awards on consideration of percentages of incapacity. Assessment of damages for pain and suffering and loss of amenities is not an arithmetic exercise however, so caution must be exercised to avoid diminishing the impact of suffering only on account of incapacity ratings. While these ratings can be very useful, where accepted medical evidence is that incapacity cannot be assessed because a claimant has not reached maximum medical improvement and/or is still receiving medical treatment, courts must have some latitude to make appropriate awards on consideration of well-established principles in order to justly compensate a claimant.

- [52] The principles in **Cornilliac v Griffith St. Louis** have been consistently applied to assessment of damages in this jurisdiction. They are reflected for example in **Louis Brown v Estella Walker** (1970) 11 JLR 561, which was cited with approval in the **Jennifer Williams case**. These principles are applicable whether or not percentages of incapacity are given.
- [53] While no PPD assessment was possible in this case, the claimant's injuries are very serious. While Mrs. Williams has had physiotherapy and treatment, her injuries have not stabilised. This is in contrast to the position in the **Jennifer Williams case** where the medical witness was able to assign a disability rating.
- [54] Almost three(3) years after the accident here, this claimant is still being treated for injuries suffered in the accident and has received the additional diagnosis of post-traumatic osteoarthritis of both ankles and right talo-navicular joint, and chronic osteomyelitis (infection and inflammation of the bone and bone marrow) of the right 1st metatarsal bone. She continues to have difficulty walking, ambulates with a cane and still feels pain in her feet. Dr. Ingram's opinion, which I accept, is that her prognosis is poor. In the face of her prolonged suffering, I cannot justly conclude that this claimant should be awarded a sum less than that assessed in the **Jennifer Willimas case** only on account that no impairment rating could be assigned to her. In all these circumstances, and in consideration of Mrs. William's age - which I believe is relevant to probable exposure to continued suffering - it is my view that a similar award to that made in the **Jennifer Williams case** would be appropriate, even in the absence of a disability rating.
- [55] In the case of **Travis Thomas**, the claimant was injured in an accident. He suffered abrasions to both knees, bruising to the elbow, damage to foot in the form of a large heavily contaminated degloving injury of medial border of the left foot with exposed tendons and bones. His foot was debrided in the operating theatre and approximately five (5) weeks after the accident the wound was covered with a Split Skin Graft. The wound healed but for a small area of oozing and he was unable to move the metatarsal phalangeal joint of the big toe. When he was last seen by the

doctor, there was obvious cosmetic mal appearance, a stiff first metatarsal phalangeal joint and a rigid forefoot. He was assessed as having a permanent partial disability rating of 2% of the whole person. General Damages was awarded in the sum of \$750,000.00 in July 1999, which updates to \$5,698,453.61 using the most recent CPI.

- [56] While there are some similarities in the injuries suffered by Mr. Taylor and the Claimant vis a vis a degloving injury to the foot with exposed tendons which required skin grafting, there are differences. Mrs. Williams has sustained more extensive injuries, including a Grade III B open fracture, delayed union, chronic osteomyelitis and post-traumatic osteoarthritis affecting both ankles and the right talo-navicular joint. While Mr. Thomas was assigned a 2% whole person impairment rating, for reasons already indicated for updating the award in the **Jennifer Williams case**, it is my view that this award is also appropriately updated.
- [57] The Defendant relies on **Caswell Rodney v Audrey Binnie-Palmer & Norman Spaulding** Claim No. 2004 HCV1950, **Maureen Golding v Conroy Miller & Duane Parsons** reported at Khans Vol. 6 page 62, **Keekee Walters v Kenry Wallace** [2022] JMSC Civ 80 and **Cecil Gentles v Artwell's Transport Co. Ltd & Joslyn Chambers** reported at Khans Vol. 5 page 60 in submitting that an award of \$2,500,000.00 to \$3,000,000.00 would be appropriate compensation for the Claimant's pain and suffering.
- [58] In the case of **Caswell Rodney**, the claimant was in a motor vehicle accident and suffered injuries. He suffered a fracture to the medial malleolus of the right ankle and was managed on plaster for eight weeks with strict instructions for non-weight bearing on the ankle. One (1) year post injury he was found to have been fully recovered. Further examination revealed that the ankle was lightly swollen and tender over the medial aspect of the joint, however, he had full range of movements at the ankle joint with pain at the extremes of movement and walked with a slight limp. X-rays confirmed that he had early onset of osteoarthritis which the court found was a direct result of the injury sustained in the motor vehicle accident. He

was assessed as having a permanent partial disability of 10% of the function of the right lower limb. Mr. Rodney was awarded general damages for pain and suffering and loss of amenities in the sum of \$650,000.00 in March 2005, which updates to \$2,929,969.42 using the most recent CPI of 147.4 (April 2026).

- [59] Both claimants suffered fracture to the right medial malleolus and had osteoarthritis. Mr. Rodney's arthritis was onset however and the injuries of the claimant here are much more severe, treatment more intensive and period of suffering longer. Mrs. Williams is still suffering after three (3) years post-accident and has a poor prognosis. I would not regard the **Rodeny case** as an appropriate comparator in the circumstances, and if used, a significant updating is advised.
- [60] In the **Maureen Golding case**, the claimant suffered an undisplaced fracture of the left fibula (ankle) and pain in the left leg. She was treated with a plaster cast and made non-weight bearing. She attended outpatient clinic on four (4) occasions and had her plaster removed approximately two (2) months post-accident. She continued to have pain in the left leg and was treated with analgesics and an ankle support. Partial weight bearing also commenced and she was referred to physiotherapy. Seven (7) months post-accident, she was fully ambulant with no significant complaints and was discharged from the clinic. She was temporarily incapacitated for six (6) months, but was not expected to have any permanent partial disability. She was awarded general damages in the sum of \$580,000.00 in July 2006, which updates to \$2,255,725.59 using the most recent CPI.
- [61] Although Ms. Golding and Mrs. Williams suffered fractures to the lower limb, the latter's injuries were more severe and long-lasting. Ms. Golding was fully ambulant approximately seven (7) months post-accident and was discharged from care without any expectation of permanent disability. In contrast, three years post-accident Mrs. Williams continues to ambulate with a cane, exhibits an antalgic gait without it, and has a poor prognosis. The case is not a useful comparator in my view, and if used, would require significant upward adjustment.

- [62] In the case of **Keekee Walters**, the 15 year old claimant was involved in a motor vehicle accident. She suffered a degloving injury to the left foot overlying the lateral malleolus and tenderness to left ankle. X-ray revealed a medial malleolus fracture. She was diagnosed with left ankle fracture and was treated with plaster of paris, Augmentin and Flagyl. She was awarded general damages in the sum of \$1,900,000.00 in June 2022, which updates to \$2,299,343.19 using the most recent CPI.
- [63] In comparing the injuries sustained by Ms. Walters to those of Mrs. Williams, I observe that both suffered degloving injury to the foot and a medial malleolus fracture. However, I am of the view that the present claimant's injuries were more severe, having regard to the course of treatment provided and the additional injuries diagnosed. I have also considered, consistent with the claimant's submissions, that although Ms. Walters complained of pain, she did not seek further medical treatment, which was a concern for the court in assessing the damages payable to her. This is to be contrasted with Mrs. Williams whose evidence of continued pain and suffering finds support in the expert medical evidence admitted in these proceedings. That evidence shows that she actively sought and received treatment and has a poor prognosis. I also do not regard the case as the most useful comparator for these reasons, and if used, a significant upward adjustment would be in order.
- [64] In the **Cecil Gentles case**, the claimant suffered from a bimalleolar fracture of the left ankle and was treated with below knee plaster of paris cast that was applied for seven (7) weeks and he was not allowed to bear weight. He was discharged from hospital within two (2) weeks of the accident and attended follow-up clinic regularly. Within four (4) months of the accident, he could walk without aid and there was no pain at the fracture site. The broken bone had healed well and although he was likely to have arthritis in his left ankle, there was no evidence of it on his last visit to the clinic. General damages was awarded in the sum of \$300,000.00 in February 2000, which updates to \$2,178,325.12 using the most recent CPI.

- [65] With the exception of similarity in the location of injury, I do not find this case comparable. Further, having regard to the extent of this claimant's injuries and treatment, as well as her poor prognosis, if the **Cecil Gentles case** should be used I am of the view that a much higher award would appropriate.
- [66] In all the foregoing circumstances, I am of the view that an award of \$6,500,000.00 would be appropriate award for pain and suffering.

ORDER

1. Judgment for the Claimant on the claim.
2. Special damages are awarded in the sum of **Two Million Four Hundred and Fifty-Three Thousand Four Hundred and Sixty-eight dollars and Fifty-three Cents (\$2,453,468.53)** with interest at 3% per annum from 25th November 2022 to 28th May 2026.
3. General Damages are awarded in the sum of **Six Million Five Hundred Thousand Dollars (\$6,500,000.00)** with interest at 3% per annum from 23rd November 2023 to 28th May 2026.
4. Costs to the Claimant to be taxed if not sooner agreed.
5. The term "NEG 1" is to be inserted in the top centre of the first page of any documents to be filed prior to their filing at the Registry.
6. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge