[2026] JMSC Civ 41

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV00639

BETWEEN	**RICARDO ANDERSON**	**CLAIMANT**
AND	**PERRY FRASER**	**1ST DEFENDANT**
AND	**TITAN CONSTRUCTION**	**2ND DEFENDANT**

IN OPEN COURT

Treshia Griffiths instructed by Treshia Griffiths & Co., Attorneys-at-law for the Claimant.
Ishia Robinson of Counsel, Attorney-at-law for the Defendants.

Heard: 14th May 2026 and 23rd July 2026

Negligence - Internal inconsistency in pleadings - Liability for motor vehicle collision - Whether loss of earnings should be awarded in the absence of effort to obtain proof of employment and pre-accident earnings - Maximum Medical Improvement not reached - Assessment of damages for pain and suffering and loss of amenities where evidence of disability rating not accepted - Handicap on the labour market - Future medical care - Property damage claimed as general damages - Whether interest payable on award for property damage and future pecuniary loss - Defendants served with claim on different days - Unified date of service in fixing interest period for general damages

C. BARNABY, J

BACKGROUND

[1] This claim in negligence arises out of a collision on 7th July 2017 on Orange Bay Main Road in the parish of Hanover between a motorcycle owned and ridden by

Mr. Anderson and a Suzuki pickup truck (the truck) owned by Titan Construction and driven by Mr. Fraser, its authorised driver.

[2] The matter came on for trial on 14th May 2026 and at the close of evidence judgment was reserved to today's date for the parties to file and serve submissions in supplement to those filed ahead of the trial. Those submissions and authorities have been duly considered in determining the claim.

PLEADINGS AND DISPOSITIVE ISSUES

[3] The facts on which the Claimant relies in alleging negligence is that he was riding his motorcycle along Orange Bay Road within the vicinity of Red Rose Hill and Bunny's Bar, when Mr. Fraser negligently drove, operated and/or managed the truck causing it to lose control and collide with his motorcycle, in consequence of which he suffered damage.

[4] Mr. Fraser's negligence is particularised as causing the truck to collide with the motorcycle; causing the truck to be parked along the brow of the hill of Santory Main Road; causing the truck to be parked at a place and time where it could not be seen by oncoming traffic until after oncoming vehicles came over the brow of the hill; causing the truck to be parked at a place so as to cause an obstruction to oncoming traffic in both directions along the single carriageway; failure to illuminate the truck with hazard or park lights when it was parked along a dark thoroughfare without streetlights; reversing along the brow of Santory Main Road; causing the truck to be reversed along the brow of the hill without a clear visibility of motor vehicles approaching from the rear of the truck; causing the truck to be driven and/or operated whilst under the influence of alcohol; failure to stop, slow down, swerve, manage or control the truck so as to avoid the collision; causing the truck to collide with the front wheel, handle, gas tank and frame of the motor cycle; and causing Mr. Anderson to sustain serious personal injury, damage, loss and expense. Special and general damages are claimed in relief.

[5] The Defendants deny the facts and particulars of negligence relied upon by Mr. Anderson and make no admission as to the injury, loss and damage claimed. The Claimant is put to strict proof of both liability for the collision and alleged consequential damage.

[6] It is the Defendants' contention that the collision was caused solely and/or materially contributed to by Mr. Anderson's own negligence. The facts on which they rely are that the collision occurred whilst the truck was stationary along the main road preparing to reverse when Mr. Anderson, who was riding his motorcycle at a fast speed, recklessly collided into the rear section of the truck. They go on to particularise Mr. Anderson's negligence as colliding into the rear of the stationary truck; failing to heed the presence of the truck on the roadway; failing to keep any proper lookout; riding at a fast speed; riding without due care or attention; and failing to stop, slow down, maneuver and/or control the motorcycle so as to avoid the collision.

[7] It is trite that in order for a party who alleges negligence to succeed in establishing it, he must prove the existence of a duty of care, breach of that duty and damage which is not too remote. The burden is discharged at the usual civil standard, that is, on a balance of probabilities.

[8] There is no dispute as to the existence of a duty situation or of the nature of the duty owed. In that regard both parties rely on ***Bourhill v Young*** [1943] AC 92 in submitting that the operator of a motor vehicle has a duty to operate it with reasonable care so as to avoid causing damage to persons who they can reasonably foresee are likely to be affected by the failure to exercise such care. As it relates to motorists, it encompasses the duty to take such action as is necessary to avoid a collision.

[9] On consideration of the parties' pleadings, I find the following five (5) main issues as being dispositive of the claim. They are:

(i) Whether Mr. Fraser lost control of the truck or operated the truck while under the influence of alcohol, causing the collision.

(ii) Whether Mr. Fraser failed to take reasonable care to avoid the collision in parking and/or attempting to reverse in the circumstances which existed at the time of the collision.

(iii) Whether Mr. Anderson was riding his motorcycle at a fast speed which caused him to collide into the rear section of the stationary truck to make him wholly or contributorily negligent.

(iv) Whether Mr. Anderson suffered damage as a result of the collision.

(v) Whether Mr. Anderson is entitled to damages.

[10] Mr. Anderson and Mr. Fraser were the only witnesses of fact to the collision. Each present a different account, which causes questions as to credibility to assume some prominence in resolving the dispute.

Whether Mr. Fraser lost control of the truck or operated the truck while under the influence of alcohol, causing the collision.

[11] The fact on which Mr. Anderson relies in contending that Mr. Fraser caused the collision is that he lost control of the vehicle. Loss of control of a motor vehicle is ordinarily understood as the inability on the part of its driver to safely steer or stop the motor vehicle on account of disruption in stability due to internal and external forces. Mr. Anderson has failed to present any evidence of such matters to enable me to find that Mr. Fraser lost control of the truck and caused the collision as a result.

[12] While Mr. Anderson gives evidence of the presence of a bar within the vicinity of the collision, proximity to bar is not probative of indulgence. No evidence has been presented which would enable me to find that Mr. Anderson caused the truck to be

driven and/or operated whilst he was under the influence of alcohol, thereby causing the collision.

[13] Before moving to address the next issue, I pause to observe that there is dissonance between the facts relied upon by Mr. Anderson in his main pleading to establish the cause of action of negligence and the particulars of negligence which are levelled at Mr. Fraser. By the latter Mr. Anderson seeks to fill in factual gaps in the former, which is improper and as will be seen later in these reasons, has given rise to intrinsic inconsistencies in Mr. Anderson's case relative to how the collision occurred.

[14] I take the opportunity to remind of the duty to set out a short as practicable statement of the facts relied upon to establish the foundation of a case which is sufficient to make out a valid cause of action; and that where the claim is grounded in negligence the obligation is fulfilled where the broad material facts which outline the elements of the cause of action and which tells the story of what happened and why the defendant is culpable, are set out. On the other hand, particulars of negligence are specific and granular allegations which connect the facts pleaded to acts or omissions which a claimant says are blameworthy. While they notify a defendant of the specific case to be answered, they are incapable of introducing new causes of action or filling in factual gaps which exist in the main pleading. In that regard **Trishell Vassell v Desmond Alphonso Richards** [2026] JMSC Civ 71 at paragraphs [12] and [13] may be seen.

Whether Mr. Fraser failed to take reasonable care to avoid the collision in parking and/or attempting to reverse in the circumstances which existed at the time of the collision.

[15] Among the particulars of negligence pleaded by Mr. Anderson is that Mr. Fraser caused the truck to be parked along the brow of the hill, at a time and place when it could not be seen by oncoming traffic until after oncoming vehicles came over

the brow of the hill, at a place so as to cause an obstruction to oncoming traffic in both directions, without hazard or park light on the dark road which was without streetlights.

[16] The truck being parked is inconsistent with the main pleading and one of the particulars of negligence, that is, the truck collided into Mr. Anderson's motorcycle; the allegation that the truck was reversing along the brow, reversed along the brow of the hill without clear visibility of motor vehicles approaching from its rear, driven whilst Mr. Fraser was under the influence of alcohol, and failed to stop, slow down or swerve to avoid the collision which are also among the particulars of negligence.

[17] On Mr. Anderson's own case, the collision occurred when the truck was parked and moving. The incongruity of both accounts is evident. In fact, Mr. Anderson acknowledged this on cross examination on this exchange with Ms. Robinson. He was asked *"[w]ould you agree with me that a truck cannot be parked and be reversing at the same time?"* and replied, *"I would agree".* When directed to the particulars of negligence in his pleadings relative to the parking of the truck and asked whether he would agree that he instructed his attorney that the truck was parked at the time of the accident, he responded *"No"*. The enquiry went no further.

[18] While I observe that the certificate of truth in the Particulars of Claim was given by Mr. Anderson's Attorney-at-law, it is said to be on the basis of Mr. Anderson's instructions that the facts stated therein were true to the best of his knowledge or information, I cannot avoid concluding that Mr. Anderson's case, certainly as to the position of the truck at the time of the collision is intrinsically incredible.

[19] It is not disputed that the collision occurred in the vicinity of a hill and that Mr. Anderson would have been travelling behind, as distinct from in front of Mr. Fraser, along the roadway.

[20] It is also alleged that the truck was *"along the brow of the hill".* The brow of a hill in ordinary signification is its highest edge, top or crest of the slope just before levelling off of the terrain or the beginning of the hill's descent.

[21] It is Mr. Anderson's evidence in chief, that the collision occurred

> *2. … when … [the truck] … reversed into [him] and [his] motorcycle … whilst [he] was riding over the brow of the hill in [his] left and proper lane.*
>
> *3. Upon reaching the brow of the hill, [he] could not see if there was any oncoming vehicle in the right lane. Upon approaching the brow of the hill, I also could not see if there was any vehicle in my left lane ahead. I saw no motor vehicle travelling ahead in my left lane. I also saw no vehicles in the right lane. I had to get to the top of the hill and go over the brow of the hill, before I could see if there was any motor vehicle in my left lane or in the right lane.* ***The accident happened before I got to the top of the brow****…*
>
> *[Emphasis added]*

[22] In cross examination it was suggested to him that *"[t]he accident did not happen before [he] reached the top of the brow of the hill"* to which he replied "*[a]greed".* Ms. Griffiths was permitted to re-examine Mr. Anderson in these regards. The re-examination follows.

> *Q Counsell suggested that the accident did not happen before you reached the top of the brown of the hill and you agreed*
>
> *A I am sure I disagree*
>
> *Q What do you understand when Counsel suggested that the accident did not happen before you reached the top of the brow of the hill to mean?*
>
> *A It did not happen before the brow of the hill*
>
> *Q So when you responded "agreed" are you agreeing that the accident did not happen before you got to the top of the brown of the hill?*
>
> *A Yes. It did not happen before I got to the brow of the hill*

Counsel was also permitted to make the enquiry below.

> *Q What is the distance between the point of impact where the accident occurred and the brow of the hill?*
>
> *A About three (3) feet*

[23] Mr. Anderson's admission on cross examination, which was repeated in his re-examination - that the collision did not happen before he got to the brow of the hill - is inconsistent with his evidence in chief that the accident happened before he reached the brow of the hill.

[24] The precise location of the accident being in issue, I consider the inconsistency to be material. Ms. Robinson did not seek to prove it, however, either during Mr. Anderson's cross-examination or following his re-examination. Mr. Anderson was not confronted with the inconsistency to enable an explanation to be offered, if possible, which would have placed the court in a position to accept or reject it and properly determine the effect of the inconsistency on his credibility in these or other regards. While I do not regard the inconsistency as being proved in the circumstances, when it is considered with what I have found to be the intrinsic incredibility of Mr. Anderson's pleaded case in respect of how the collision occurred, his account of the collision is approached with caution.

[25] Mr. Fraser's evidence, consistent with the Defendants' pleadings, is that the collision occurred while the truck was stationary. In accounting for that position, it is his evidence that his coworker stopped him after he went over the slope and down the hill; that he pulled to the extreme left of the roadway; stopped down the road after going over the hill to let his co-worker out of the truck; and that there was no soft shoulder on either side of the roadway. His evidence in these regards was not impeached on cross-examination and is accepted.

[26] It was not suggested that the collision occurred before Mr. Anderson reached the top of the brow of the hill. In fact, Ms. Griffiths suggested that "[t]*he accident happened after [Mr. Fraser's] co-worker stopped [Mr. Fraser], [Mr. Fraser] went*

over the slope and down the hill" to which the witness emphatically answered "*[y]es, Ma'am".*

[27] In all of these circumstances, I prefer Mr. Fraser's evidence and find that the truck was stationary when the collision occurred and find:

(i) that there was no soft shoulder on either side of the roadway;
(ii) that Mr. Fraser had pulled the truck to the extreme left of the roadway when he stopped to let his co-worker out of it;
(iii) he did so after he went over the slope and down the hill;
(iv) that the truck was then stationary;
(v) that the collision occurred while the truck was so positioned.

[28] It is also Mr. Fraser's evidence that when he stopped the truck and while it was stationary, he put it in reverse and the reverse lights came on. On cross-examination he answered in the affirmative when asked *"[y]our foot was on the brake when the accident happened?" and "[s]o while the vehicle was in reverse gear you put your foot on the brake at the same time?"* It was never suggested to the witness, and rightly so, that this was an impossibility. In any event, I take judicial notice of the fact that it is not. The presence of a reverse light did not prevent the truck being stationary as I have earlier found.

[29] There is no dispute that the accident happened after 11:00 p.m. in the night. Mr. Fraser does not provide any evidence of illumination of the road by streetlights but it is Mr. Anderson's evidence which was unchallenged, and accordingly accepted, that there was no streetlight where the accident happened. When considered together with the absence of a soft shoulder on either side of the road and the visibility challenge presented to road users on opposite sides of the brow of the hill, I find that Mr. Fraser would have brought the truck to a stop at a very precarious position.

[30] I also find that the hill which was between the motorcycle and the truck would have affected both operators' ability to see the motorcycle and truck of the other over

the brow of the hill. This is on account of the common evidence of Mr. Anderson and Mr. Fraser in this regard. It was the former's evidence that he would not see motor vehicles beyond the brow of the hill until he got to the top of the hill and over its brow, and the evidence of the latter, elicited on cross-examination, that he could not see anything behind him over the grade where the collision happened. Heightened vigilance was required by both Mr. Anderson and Mr. Fraser in the operation of the motorcycle and truck respectively on what was, on all accounts, a dark road.

[31] It is also Mr. Fraser's evidence that the distance from the top of the slope to where he stopped was about two and one half (2 ½) times the length of the truck. When asked to estimate the length of his truck on cross examination, he landed at fifteen (15) feet on the basis that the cab and bed were about five (5) feet and ten (10) feet respectively. His evidence in these regards was not challenged and is accordingly accepted. I find that the distance from the top of the slope to where the truck stopped was some thirty-seven and one half (37 ½) feet.

[32] It is also Mr. Fraser's testimony that his reverse lights were bright enough for a motorist to see the truck once the motorist came to the top of the hill. When he was asked on cross-examination whether his reverse light was bright, he stated that it was *"standard light",* that is, *"[l]ike if you going somewhere weh dark, you can see behind that".* When it was suggested to him that the reverse light did not make the truck visible on the dark road, he said that both the reverse light and the truck can be seen. He provided no evidence however of the distance to which the reverse lights projected and could be seen from a motorist travelling behind him. In any event, he agreed that one cannot see the truck and the light until one comes over the grade of the hill and that the purpose of a reverse light is not to make a vehicle visible on a dark road.

[33] Why then did he put the truck in reverse gear, enabling those lights? His response to a like question in cross examination was, *"[t]hat I can see the truck".* When Counsel Mrs. Griffiths asked if *"[he] want[ed] this court to believe [that he] put the*

truck in reverse gear when [he was not] reversing the truck", he responded *"[t]he truck didn't move Ma'am, I was letting out someone".* It is not his evidence that he engaged the reverse light to enable the truck to be visible to other road users.

[34] After answering that he could not see anything behind him when he went over the grade and when asked if *he "agree[d] that Mr. Anderson was coming from behind [him] through this same grade that [he] couldn't see behind?"*, Mr. Fraser answered *"Yes, he was behind me at a distance".* Being so aware and considering the conditions of the roadway, it is my view that a reasonable and prudent driver in the position of Mr. Fraser would have engaged all visual warnings to alert Mr. Anderson that the truck had come to a stop. I take judicial notice that hazard lights constitute one such warning and that their engagement would cause a vehicle's turn signals to flash simultaneously, alerting other road users of an obstruction or that an emergency is being experienced. It is Mr. Anderson's evidence that the back of the truck had no such lights to allow him to see it. Mr. Fraser agreed that there was no hazard light on the truck when the collision occurred as he did not turn it on. It is my judgment that this failure constitutes a failure to take reasonable care, in breach of the duty owed by Mr. Fraser to Mr. Anderson.

Whether Mr. Anderson was riding his motorcycle at a fast speed which caused him to collide into the rear section of the stationary truck to make him wholly or contributorily negligent.

[35] It is Mr. Fraser's evidence in chief - consistent with the Defendants' pleaded case that Mr. Anderson was speeding - that while the truck was stationary, he observed the motorcycle coming over the hill at a "*fast rate of speed"*. What constitutes this fast rate of speed was not stated.

[36] Early in his cross examination when he was asked to describe the speed at which he was travelling vis a vis *"fast, slow or in the middle"*, Mr. Anderson responded *"moderate"*, but when it was suggested to him that he was travelling at a *"fast rate*

of speed", he responded *"[a]greed".* The responses appear to give rise to an inconsistency, but it was not tested. I nevertheless approach the evidence in this regard with caution.

[37] Mr. Anderson's evidence is that the first and second gears of the motorcycle are starter gears which enable the motorcycle to move between 1 to 30 kmph and provide no momentum to go uphill, nor are they engaged when going up a hill. He says if he is riding in those gears, the compression would kill the engine power and bring the motorcycle to a halt. It is also his evidence that the speed in third gear ranges from 40 to 60 kmph. His evidence in these regards was not challenged.

[38] Mr. Anderson's evidence in chief is that he was travelling around 50 kmph at the point of impact. On his unchallenged evidence, his speed would be within the middle of what would take the motorcycle up and over the hill and cannot be regarded as excessive. Additionally, no evidence was led on the speed limit on the roadway to enable me to conclude that Mr. Anderson exceeded it in operating the motorcycle.

[39] In the foregoing circumstances I am unable to find that the Mr. Anderson was operating his motorcycle at an excessive speed and thereby caused the collision.

[40] There is no evidence of the duration of engagement of the reverse light on the truck before the collision occurred. Nevertheless, it was Mr. Anderson's evidence, elicited on cross-examination, that he saw the reverse light on the truck approximately three (3) feet before the accident. He was not challenged on this and it has not been suggested that he would have seen it before he did if he was travelling at a speed below 50 kmph.

[41] Mr. Anderson went on to admit that when he saw the truck he never tried to stop the motorcycle. He disagreed with the suggestion that it was because he was riding at a fast rate of speed that he was unable to stop before colliding into the back of the truck. I find no fault with his disagreement. I consider it to be more probable than not that Mr. Anderson did not seek to stop the bike when he saw the truck,

not because he was travelling at a fast rate of speed but because of his engagement of other evasive action.

[42] It was Mr. Anderson's testimony that when he saw the truck, he veered right to avoid the collision but was unable to safely pass when he did so. He ended up on the right embankment behind the truck after he veered. Mr. Fraser's evidence is that when he exited the truck immediately after he felt an impact to its back, he observed the motorcycle and Mr. Anderson on the extreme right side of the road. He also admitted that based on the position of the motorcycle after the collision, Mr. Anderson had swerved right to avoid the accident. On this evidence it is my judgment that Mr. Anderson swerved right to avoid the collision. I also find that this was a reasonable action taken to avoid the collision in circumstances where Mr. Anderson saw the reverse light on the truck when he was about three (3) feet away from it. In my view there was no failure of the part of Mr. Anderson to exercise reasonable care in the operation of his motorcycle to enable the finding that he caused or contributed to the collision.

Whether Mr. Anderson suffered damage as a result of the collision.

[43] Mr. Anderson's evidence is that upon impact he fell from the motorcycle, hitting his head, face and forearm. Although he said he lost consciousness for a while he regained it at the scene of the collision and came to the realization that a bone was protruding from his left knee cap. He was transported to the Noel Holmes Hopsital by Mr. Fraser. It is also his evidence that his motorcycle was damaged. Mr. Anderson admits that he transported the Claimant to the hospital from the scene of the accident and that there was some damage to the motorcycle. On both parties' case, Mr. Anderson suffered damage as a result of the collision.

[44] It is in all the foregoing premises that I find that it was Mr. Fraser's failure to engage the hazard lights on the truck which was the proximate cause of the collision; and

that Mr. Anderson suffered damage to his person and property as result, to make the Defendants liable in negligence.

[45] The enquiry accordingly turns to the assessment of damages for the injuries and loss alleged to have been suffered.

Whether Mr. Anderson is entitled to damages.

Special Damages

[46] Special damages was agreed in the sum of **Three Million Three Hundred and Twenty-three Thousand Two Hundred and Thirty-seven dollars and Sixty-six cents ($3,323,237.66)**, subject to the court's determination as to liability for the collision. Having found that the Defendants are liable, the said sum is accordingly awarded to Mr. Anderson as special damages.

Loss of Income

[47] The sum of $7,303,500.00 is being sought for loss of earnings from the date of the accident to 30th December 2024 when Mr. Anderson says he regained employment. The Defendants submit that no award should be made under this head on account that Mr. Anderson has not discharged the evidential burden to prove that he was employed at the time of the accident, nor has he stated why there is no proof of his income to entitle him to claim minimum wage. There is merit in the submissions.

[48] It is trite that loss of income is treated as an item of special damages and is accordingly required to be specifically pleaded and proved. The first requirement has been met. While there is some latitude to depart from the requirement for strict proof, the circumstances of this case do not warrant its exercise.

[49] In particularizing loss under this head, Mr. Anderson says that at all material times he did sub-contractual work as a survey assistant for RIU Hotel seven (7) days per week at a rate of $2,700.00 per day. He claims loss of income as a result of incapacity from 7th July 2017 to 27th February 2023. Earlier in his pleadings he stated that he was a tiler at all material times.

[50] In his evidence in chief, he says that he was a tiler and welder at all material times; and that he was doing sub-contractual work as a welder seven (7) days per week at the rate of $2,700.00 per day at the time of the accident. He does not give any evidence as to where he was subcontracted as a welder. It was suggested to him during cross-examination that he was not a subcontractor welder at the time of the accident and he disagreed with the suggestion. Mr. Anderson's evidence is inconsistent with his pleaded case that he was doing sub-contractual work as a survey assistant for RIU Hotel at all material times. While the inconsistency was not proved, it causes me to approach Mr. Anderson's evidence as to his employment and earnings with caution. Mr. Anderson has not caused me to be satisfied that he was employed in any capacity at the material time.

[51] In any event, Mr. Anderson has failed to prove matters which I consider easily proved if reasonable effort was made to obtain proof. There is no evidence of any such effort, reasonable or otherwise; nor is there any explanation for the failure to make such effort or to produce such evidence. Mr. Anderson simply says, "*I have no proof of this income"*. This does not suffice to warrant departure from the requirement for strict proof of special damages.

[52] Mr. Anderson admitted in cross-examination that the RIU Hotel where he said he was doing sub-contractual work was open at commencement of his claim and also indicated that he could not say whether it was open at the time of his witness statement as he no longer lives *"down there".* The fact that he does not live at an area does not prevent enquiries being made. RIU Hotels are well established in the jurisdiction and it appears to me that the continued existence of any of its

properties and evidence of Mr. Anderson's engagement and his earnings therefrom may have been easily proved if any effort was made to obtain proof.

[53] When asked on cross examination who paid him when he was doing survey assistant work as a subcontractor at RIU, Mr. Anderson said he was paid by a subcontractor, whose name he said he does not know. There is no evidence of any effort being made to learn the name of the party he said subcontracted him in order to obtain proof of his engagement or earnings at the time of the accident.

[54] Mr. Anderson's effort to rely on information he is said to have received from the Ministry of Labour and Social Security as to the minimum wages payable for the period of his alleged loss of income will not be sanctioned in all the circumstances. He would have been better served by effort to obtain proof of employment and earnings from the sources best able to provide them but he has failed to do so. The claim for loss of income has not been proved and is refused.

General Damages

Pain and Suffering and Loss of Amenities

[55] The Claimant particularises injuries to his person as follows:

i. Bilateral floating knee
ii. Left tibial shaft fracture
iii. Right proximal tibia fracture
iv. Right femoral shaft fracture
v. Hypertension
vi. Right inferior pole patella fracture
vii. Left fibula fracture
viii. Left saphenous nerve injury
ix. Kleb Pneumonia pin site infection
x. Osteomyelitis

Medical Evidence

[56] Mr. Anderson relies on the medical report of Dr. Patrice Monthrope, Senior Medical Officer of the Noel Holmes Hospital dated 17th June 2025; Medical Summary dated 3rd February 2025 and Amendment thereto by Dr. Yannick-George Johnson, Orthopedic Resident dated 27th June 2025; and a report of Dr. Don Gilbert, Consultant orthopedic Surgeon dated 25th March 2025. Each of these doctors were certified as expert witnesses in the proceeding ahead of the trial. Their reports were admitted into evidence at trial by agreement.

[57] Dr. Monthrope's report shows that the Claimant presented to the Noel Holmes hospital on 7th July 2017, the date of the accident. She gives a history of Mr. Anderson being involved in motor bike accident on the date of presentation. Upon examination, the Claimant was found to have had a 5cm laceration to the left side of the forehead, with the skull noticeably depressed, swollen right forearm with bruise to upper 1/3 of the ventral aspect and the lower limb was bilaterally abducted at the pelvis. The left thigh bone was protruding above the knee, the left leg had an open fracture to the middle 1/3 and the right thigh was grossly swollen in the upper 1/3. The left leg also had a 4cm laceration and a bony deformity and there was bruising above the left nipple. X-ray and examinations revealed fractures of the right and left distal femur 1/3, fractures to the left tibia and fibula and comminuted fracture to the right tibia. An assessment of multiple traumas was made, the Claimant treated and transferred to the Orthopedic Department of the Cornwall Regional Hospital (CRH) for expert care.

[58] A Medical Summary Report Form from CRH dated 1st October 2019 and stamped 4th October 2019 was admitted into evidence by agreement at trial. By way of medical history, it indicates that Mr. Anderson was involved in a motorbike accident and sustained injuries to both lower limbs and elevated blood pressure during the course of admission. 7th July 2017 is given as the date of the accident. Mr. Anderson was diagnosed with bilateral open fracture to the tibia/fibula, right femoral shaft fracture, left distal femur fracture, hypertension in young and Kleb

Pneumonia pin site infection. He was treated by way of Open Reduction and Internal Fixation (ORIF) to the left distal femur with locking plate, plaster of Paris to both limbs, skeletal traction during the course of admission, and co-managed by internal medicine for hypertension. He was transferred to the Kingston Public Hospital (KPH) on 26th September 2017 for further management.

[59] A medical report from the Orthopedic Outpatient Department II of KPH dated 10th October 2019 was also admitted into evidence by agreement. It refers to Mr. Anderson's previous admission to the CRH and his referral to KPH Orthopedic Out-Patient Department II for two (2) weeks. Examination findings of the right lower limb showed obvious shortening, swelling to the mid-thigh and there was an inability to assess range of motion of the knee. There was external rotation of the left lower limb and decreased range of motion. Knee flexion Active 0° and dorsiflexion decrease and plantar flex decrease in the ankle. Investigations show implants to the distal left femur; proximal 1/3 fibula fracture, left tibial shaft fracture-junction of proximal and middle 1/3, right tibial shaft fracture-proximal fracture in plaster of paris-comminuted; left patella fracture - inferior pole; right proximal tibial shaft fracture-comminuted; right middle femoral fracture-oblique. He was diagnosed with bilateral floating knees, left tibial shaft fracture, right proximal tibia fracture, right femoral shaft fracture, hypertension in the young, right inferior pole patella fracture, left fibula fracture and left saphenous nerve injury. He was treated and implants acquired on 18th October 2017 and surgery done on 28th October 2017 (right femur IM Nail, left patella ORIF and revision of left femur locking plate). He was referred to physiotherapy, placed on analgesics and hematinics, received transfused PRBCs on 30th October 2017 and discharged home on 5th November 2017.

[60] Also admitted into evidence by agreement is the Physiotherapy Report from the Physiotherapy Department of the KPH dated 11th February 2019. The report shows that the Claimant was referred to the outpatient physiotherapy department on 14th March 2018 with a diagnosis of bilateral femur and tibia fracture and left patella fracture and post ORIF. At the date of the report, it was noted that the most recent

examination - date not stated - showed significant improvement in pain control in the left knee. There was increased range of motion in the left knee, and he had a hard end feel for left knee flexion which is said to be abnormal and indicates no further increase in range of motion could be achieved with physiotherapy. It was also noted that the Claimant had a deformity of the left leg with increased lateral deviation of the tibia, and that patella mobility was still very limited. He was, however, able to ambulate independently with a cane - he was previously dependent in ambulation on non-weight bearing axillary crutches - and had a lower extremity functional index score of 26/80. The report further noted that the Claimant had benefited maximally from physiotherapy and was advised to continue home exercises.

[61] Dr. Johnson's report dated 3rd February 2025 shows by way of history of impairment, that while Mr. Anderson's bilateral tibia fractures had healed with conservative management after being immobilized in a plaster of paris splint, he presented to the Orthopedic Department of the University Hospital of the West Indies (UHWI) in June 2021 on referral from a private Orthopedic Surgeon due to persistent drainage from the left thigh since 2018. Investigations suggested that Mr. Anderson had developed chronic osteomyelitis of the distal left femur. He had surgery on December 20, 2021, and at that time the left distal femur fracture site was debrided. It had a fibrous non-union. The defect was filled with antibiotic impregnated bone cement. Mr. Aderson remained admitted until 5th February 2022 where he was treated to clear up a deep tissue infection of Klebsiella species. He had further surgery on 21st March 2022 when the bone cement was removed and the defect grafted. He was placed in a cylinder cast and discharged on 25th March 2022. He is seen routinely in the Orthopedic Outpatient Department of the Hospital, with twenty-one (21) clinic visits on record. At a clinic visit on 13th May 2022 the left femur bone graft site had healed but Mr. Anderson has a residual varus deformity of the left tibia. On 11th August 2023 he was awaiting corrective surgery for the left tibial malunion with the placement of an intramedullary nail for fixation.

[62] Physical examination revealed a healed surgical scar to the left thigh, varus deformity to the left leg and approximately a 1cm limb length discrepancy. Radiographs showed healed left distal femur with consolidation of the graft site and left tibia varus deformity with a 15° angular deformity. He was again diagnosed with bilateral floating knee, chronic osteomyelitis of the distal left femur which was treated and malunited left tibia. The diagnosis is attributed to Mr. Anderson's involvement in the accident on 7th July 2017. His final prognosis is said to be dependent on the outcome of his corrective surgery for the left tibia as he will continue to have significant difficulty in mobilizing and weight bearing on the left lower limb. Due to the protracted course of Mr. Anderson's injuries, it is indicated that he is likely to experience permanent muscle weakness which will impact his function. It is opined that he had a moderate ability to travel to work and sit, and a weak ability to stand.

[63] Dr. Johnson's report of 27th June 2025 contains response to questions put on the report of 3rd February 2025. It confirms that the doctor was among those who participated in Mr. Anderson's care at the UHWI from 1st January 2022 to 30th June 2022. It is also indicated that a disability rating assigned in the earlier report was done erroneously and should be disregarded. It is advised that Mr. Anderson remains a patient of the Orthopaedic Out-patient Department awaiting surgery and, as such, has not yet attained Maximum Medical Improvement (MMI). This prevents a formal disability rating being given.

[64] Dr. Gilbert's report dated 25th March 2025 shows that he saw Mr. Anderson on 24th March 2025 for the purpose of assessing his injuries and writing his report. A history of impairment is given which refers to Mr. Anderson's involvement in the accident and some treatment. The report also refers to investigations, including radiographs, the last of which was done on 24th March 2025 as well as physical examination of Mr. Anderson. Dr. Gilbert diagnosed Mr. Anderson with fractures of the right femur, right tibia, right fibula, left tibia, left fibula and left patella in the accident as well as an open supracondylar fracture of the left femur; and that he subsequently developed osteomyelitis of the distal left femur, which was treated

by resection of the involved bone, and now has a malunion of the distal left femur. There is also malunion of the left tibial fracture, limitation in flexion of the left knee, and a 1cm limb length discrepancy.

[65] The prognosis provided was that the 1cm limb length discrepancy does not cause any abnormality in gait and angular deformities of the femur except where they cause shortening of more than 2cm are not usually symptomatic. In respect of the supracondylar fractures, the prognosis is that they inevitably lead to some functional sequelae, ranging from loss of knee movement to instability, pain, weakness, and traumatic arthritis, which is consistent with Mr. Anderson's symptoms of knee pain and limitation in flexion of the joint. It is indicated that Mr. Anderson presently has left knee pain and radiographs showed narrowing of the joint space consistent with early osteoarthritis. It is Dr. Gilbert's view that Mr. Anderson is still young, is expected to have progression of the osteoarthritis of the knee and will ultimately require a total knee replacement. Dr. Gilbert also indicates that the risk of infection following a grade III open fracture is 2.8-40.5%, which was in keeping with the with the fact that Mr. Anderson went on to have osteomyelitis (infection in the bone) despite debridement of his wound in the operating theatre. Dr. Gilbert considered that the limitation in flexion of the left knee, limitation in extension of the knee, and the angular malunion of the left tibial fracture caused lower extremity impairments of 10%, 20% and 9% respectively. This results in a 34% lower extremity impairment rating which is equivalent to a 14% whole person impairment.

[66] With the exception of Dr. Gilbert's opinions in respect of impairment ratings, I accept the opinion evidence contained in the various reports. On consideration of the mechanisms of the accident which I have accepted, I find it to be more probable than not that the injuries sustained and their complications was caused by the accident. The impairment ratings provided by Dr. Gilbert are not accepted as it appears to me that the surgery which he regards as being ultimately required and for which he has provided costing would likely impact Mr. Anderson's physical capabilities, range of motion and pain levels. Until the surgery is done, for which

Mr. Anderson makes a claim for future medical care, I am unable to conclude that Mr. Anderson has reached MMI to enable a reliable final evaluation of permanent functional loss. In these circumstances it is my view that Dr. Gilbert's opinion as to impairment is provisional or temporary at best. Dr. Johnson's opinion that a formal disability rating cannot be given at this time on account that Mr. Anderson remains a patient of the Orthopedic Out-patient Department of the UHWI awaiting surgery and has not yet attained MMI is therefore preferred.

[67] I am of the view that the absence of a disability rating does not prevent a fair assessment of damages payable for personal injury. While permanent disability ratings offer a good guide for making awards and arriving at some degree of uniformity in awards when comparing cases with similar injuries, as I observed in **Ivy Williams v Jamaica Urban Transit Company Limited** [2026] JMSC Civ 66 at paragraphs [50] to [52],

> *[50] … 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… , These principles are applicable whether or not percentages of incapacity are given.*

[68] **Victor Cornilliac v Griffith St. Louis** (1965) 7 WIR 491 requires the court to consider the following in assessing damages for personal injury. They are:

(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.

[69] Counsel for the Claimant relies on some sixteen (16) authorities in submitting that an award in the sum of $40,000,000.00 would be appropriate to compensate Mr. Anderson for pain and suffering and loss of amenities. I do not consider many of the authorities to be appropriate comparators on account that the injuries sustained by claimants in them are not comparable to the injuries suffered by Mr. Anderson. Reliance on many of them is therefore unjustified in my view. They are nevertheless addressed below ahead of my assessment of the authorities which I found to be of utility.

[70] The first authority cited is **Sophia Moore v Lynden Forbes, the Attorney General for Jamaica, Sonia Pinnock & Dudley Buchanan** Suit No. C.L 1997 M 206, Khan Vol. 5, p. 17. While the claimant suffered fractures, they were to the hand, pelvic and thigh. With the exception of a fracture to the thigh, the injuries are quite distinct from those suffered by Mr. Anderson which may be generally categorized as femoral and tibial fractures.

[71] In **Natalie Whylie v Carlton Campbell et all** Suit No. C.L. 1994 W 103, Khan Vol 4, p. 86 the claimant suffered what may be broadly stated as fractures to pelvic areas, neck and foot. I do not consider them comparable to those suffered by Mr. Anderson.

[72] The claimant in **Mark Smith v Roy Green and Anor.** Khan Vol 4, 118, sustained injury to left thigh; injury to large intestine requiring colostomy; extensive loss of skin and soft tissue injury of left lower leg quadrant of the abdomen, left buttock, perineum, genitalia and anus; degloving injury to left lumbar area; laceration of both legs; damage to left sciatic nerve; laceration of urethra and rectum; laceration and contusion of bladder requiring cystosomy; multiple fractures of pelvis with dislocation of sacroilial joint; fracture of left ilium; and fracture of iliopubic and ischio pubic rami. He underwent treatment for 2 ½ years and was left severely handicapped. The injuries are not comparable to Mr. Anderson's.

[73] I also do not find the injuries of the claimant in **Kevin Brooks v Christopher Edwards** [2018] JMSC Civ 167 comparable. In that case Mr. Brooks appears to have suffered open supracondylar fracture of the left femur which required cervical intervention. He had also developed stiffness to the knee and ankle, and appears to have suffered injury to his foot, there being reference to scarring on the instep of the left foot and skin grafting to the dorsum of the said foot.

[74] Mr. Anderson also relies on **Cecil Martin v Uncle Sonny's Transport Co. Ltd** C.L. 1995 M 035, Khan Vol. 5, p. 68 where the claimant suffered swelling and deformity of right thigh with 10cm skin-deep laceration, 13cm superficial laceration to anterior aspect of left leg and oblique fracture of the right femur at junction of middle and distal third. Again, I do not find the case to be a useful comparator based on the dissimilarity in injuries.

[75] In **Carlton Parkins v Tennyson Taylor and Ors.** C.L. 1989 P 049, Khan Vol 4 p. 75, the claimant suffered from a compound fracture of the right femur; 3cm laceration on the right thigh; 3 lacerations ranging from 2cm to 5cm to the right side of the forehead; left renal contusion with retroperitoneal hematoma; oval

hyper-pigmented scar of 6" x 2-1/2'" on the mid lateral aspect of his right thigh; 6"x4" irregular scar with tendency to keloid formation on the mid anterior aspect of the left thigh being the donor site for skin graft; 6" operation scar to the lower abdomen and 1" shortening of the right lower limb. He also had an increased risk of developing renal hypertension. I do not find the authority useful as a comparator.

[76] I come to a like view of **Beverley Francis v Donovan Pagon and Anor.** C.L. 1992 F 069, Khan Vol 4 page 52 and **Marlene Brown v Lema Malcolm and Anor.** 2006 HCV 00895**,** Khan Vol. 6, p. 8. In the former the claimant suffered a swollen tender left lower thigh with movements diminished due to pain and comminuted supra condylar fracture of the left femur; and the claimant in the latter suffered brief loss of consciousness, a fracture of the right tibia, soft tissue injury to the left leg and hypopigmented scars to the right leg.

[77] In **Horace Allen v Tekel Barret v Eastern Banana Estates Ltd.** Khan Vol. 5, p. 56, the relevant plaintiff suffered from displaced fracture of middle 1/3 of right femur and displaced fracture of lateral condyle of right femur with large haemarthrosis. I do not consider the case a useful comparator.

[78] **Barrington Mckenzie v Christopher Fletcher and Anor. Joseph Taylor** CL #1996 M075, Khans Vol. 5, p.72 and **Johnathon Johnson v the Attorney General for Jamaica, Jamaica Public Service Company Limited, Cable and Wireless Jamaica Limited**, Khan Vol. 6, p. 58 were also cited in submissions for the Claimant, as indicated, but neither authority was supplied to the court for consideration. Based on the injuries indicated in the submissions, however, I would not have regarded the cases as useful comparators.

[79] The Defendants rely on the **Cecil Martin case** which I already determined is not a useful comparator and **Delzorene Wilson v Hopeton Caven** Suit No. W029 of 1989, delivered 30th July 1993 reported in summary in *Harrisons' Assessment of Damages [Cases on Personal Injury and Fatal Accidents*], 2nd Edn. p. 601 - also relied on by Mr. Anderson and addressed below - in submitting that general

damages for pain and suffering is to be awarded in the range of $6,000,000.00 to $8,000,000.00.

[80] In the **Delzorene Wilson case**, a 73 year old plaintiff was struck down unconscious by a motor car on 31st July 1987. She regained consciousness at hospital the morning following the accident. As a result of the accident, she suffered fractures of the distal third of both femurs; fracture of the upper and left tibia and fibula; and fracture of the left and right superior rami of the pelvis. The claimant reached MMI in April 1988. She had a permanent impairment of 30% of the right lower extremity due to marked bowing of the right lower femur, instability of the knee and subsequent traumatic arthritis. The impairment rating took into account the 1-inch shortening of the right lower extremity compared with the left and a 5-degree hyperextension of the left knee with loss of full flexion. The left lower extremity impairment was assessed as at 20%. A whole person impairment of 19% was assigned. The sum of $300,000.00 was awarded as general damages for pain and suffering and loss of amenities in July 1993, which updates to **$6,376,056.34** using the most recent CPI of 150.9 (June 2026).

[81] The injuries suffered by Ms. Willison are comparable to Mr. Anderson's. I observe however that the case is of some antiquity and accordingly heed the caution of Lord Carswell writing for the Board in **Seepersad v Persad and Another** (2004) 64 WIR 378, paragraph 15 that "… [t]*he methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do no more than demonstrate a trend in very rough and general terms."* The caution is applicable to all the cases below, the most current having been delivered nineteen (19) years ago.

[82] In addition to the above caution, I also observe that Mr. Anderson aged 22 at the time of the accident and 31 at the time of trial is a much younger man who is taken to have a greater life expectancy than the plaintiff in the **Delzorene Wilson case**. Ms. Wilson also reached MMI some nine (9) months after her accident and does not appear to have experienced any of the complications which Mr. Anderson has

had as a result of the accident. While Mr. Anderson has made tremendous stride in recovery, the evidence from expert medical practitioners is that almost eight (8) years after the accident, Mr. Anderson is likely to experience permanent muscle weakness which will impact his function which has led one to the opinion that he has a moderate ability to travel to work and sit, and a weak ability to stand. The other is of the view that while the 1cm limb length discrepancy does not cause any abnormality in gait and angular deformities, the supracondylar fractures, though healed, would inevitably lead to some functional sequelae, ranging from loss of knee movement to instability, pain, weakness, and traumatic arthritis, which is consistent with Mr. Anderson's symptoms of knee pain and limitation in flexion of the joint. Radiographs also show narrowing of the joint space consistent with early osteoarthritis which gives rise to the expectation that Mr. Anderson will experience progression of the osteoarthritis of the knee and will ultimately require a total knee replacement. Mr. Anderson's injuries appear more serious and he has endured pain and suffering for a much longer period. In these circumstances I consider that a significant upward adjustment of the award in the **Delzorene Wilson case** would be appropriate.

[83] In **Patrick Lawrence v Frank Cole** *Harrisons' Assessment of Damages [Cases on Personal Injury and Fatal Accidents*], 2nd Edn. p. 287 the plaintiff sustained a fracture of the lower pole of the right patella with a chip out of the right medial femoral condyle and an abrasion around the right eye. There was swelling, bleeding and tenderness of the right knee. He had an 18cm long permanent scar on the medial parapatella area and a 5cm quadriceps deficit on the right side with limited flexion. He had coarse movement of the joint and degenerative changes related to the femoral condylar damage. He was unable to stand for long periods and to stoop and also experienced continuous back ache and headache. He had pain in the knee when he sat, drove or stood too long and there was prospect of future degenerative changes to the joint. His permanent partial disability was assessed at 21% of the affected limb with an additional 10% being added for extensive loss of muscle bulk. Mr. Lawrence also required knee replacement which would last 5-6 years on account of his age at trial. General damages for pain and

suffering and loss of amenities was awarded in the sum of $120,000.00 in October 1990, which updates to **$7,243,200.00** using the most recent CPI of 150.9.

[84] While there are similarities in that both Mr. Lawrence and Mr. Anderson suffered injury to the knee joint, patella fracture, injury to the femur and will require a total knee replacement, Mr. Anderson's fractures were not limited to a single leg. It is also observed that the report does not give Mr. Lawrence's age, any indication of a period of pain and suffering, nor does it allude to Mr. Lawrence suffering complications of the kind experienced by Mr. Anderson as a result of injuries sustained in the accident. While not the best comparator, the authority is capable of providing some assistance in that it inclines me to the view that Mr. Anderson's fractures to both limbs and the complications resulting therefrom should command a significantly higher award for pain and suffering and loss of amenities than that made in the **Patrick Lawrence case**.

[85] The 26 year old plaintiff in **Donald Russell v Bruce Bryan** C.L. 1992 R 079, Khan Vol 5, p. 13 also suffered serious injuries from a motor vehicle accident on 28th February 1988. He had bilateral fractures of the neck of right and left humerus; comminuted fracture of upper 1/3 of shaft of left femur; fracture of left patella; lacerations over forehead, chest, right upper thigh, right upper calf, left knee and left lower leg; and fracture of left pubic ramus. He was admitted unconscious at the first presenting hospital where his lacerations were treated and then transferred to another because of his multiple seriousness fractures. While his general condition improved, progress was complicated by urinary infection and skin infection over the left patella. He underwent surgical intervention, was totally disabled up to ten (10) months after the accident and required physiotherapy. By April 1989 however, just over one (1) year after the accident he had reached MMI. There was a possibility that he would develop traumatic arthritis or osteoarthritis of the left knee. His permanent partial disability rating as assessed by two (2) doctors was between 18%-22%. He was awarded general damages for pain and suffering and loss of amenities in the sum of $1,200,000.00 in June 1999, which updates to **$9,431,250.00**.

[86] Like Mr. Russell, Mr. Anderson is a young man. There are also similarities in the injuries suffered, that is, fracture to the femur and patella; and required surgical intervention by way of ORIF. Mr. Anderson's injuries appear more severe, however, and have not stabilized to reach MMI; his exposure to and experience of pain and suffering also appears much more prolonged. An upward adjustment of the award in the **Donald Russell case** is therefore considered appropriate.

[87] The 50 year old claimant in **Milton Porteous v Glenton Morrison and Ors.** C.L. 1996 P 203, Khan Vol. 6, p. 14, suffered a comminuted fracture of the right femur, displaced fracture of the right tibia, compound displaced fracture of the left tibia and fibula and respiratory distress as a result of a motor vehicle accident on 2nd December 1994. He underwent a fasciotomy to relieve respiratory distress and surgery for fracture. He was discharged from hospital and the femoral fracture became angulated and there was non-union of the right tibia with persistent infection. He was again hospitalized to have the plate removed from his right lower limb. He was discharged from hospital on 11th July 1996 but was left with a marked stiffness of the right ankle and an inability to extend the right ankle. Dr. Dixon assessed him as having a permanent disability rating of 25% and Dr. Fray found that he had a permanent disability rating of 26%. General Damages was awarded in the sum of $7,500,000.00 in June 2007, which updates to **$28,152,985.08.**

[88] While there is some similarity in injuries suffered by Mr. Porteous and Mr. Anderson in that they both sustained fractures of the femur, tibia and fibula; required surgical intervention and experienced post-operative complications, Mr. Anderson's injuries appear on their face to be more serious. Mr. Porteous was also a significantly older man than Mr. Anderson and his injuries appear from the report to have stabilized in approximately nineteen (19) months from the date of the accident, without any evidence of prolonged suffering of the kind experienced by Mr. Anderson.

[89] When the above distinguishing features between the **Milton Porteous case** and the instant are considered in isolation, it might be instinctively thought that a similar

or higher award is warranted here for pain and suffering and loss of amenities. The comparator being one of some antiquity however, I am reminded of the caution in the **Seepersad case** that comparisons in these circumstances can do no more than demonstrate a trend in very rough and general terms. Accordingly, when I consider the award in the **Milton Porteous case** against the awards in the **Delzorene Wilson**, **Patrick Lawrence** and **Donald Russell cases**, and the award made in **Vincent Gallimore v Kofi Foster** 2006 HCV 00316, Khan Vol 6, p. 4 just one (1) month after the **Milton Porteous case,** I am of the view that the latter award is an outlier and I so treat it.

[90] In the **Vincent Gallimore case,** the claimant a 35 year old building contractor suffered jagged laceration of the lateral aspect of the right knee joint; fracture of the left femur; mid-shaft and intra-articular fracture of right distal femur; and fracture dislocation of the right knee. They arose out of a motor vehicle accident on 4th September 2004. He was admitted to hospital where he had debridement, irrigation, ORIF to his right knee joint injury and skeletal traction applied to the left lower limb. He also had surgery for soft tissue coverage of the right knee with fasciocutaneous flap. He was discharged from hospital on 24th October 2004 almost two (2) months after the accident, wheelchair bound for outpatient treatment and regular review and dressing by a plastic surgery team. Approximately one (1) year and seven (7) months post-accident he saw an orthopedic surgeon on 28th July 2006 who found left tibial Steinmann Pin in place, hinged knee brace on the right lower limb and limited range of motion on the right knee with deformation. He also found superficial scars to the occipital area healed without functional deficit; right lower limb shorter than the left; varus deformity of the left knee; 5.7 cm scarring commencing at the middle of the right thigh across to parts of the right knee; gaping ulcer at the right knee exposing implanted screws and washers along with necrotic bone; no active right knee movement and a painful jog of passive motion and inability to straight leg; Sensation along right saphenous nerve distribution diminished; Varus deformity of the left thigh with course patellofemoral crepitus; and a moderate degree of laxity at the medial collateral ligament off the left knee. Permanent impairment was assessed at 66%

of left lower extremity or 26% whole person and 64% of right lower extremity or 26% whole person giving a combined impairment or 45% of the whole person.

[91] The orthopedic surgeon opined that the status of the right knee constituted a potentially dangerous condition that would lead to septicemia (diffused infection) that could lead to amputation or possible loss of life. Surgery was indicated to address the matter of infection as well as restoration of some of the contour of the knee. It was also envisaged that the claimant would require bilateral total knee replacements. If he had total knee replacement impairment would likely be 15% whole person of each knee and where successful, it would enable the claimant to walk on the level and on sloped ground without significant pain or discomfort but would not enable him to safely work on high ladders over a protracted period or carry heavy weights. He would be able to inspect construction sites, supervise and direct workers employed under his control and drive an automobile including heavy duty equipment without serious risk to himself. General damages in the sum of $2,500,000.00 was awarded in July 2007 for pain and suffering and loss of amenities, which updates to **$9,269,041.77** using the most recent CPI.

[92] Mr. Galimore and Mr. Anderson are a similar age and both suffered fractures to the left and right femur and knee injuries which required surgical intervention including knee replacement. While there are these similarities, Mr. Anderson has had a number of surgeries as a result of his injuries and has in fact suffered serious complications including chronic osteomyelitis of the distal left femur. He has been in and out of hospital for some time and almost eight (8) years after the accident he was still feeling pain and has limited flexion in the joint on account of the supracondylar fractures. Though healed, those fractures will lead to functional sequelae. On my assessment Mr. Anderson’s injuries appear to be more serious and he has had to endure pain and suffering well in excess of the period suggested of the claimant in the **Vincent Gallimore case**. For these reasons I consider an upward adjustment of the award in that case is appropriate.

[93] Notwithstanding that Mr. Anderson has not reached MMI to enable any permanent impairment rating to be given at this time, on consideration of the foregoing comparable authorities which I treat as a rough guide, the nature and extent of Mr. Anderson's injuries which has reduced his ability to travel to work and sit to moderate and his ability to stand weak, continued symptoms of knee pain and limitation in joint flexion eight (8) years after the accident, it is my judgment that general damages for pain and suffering and loss of amenities in the sum of **Thirteen Million Dollars ($13,000,000.00)** is properly awarded to Mr. Anderson.

Future Medical Care

[94] Mr. Anderson claims the sum of $3,230,000.00 for future medical expenses. The same was included in his pleadings pursuant to a properly unopposed application for amendment. The sum represents the cost of surgery for left total knee replacement set out in Dr. Gilbert's medical report. It is the said doctor's evidence that the Mr. Anderson, who he examined last year, still had knee pain and that radiographs of the knee show narrowing of joint space consistent with osteoarthritis, which is expected to progress due to Mr. Anderson's youth and will ultimately require a total knee replacement. The sum of **Three Million Two Hundred and Thirty Thousand Dollars ($3,230,000.00)** is therefore awarded for future medical expenses.

Property Damage

[95] Mr. Anderson also makes a claim for damage caused to his 2014 Wass Motorcycle by the accident. The sum of $118,000.00, which includes the sum of $13,000.00 for an assessor's report is claimed in submissions.

[96] The cost of the assessor's report is an item of special damages, for which an award has been agreed. That leaves the sum of $105,000.00.

[97] Mr. Anderson's evidence, which is accepted, is that the motorcycle sustained damage to the front rim, front shock, head lamp bracket, gas tank, seat, right and left indicator brackets, odometer bracket, front tyre, handle, odometer, brake lever, engine, rear rim and tyre, right and left mirrors, front fork, head lamp, frame, muffler system, right and left indicator lamps, and wire loom. A Damage Assessment Report prepared by National Loss Adjusters dated 20th May 2019 was admitted into evidence by agreement and it is indicated that the motorcycle was a total loss and that loss was caused by collision. That loss is assessed at $105,000.00, which is the stated pre-accident value of Mr. Anderson's motorcycle. I consider the loss proved and accordingly award the sum of **One Hundred and Five Thousand Dollars ($105,000.00)** for property damage.

Handicap on the labour market

[98] Mr. Anderson's pleadings include a claim for damages for handicap on the labour market, and he submits that the lump sum of $3,000,000.00 should be awarded under this head. The Defendants submit that in the absence of evidence of Mr. Anderson's current income the lump sum approach should be taken, and that having regard to the low risk of unemployment the sum of $1,500,000.00 would be a reasonable award under this head. I find merit in the submissions that an award should be made for handicap on the labour market using the lump sum method but consider that an award of $1,500,000.00 would be appropriate in the circumstances of this case.

[99] Mr. Anderson relies on the dictum of Sykes, J as he then was in **Icilda Osbourne v George Barned and Ors.** Claim No. 2005 HCV 294, unreported judgment delivered 17th February 2006, where **Moeliker v A Reyrolle & Co. Ltd** [1977] 1 ALL E.R. 9 was cited with approval. The latter case was also cited with approval by Thomas, J in **Kevin Brooks v Chrisopher Edwards and Ors.** [2018] JMSC Civ 167 cited by the Defendants. The Moeliker case makes it clear that what is being quantified under this head of damages is the present value of the risk that a

claimant will suffer financial damage at some future time because of his disadvantage in the labour market.

[100] The cases demonstrate that two approaches are used in assessment of handicap on the labour market. The multiplier/multiplicand method, which is appropriate where the court has reliable information of matters such as income and remaining working life, and in the absence of such information the lump sum method.

[101] In addition to those principles, I also find the guidance of Sykes, J (as he then was) at paragraph 53 of **Andrew Ebanks v Jephther McClymont** Claim No. 2004 HCV 2172, unreported judgment delivered 8th March 2007 to be instructive. So far as applicable to the instant case, they are:

> a. *if the claimant is working at the time of the trial and the risk of losing the job is low or remote then the lump sum method is more appropriate and the award should be low…*
> b. *If the claimant is working at the time of the trial and there is a real or serious risk of losing the job and there is evidence that if the current job is lost there is a high probability that the claimant will have difficulty finding an equally paying or better paying job then the lump sum method may be appropriate depending, of course, when this loss is seen as likely to occur…*

[102] It is Mr. Anderson's evidence that since the accident in July 2017, he has worked as a bus driver in 2024 and has been employed as a welder to Tru Juice since 2025. He admitted in cross examination that he got a contract of employment when he started working at Tru Juice and gets paid fortnightly. He has not provided any evidence of these or pre-accident earnings, however. The court is therefore without reliable data concerning his income and remaining working life to enable use of the multiplier/multiplicand method for assessing damages under this head. Use of the lump sum method, as submitted by the parties, is therefore appropriate.

[103] The Defendants concede in submissions that there may be a risk that the Claimant could lose employment in the near future, on account of his evidence that he would

be unable to work for a period of time after he does his knee replacement surgery. They point to the fact that Dr. Gilbert does not state the likely recovery period subsequent to surgery so Mr. Anderson is unable to say how long he would be out of work; nor does the doctor give an estimate of the period required for the surgery. The observations are correct.

[104] I have considered the medical evidence and while it is clear that the accident has caused serious injury to Mr. Anderson, there is nothing to suggest that he is incapable of working or that his injuries are likely to prevent him from obtaining or maintaining employment in the future. It is the evidence of the medical professionals however that some functional sequalae is likely as a result of Mr. Anderson's injuries. In the circumstances I find that there is a real risk that Mr. Anderson may be disadvantaged in the labour market at some time in the future. The fact that he has been able to work since the accident, however, and absent any evidence that his injuries have caused any diminution in earnings, I do not consider the risk to be great. A low but not insignificant award is therefore appropriate. The sum of **One Million Five Hundred Thousand Dollars ($1,500,000.00)** submitted by the Defendants meet these criteria and is accordingly awarded for handicap on the labour market.

Interest of General Damages

[105] A question of whether interest should be awarded on general damages for property damage, handicap on the labour market and future medical care also arose. Ms. Robinson submitted that it is not usually awarded for those heads of general damage. I find merit in the submission so far as it relates to future pecuniary loss, but not the loss relating to property damage which would have occurred and crystalised pretrial. This accords with the principle in **Jefford v. Gee** [1970] 2 Q.B. 130 that interest should not be awarded for future pecuniary loss on account that the plaintiff has not been kept out of his money and would in fact have received it in advance by such an award, which was applied in **Clarke v Rotax Aircraft**

Equipment Ltd. [1975] 1 WLR 1570 and cited with approval by Sykes, J (as he then was) in **Andrew Ebanks**.

[106] In all the foregoing premises that I make the orders below.

ORDER

1. Judgment for Claimant.
2. Special damages are awarded in the sum of **Three Million Three Hundred and Twenty-three Thousand Two Hundred and Thirty-seven dollars and sixty-six cents ($3,323,237.66)**.
3. Interest on special damages at 3% per annum from 7th July 2017 to 23rd July 2026.
4. General damages are awarded as follows:
    a. **Thirteen Million Dollars ($13,000,000.00)** for pain and suffering and loss of amenities;
    b. **Three Million Two Hundred and Thirty Thousand Dollars ($3,230,000.00)** for future medical care;
    c. **One Hundred and Five Thousand Dollars ($105,000.00)** for property damage; and
    d. **One Million Five Hundred Thousand Dollars ($1,500,000.00)** for handicap on the labour market.
5. Interest on general damages, with the exception of the award for handicap on the labour market and future medical care, at 3% per annum from 16th March 2023 to 23rd July 2026.
6. Costs of the claim to the Claimant to be taxed if not agreed.
7. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge