[2020] JMSC Civ 128

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISON

CLAIM NO. 2013HCV02305

BETWEEN	**GLENROY YORKE**	**CLAIMANT**
AND	**MICHAEL ANTHONY LEE**	**DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. 2013HCV06733

BETWEEN	**GLENROY YORKE**	**CLAIMANT**
AND	**DELROY MILLWOOD**	**DEFENDANT**

IN OPEN COURT

Mr Richard R. Reitzin and Miss Keisha Spence instructed by Messrs Reitzin & Hernandez for the Claimant

Mr Steven Jackson instructed by Messrs Samuda & Johnson for Michael Anthony Lee

Mr Clifton Campbell instructed by Archer, Cummings & Company for Delroy Millwood

NEGLIGENCE -Motor vehicle accident- Personal Injury- Vehicle slowing down to an almost stop near a corner/bend- Vehicle colliding in the rear of vehicle near a corner- Blameworthiness- Apportionment of liability

Heard: December 18, 2019, December 19, 2019 & June 26, 2020

WOLFE-REECE, J

INTRODUCTION

[1] The respective claims before the Court arose out of a single motor vehicle accident that occurred on or about the 16th February, 2013 at Wilberforce in the parish of Saint Ann. The sole Claimant in both matters is Mr. Glenroy Yorke, he initiated separate claims on the 17th April 2013 and the 6th day of December, 2013 against Mr. Michael Anthony Lee and Mr. Delroy Millwood, respectively, to recover damages for personal injuries and loss suffered by him by virtue of his involvement in the said accident. On the 17th of November 2014, Master Bertram-Linton (as she then was), ordered, inter alia, that the claims against both defendants should be tried on the same occasion.

BACKGROUND

[2] The facts are that on or about the 16th February, 2013 at about 2:00 p.m. the Claimant, Mr Glenroy Yorke, was travelling from Alexandria to Brown's Town in the parish of Saint Ann as a passenger in Toyota Corolla motor car registered PC 5919 (hereinafter called the taxi), which at all material times was owned and driven by Mr Delroy Millwood. Upon reaching a corner/bend in the road at a place known as Wilberforce, a Land-Rover Freelander station wagon registered 5267 FG (hereinafter called the Land-Rover), which was owned and driven by Mr Michael Anthony Lee, collided into the rear of the taxi in which the Claimant was travelling.

[3] As a result of the collision the Claimant suffered the following injuries, which are more particularly described in the medical report of Dr. Alford H Jones;

(i) Tenderness to the muscles of the posterior neck
(ii) Tenderness to the right sternomastoid muscles
(iii) Tenderness to the left sternomastoid muscles
(iv) Flexion and lateral rotation of the neck was restricted by pain and stiffness

(v) Tenderness to the muscles of the lumbar area of the lower back. Flexion of the lumbar spine was restricted by pain

[4] Mr. Yorke claims that the accident and by extension the injuries which he sustained, are as a result of the negligence of both Mr. Lee and Mr. Millwood. I hereunder outline the claim against each defendant and their respective defences.

CLAIMANT'S CASE

[5] The Claimant gave evidence that he was travelling on his way to work in Delroy Millwood's taxi from Alexandria to Brown's Town in Saint Ann. According to Mr. Lee, the vehicle was a left hand drive and he was seated in the back seat behind Mr. Millwood.

[6] He noted that when the car reached a corner/bend in the area of Wilberforce, Mr. Millwood slowed down *"to an almost stop"* when a driver from the opposite direction signalled to Mr. Millwood that there was police ahead. During cross-examination the Claimant gave evidence that the vehicle did not come to a complete stop, rather it slowed down to enable Mr. Millwood to exchange words with the driver who was coming from the opposite direction. The Claimant could not say how fast the vehicle was travelling at that time but he noted that the vehicle did not stop and that the pause or slowing down was for only about 5 seconds before Mr. Lee collided into the rear of the taxi.

[7] The initial claim filed by the Claimant on the 17th April, 2013 was against Michael Anthony Lee, wherein the Claimant alleged that the collision was due to the negligence of Mr. Lee. He particularized the negligence of Mr. Lee as follows:

(a) Failing to Keep any or any proper lookout;
(b) Failing to keep a safe distance from the vehicle in front;
(c) Failing to maintain any or any proper control over the motor vehicle;
(d) Driving at a speed which was excessive in the circumstances;
(e) Failing to have any, or any sufficient, regard for the safety of other road users, including the claimant;

(f) Failing, by means of braking, steering or otherwise, to stop, slow down or otherwise avoid the said collision.

[8] Mr. Lee filed a defence on the 9th October, 2013 wherein he admitted that he collided in the rear of the taxi but alleged that the collision was as a result of Mr Millwood's negligence. The Claimant filed a Claim on the 6th December, 2013 against Mr. Millwood wherein he particularized the negligence of Mr Millwood as follows:

i. Slowing down and/or stopping at or near the exit of a corner;
ii. Slowing down and/or stopping just beyond the view of the following driver;
iii. Slowing down and/or stopping in the path of a following vehicle;
iv. Causing an obstruction of the following vehicle;
v. Failing to give any or any adequate warning to the following vehicle of his intention to slow down and/or stop at or near the exit of a corner

CLAIMANT'S SUBMISSIONS

[9] Mr. Reitzen, Counsel for the Claimant submitted at paragraph 22 of the Claimant's submissions, that the collision was caused by Mr. Lee in that he failed to keep a proper lookout, failed to maintain a safe distance behind the taxi and drove too fast in the circumstances, particularly in the vicinity of a corner in circumstances where he was unable to see clearly around the corner.

[10] Learned Counsel went further to submit that Mr. Millwood was also negligent for stopping at or near a bend and alongside or opposite a stopped vehicle, the claimant cited several sections of the Road Code and the Road Traffic Act to support his point.

[11] He submitted the case of **Waller v Levoi** (1968) 112 Sol Jo 865, (1968) Times, 16 October found at page 369 in Bingham and Berryman's Personal Injury and Motor Claims Cases 11th edition for the Court's consideration. Mr Reitzen opined that the circumstances of that case "*is on all fours with the case at bar*." In that case,

the Defendant stopped at a kerb and the Claimant ran into the rear of his car. The Court of Appeal found that the Claimant was 80% negligent and the defendant was 20% negligent. The Court reasoned that a car parked at a bend should not pose a danger to both a careful driver or a person who drove carelessly as a driver owed a duty of care to careless drivers who drove too fast or was temporarily inadvertent.

[12] Counsel also cited decisions such as ***Rugg v Marriott*** (6 October 1999, unreported) and ***Lemon v Ifield & Barrett Roofing Ltd*** (24 March 1998, unreported) which were both cited at pages 370 and 371, respectively, in Bingham and Berryman's Personal Injury and Motor Claims Cases 11th edition. The Claimant distinguished the instant case from ***Rugg v Marriott*** (supra) in arguing that stopping by a bend/corner raised a possibility of danger which should have been reasonably apparent to Mr Millwood to cause him to exercise more care in the circumstance.

Cross-Examination of the Claimant

[13] During cross-examination learned Counsel for Mr Millwood, Mr. Campbell, challenged the Claimant on the issue of whether Mr Millwood paused to talk to the driver who was coming from the opposite direction. It was suggested to the Claimant that Mr. Millwood stopped in the road because of the stones which impeded his path. However, the Claimant insisted that Mr Millwood slowed down to speak to the motorist coming from the opposite direction.

[14] In his witness statement, the Claimant noted at paragraph 8 that he cannot say whether he saw any stones in the road. During cross-examination he noted that he did not see any stones in the road. He admitted that there was a difference between saying he could not say whether there were stones in the road and making a statement that he did not see any stones in the road.

[15] On the issue of whether the corner was a blind corner, the Claimant gave evidence that it was not a blind corner and that if one were approaching the corner from 50 meters away you would be able to see around the corner.

MICHAEL ANTHONY LEE'S CASE

[16] Mr. Lee's evidence is that on the date of the accident he was driving several car lengths behind Mr. Millwood for about 10 to 15 minutes before the collision. According to Mr. Lee, a section of the road leading to the corner where the collision occurred, was bumpy for approximately 2 chains immediately before the corner, as such he was travelling at thirty (30) kilo miles while negotiating the section of the road leading up to the corner.

[17] Mr. Lee stated that he was unable to see around the corner where the accident occurred because there was a built up parameter wall which blocked his sight. He further noted that Mr. Millwood gave him no notice that he was about to stop his vehicle and when Mr. Millwood negotiated the corner he disappeared from his sight.

[18] According to Mr. Lee when he entered the corner and proceeded around the bend he saw Mr Millwood's vehicle stationary and in his path. He stated that he observed that another vehicle was in a stationary position on the opposite side of the road directly beside Mr. Millwood's vehicle with both drivers having a conversation.

[19] It is Mr Lee's evidence that he attempted to avoid the collision by stepping on the brakes but he could take no further evasive action because the wall was to his left and the driver was to his right therefore he collided into the rear of Mr Millwood's vehicle.

Cross examination of Michael Anthony Lee

[20] During cross-examination, Mr Lee admitted that four persons were travelling with him but none of these persons were called as witnesses. Also, it was noted that he did not take any pictures of the scene nor tender any such picture into evidence.

[21] When asked the speed at which he was travelling when he was coming around the bend he noted that he was travelling at about 35 -40 Kilo miles per hour. Mr. Lee admitted that he did not give evidence to suggest that he slowed down while he was coming around the bend.

DELROY MILLWOOD'S CASE

[22] Mr. Millwood's evidence is that while he was driving along the Wilberforce main road, as he approached the corner he noticed that a vehicle was coming from the opposite direction. Mr. Millwood noted that the roadway was very narrow and that there was a stone which would prevent both vehicles from passing along at the same time. Mr. Millwood's evidence is that he slowed down to allow the vehicle which was coming from the opposite direction to pass him.

[23] Mr Millwood noted that he could not pull any further to the left side of the road because he was already positioned to the extreme left side of the road because of the narrowness of the road.

[24] Mr. Millwood noted that after he slowed down he felt a heavy impact to the rear of his vehicle which he later discovered to be Land-Rover motor car registered 5267FG which was driven by Michael Anthony Lee.

Cross-examination of Delroy Millwood

[25] Mr Millwood gave evidence that he did not turn on his hazard lights or otherwise indicate to the vehicle travelling behind him that he was about to stop. He also gave evidence under cross-examination that he did not report to the police of the existence of the stone which is alleged to have impeded his path.

ISSUES

i. **Whether Michael Anthony Lee owed the Claimant a duty of care**
ii. **Whether Michael Anthony Lee breached that duty of care**
iii. **Whether Delroy Millwood owed the Claimant a duty of care**
iv. **Whether the conduct of Delroy Millwood fell below the standard to be expected in the circumstances**
v. **What is the appropriate apportionment of liability if both parties are found be liable**

LAW AND ANALYSIS

[26] In order to succeed in a case of negligence, the claimant must satisfy the court that the essential elements of the tort were satisfied, that is;

(i) The Defendant owed a duty of care to the Claimant;
(ii) The Defendant breached that duty of care; and
(iii) The breach caused the Claimant to suffer harm that is reasonably foreseeable in the circumstances.

[27] In the Court of Appeal decision of **Glenroy Anderson v George Welsh** [2012] JMCA Civ 43 at paragraph 26 of the judgement, Harris JA expressed as follows:

> *"It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty."*

Issues i. and iii- Whether Michael Anthony Lee and Delroy Millwood owed the Claimant a duty of care

[28] The first question to be addressed is whether one or both of the defendants owed a duty of care to the Claimant. It is trite law that all road users owe a general duty of care to other road users to exercise due care so as not to cause harm to others by their acts and omissions. The case of **Hay or Bourhill v Young** - [1942] 2 All ER 396 is instructive on this point. In that case, the House of Lords affirmed the dicta of Lord Jamieson on page 402 of the judgment where he expressed that a driver owes a duty to persons on the highway or adjoining premises. The passage endorsed by House of Lords reads as follows:

> *"No doubt the duty of a driver is to use proper care not to cause injury to persons on the highway or in premises adjoining the highway, but it appears to me that his duty is limited to persons so placed that they may reasonably be expected to be injured by the omission to take such care."*

[29] In the said case of **Hay or Bourhill v Young**, **supra**, Lord MacMillan went on to note that "p*roper care connotes avoidance of excessive speed, keeping a good look-out, observing traffic rules and signals and so on*."

[30] In our island Jamaica a duty of care is also imposed on drivers of motor vehicles by virtue of section 51(2) of the **Road Traffic Act** (hereinafter called the RTA) which provides that:

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

[31] The question of whether the respective defendants owed a duty of care is not a complex question. Based on the foregoing, it is clear that all road users owe a duty of care to other road users who they reasonable foresee would be injured by their acts or omissions. Therefore, it is concluded that both Mr. Lee and Mr. Millwood

must have contemplated that any negligent operation of their respective vehicles could cause damage to drivers and/or passengers of the other vehicle. I find that the Defendants owed the Claimant a duty of care to operate their respective vehicles in a manner that would not cause him to suffer any injury or loss.

Issues ii & iv- Whether Mr Michael Anthony Lee and/or Mr Delroy Millwood Breached the Duty of Care owed to the Claimant

[32] There is no blanket approach to assessing a claim of negligence, the fact that someone has been injured by another does not automatically result in a conclusion that the other party is negligent. The determination of that issue is by an assessment of the evidence which will assist in a finding as to whether the Defendant's conduct fell below the standard of care that the circumstances demand **(see Carmarthenshire County Council v Lewis [1955] A.C. 549).** In essence, the court will apply what we know in law to be the '*reasonable man test'*. That is, whether a reasonable man placed in the same circumstance would have acted as the Defendant did. Alderson B in the often cited case of **Blyth v Birmingham Waterworks Co** (1856) 11 Exch 781 provides an apt explanation of the ***"reasonable man test***" when he stated that:

> *'negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do'*

[33] The **RTA** and the **Island Traffic Authority Road Code** (hereinafter called the Road Code) provide a guide as to how road users should conduct themselves in the use of the roadways. Section 95(3) of the Road Traffic Act provides that:

> *"The failure on the part of any person to observe any provision of the Road Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or negate any liability which is in question in those proceedings."*

Whether Michael Anthony Lee was negligent in the operation of his vehicle

[34] Section 4 of Part 2 of the **Road Code** provides, inter alia, that motorists must "*always be able to stop your vehicle well within the distance for which you can see the road to be clear...*" Additionally, paragraph 7(c) of the **Road Code** gives the following directives:

> *"**Do not travel too closely to the vehicle in front of you. Always leave enough space between you and the vehicle in front so that you can pull up safely if it slows down or stops.** A good rule of thumb in good road conditions is to allow at least one vehicle length for each 10 m.p.h. you are travelling**." [Emphasis mine]***

[35] Mr. Lee collided into the rear of Mr Millwood's vehicle, the natural inference to be drawn is that Mr. Lee was negligent, in that, he failed to adhere to the provisions set out at sections 4 and 7(c) of Part 2 of the **Road Code** as outlined above. Mr Lee seeks to convince the Court that he was not speeding on the day in question. He gave evidence that he was travelling at about 35-40 Kilo miles while negotiating what he considered to be a blind corner. According to Mr Lee, the accident was caused by the negligence of Mr Millwood who stopped at the end of the corner in circumstances where it was dangerous to do so as he was not able to see beyond the blind corner and therefore collided into Mr. Millwood's vehicle which stopped in the middle of the road.

[36] When I assess the evidence of Mr. Lee, on a balance of probabilities, I cannot accept that he was driving at a reasonable speed. It is common knowledge that the slower you drive the more control you will have over the motor vehicle. It therefore means that if Mr. Lee was approaching the corner with due care he would have been able to apply his brakes within reasonable time so as to avoid the collision.

[37] Additionally, I find that Mr. Millwood was not stationary as Mr. Lee suggested, rather I accept the evidence of the Claimant and Mr. Millwood when they said that the vehicle slowed down "*to an almost stop."* I find that the Claimant was a credible witness and based on his account, Mr. Millwood's vehicle slowed down for about

5 seconds before Mr Lee collided into the rear of Mr. Millwood's taxi. What this therefore tells me is that Mr Lee was not travelling within braking distance from Mr Millwood, rather he was travelling very close to Mr Millwood and/or he was travelling too fast in the circumstances, thereby giving little to no space and/or time to apply his brakes in time to avoid to collision.

[38] On the issue of whether the corner was a blind corner, I do not accept my Mr. Lee's assertion regarding same. In any event, even if I were to accept same, I find that it would mean that the Mr. Lee would be required to exercise even a greater degree of care as the circumstances would demand that he slowed down and be more alter as he would not be able to see any impending danger which may be awaiting one on the other side of the 'blind corner.'

[39] I find that Mr. Lee significantly contributed to the accident, as he was negligent in the operation of his vehicle while negotiating the corner. The next question for me to address is to what degree was Mr. Lee liable and should any blame be attributed to Mr. Millwood for slowing down in the manner and place that he did. As Lord MacMillan stated in the case of **Hay *or Bourhill v Young*** - [1942] 2 All ER 396 "*There is no absolute standard of what is reasonable and probable. It must depend on circumstances and* ***must always be a question of degree***"

Whether Mr. Millwood contributed to the accident by slowing down as he did near the corner of the road

[40] I find the Privy Council decision of ***Chop Seng Heng v Thevannasan s/o Sinnapan and others*** - [1975] 3 All ER 572 to be very useful in assessing the liability of both parties in this matter. In that particular case the board expressed as follows:

> *"It is no part of their Lordships' present function to express any view regarding the correctness of the decision of the majority in Chan Loo Khee v Lai Siew San nor should they be regarded as expressing any. But what they do respectfully and emphatically approve of is the*

following statement of general principle enunciated by Ong CJ in his dissenting judgment in that case ([1971] 1 MLJ at 254):

*'**If parking a car, however recklessly, so as to cause needless obstruction to other road-uses, were to be held blameless, merely because other motorists could still have room to pass, provided they kept a proper look-out, then it would appear that the deliberate parking of a car anywhere, even in the middle of the highway, should be considered equally excusable, if not justifiable, regardless of the fact that, by reason of such obstruction, other motorists had come to grief by reason of their not being fully alert. In such cases there should, in my opinion, be proper apportionment of blame, depending on the circumstances. But, to exonerate the obstructionist completely—when it is undeniable that, but for the presence of the obstruction, there could not possibly have been an accident—is to ignore the principle of placing the blame fairly on those to be blamed for their acts or omissions.** In this age of fast motor transport I think it is the duty of the courts to eschew excessive legalism and to require that every motorist should observe the golden rule of showing due consideration for other road-users, or suffer the consequences of his failure to do so.'*

*Although Gill FJ had failed to find any reported case supporting the view so expressed by the Chief Justice, so clearly right is it that, with respect, it needs no support. But were there such a need, the Court of Appeal decision in **Waller v Levoi** supplies it. **A motorist who parked a car on a bend in daylight there being held one-fifth to blame for the injuries sustained by a motor cyclist who collided with it. Salmon LJ said that the motorist was also negligent because parking a car on a bend was unwise. He should have foreseen that someone might come along rather quickly or without keeping a proper look-out and that such a person would be put in an extremely difficult position if there were a car parked on a bend." [Emphasis Mine]***

[41] The cases of **Chop Seng Heng v Thevannasan s/o Sinnapan and others** - [1975] 3 All ER 572 and ***Waller v Levoi*** (1968) 112 Sol Jo 865, CA which was applied and discussed in the passage cited above, demonstrate that a motorist who parks his car along a roadway shall not be held to be blameless simply by the fact that the other road user failed to keep a proper look-out or be more cautious in the operation of his vehicle. One might argue that in the case of Waller v Levoi and Chop Send Heng, the relevant Defendants were parked along the roadway

while in the instant case Mr Millwood slowed down to what the Claimant described '*as an almost stop'* and that this slowing down lasted for only about 5 seconds. It is my conclusion that the fact that the vehicle did not come to a complete stop is immaterial, what is of importance is whether Mr. Millwood's conduct posed a danger to other road users by creating an obstruction in circumstances where he ought to have reasonable known that it was unsafe for him to slow down as he did, at that particular area.

[42] Mr Millwood denied the allegation by the Claimant and Mr. Lee that he slowed down to speak to a motorist who was coming from the opposite direction. Instead, he claimed that he was forced to stop because an impassable stone was in the roadway which would not allow him and the other driver to pass at the same time. He therefore slowed down to allow the other vehicle to pass. Mr Millwood did not draw the police's attention to this stone and the Claimant does not seem to recall seeing any such stone in the road. I reject Mr Millwood's argument regarding there being a stone in his path and I find it more believable that he slowed down to exchange words with the driver of the motor vehicle which was coming from the opposite direction.

[43] I find that Mr Millwood was negligent and his conduct was in breach of the following provisions of the Road Code:

> *Section 6 which provides that "Before you slow down, stop, turn or change lanes, check your rear view mirror, signal your intention either by hand or indicator light signals and make sure you can do so without inconvenience to others."*
>
> *Section 38 which instructs a motorist to "never stop your vehicle opposite to another stopped or parked vehicle if by so doing you will obstruct the flow of traffic"*
>
> *Section 39(e) which states: "Do not park or stop your vehicle at or near a bend, the brow of a hill, or a hump back bridge."*

APPORTIONMENT OF LIABILITY

[44] In determining how to apportion the liability the court must consider two factors:

i. Blameworthiness; and

ii. Caution.

[45] This point was expressed in the case of ***Brown and Another v Thompson*** - [1968] 2 All ER 708 where Winn LJ expressed as follows:

> *"When it is necessary for a court to ascribe liability in proportions to more than one person, it is well established that regard must be had not only to the causative potency of the acts or omissions of each of the parties, but to their relative blameworthiness. In The Miraflores and The Abadesa ([1967] 1 All ER 672 at pp 677, 638; [1967] 1 AC 826 at p 845), Lord Pearce said:*
>
> *"…the investigation is concerned with 'fault' which includes blameworthiness as well as causation; and no true apportionment can be reached unless both those factors are borne in mind."*

[46] I conclude that Mr Lee is 90% liable for the accident as the degree of recklessness of his conduct is much more severe. On a balance of probabilities, I find that Mr Lee was driving too fast in the circumstances and failed to keep a proper lookout. I have also attributed liability of 10% to Mr Millwood on the basis that but for his obstruction of the roadway by slowing down, the accident would not have occurred.

GENERAL DAMAGES

[47] In determining the level of damages Counsel for the Claimant relied on the following cases:

[48] The case of ***Claston Campbell v Omar Lawrence, Dale Mundell and Delroy Officer***, (unreported) Suit No C.L. C-135 of 2002, delivered on the February 28, 2003. In that particular case the relevant Claimant was diagnosed with having a 2" x 1/6" laceration to the chin, trauma to chest resulting in severe pain and swelling to the chest wall, trauma to back resulting in severe pain and swelling and difficulty in walking properly for 3 weeks and whiplash injury to the neck resulting in pain

and restriction of movements for which the claimant was recommended to wear a collar.

[49] The Claimant in ***Claston Campbell*** *(*supra), was assessed by a General Practitioner as having a disability of 10% however the doctor did not state whether it was a disability of the whole person or whether it was with respect to a specific area of the body. In the circumstance the court came to the conclusion that the relevant claimant's disabilities were not permanent and he was therefore awarded general damages in the sum of **Six Hundred and Fifty Thousand Dollars ($650,000.00)**, that converts at present with the application of the March, 2020 C.P.I. of 268.80, to **Two Million Seven Hundred and Thirteen Thousand One Hundred and Sixty-Five Dollars ($2,713,165.00**) arrived at in the manner set out as follows:

Calculation Methodology

268.80 index for March, 2020 x 100 = 417.41%
64.397 index for February, 2003 1

417.41 x $650,000.00 = **$2,713,165.00**
100

[50] It is to be observed that the Claimant in the instant case suffered injuries which were less severe than those suffered by the Claimant in **Claston Campbell**, (supra). In addition to suffering from whiplash injuries to the neck, the Claimant in Claston Campbell case also suffered from trauma to chest resulting in severe pain and swelling to the chest wall in addition to difficulty walking for some three weeks. I therefore conclude that the award to the Claimant in the instant case should be less than that in the Claston Campbell case.

[51] The Claimant also relied on the case of **Dalton Barrett v Poncianna Brown and Leroy Bartley** (unreported) 2003 HCV 1358, delivered on the 3rd November, 2006, found at page 104 of **Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 6**. In that case the Claimant

sustained injuries in the form of tenderness around the right eye and face, tenderness in the left hand and lumbar spine, pain to the lower back, pain to the left shoulder and left wrist and a very mild cervical strain, he also suffered from contusions to the mouth and to the lower back and left shoulder. General damages for pain and suffering was assessed at **Seven Hundred and Fifty Thousand Dollars ($750,000.00)** which converts at present, with the application of March, 2020 C.P.I. of 268.80, to **Two Million Twenty-Three Thousand Seven Hundred and Twenty-Five Dollars ($2,023,725.00)** using the following formula:

Calculation Methodology

$$\frac{\text{268.80 index for March, 2020}}{\text{99.62 index for November, 2006}} \times \frac{100}{1} = 269.83\%$$

$$\frac{269.83}{100} \times \$750,000.00 = \mathbf{\$2,023,725.00}$$

[52] I conclude that the injuries suffered by the Claimant in ***Dalton Barrett v Poncianna Brown and Leroy Bartley***, supra are more severe than those sustained by Mr Yorke, in that Mr Yorke's injuries were limited to pain in his neck and lower back. In the Dalton Barrett case the injuries were not confined to his back but he felt pain to his left shoulder and wrist. He also suffered from a mild cervical strain. I again conclude that the award should be lower in the instant case.

[53] The Claimant also relied on the case of ***Stacey Ann Mitchell v Carlton Davis, Kenneth Boyd, Harold Henry and Keith Lindsay***, (unreported) Suit C.L. 1998 M 315 delivered on the 10th May, 2000 and found at 146 of **Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 5.** In that particular case the Claimant suffered from severe tenderness in the back of the head and neck, laceration to the back of the head, marked tenderness and stiffness of lower spine, continuous pains in the back of the neck and across the waist, swollen and painful left arm with difficulties lifting weight. Her injuries were assessed as moderate whiplash. She was assessed as having severed pains for

about 9 weeks which would result in total disability for that period and thereafter diminishing pain resulting in partial disability for about 5 months and at least intermediate pain for at least a further 4 months.

[54] General damages of **Five Hundred and Fifty Thousand Dollars ($550,000.00)** which converts at present, with the application of March, 2020 C.P.I. of 268.80 to **Two Million Seven Hundred and Thirty-Five Thousand Two Hundred and Sixty Dollars ($2,735,260.00)** using the following formula:

Calculation Methodology

$$\frac{\text{268.80 index for March, 2020}}{\text{54.05 index for May, 2000}} \times \frac{100}{1} = 497.32\%$$

$$\frac{497.32}{100} \times \$550{,}000.00 = \mathbf{\$2{,}735{,}260.00}$$

[55] On the face of it, the injuries would appear to be similar to those suffered by the Claimant in the instant case, however, I am constrained to conclude that the injuries suffered by Stacey-Ann Mitchell were more severe than those suffered by the Claimant in the instant case. In the Stacey-Ann Mitchell case the Claimant was assessed as suffering from moderate whiplash. Additionally, Stacey-Ann Mitchell suffered severe pain for 9 weeks resulting in total disability for that period. There was no such assessment found in the instant case.

[56] I find that the case of ***Sylvester Charlton v Super Star Bus Co Ltd et*** al (unreported) Suit No. C.L. delivered on the 25th October, 1989 and at page 3found20 **Ursula Khan's Recent Personal Injury Awards in The Supreme Court of Judicature of Jamaica Vol. 6**. In that case the relevant claimant suffered from injuries which are similar to those suffered by the Claimant in the instant case, that is, whiplash injury affecting his lower back and tenderness of the lower back muscles and spine at level of 4th and 5th lumbar vertebrae, acute pains in the neck, severe pains and tenderness in the back and hip and head injury. He was awarded Twenty-Two Thousand Dollars ($22,000.00) for general damages which converts

at present, with the application of March, 2020 C.P.I. of 268.80 to **One Million One Hundred and Sixty-Two Thousand and Thirty-Five Dollars and Sixty Cents ($1,162,035.60)** using the following formula:

Calculation Methodology

$$\frac{\text{268.80 index for March, 2020}}{\text{5.089 index for October,1989}} \times \frac{100}{1} = 5281.98\%$$

$$\frac{5281.98}{100} \times \$22{,}000.00 = \mathbf{\$1{,}162{,}035.60}$$

[57] I therefore conclude after assessing all the cases that a reasonable award for general damages would be **One Million and Two Hundred Thousand Dollars.**

DISPOSITION

1. Judgment awarded in favour of the Claimant against the Defendants in the following terms: (a) Judgment for the Claimant in Claim no. 2013HCV02305 with the Defendant's liability assessed at 90%. (b) Judgment for the Claimant in Claim no. 2013HCV06733 with The Defendant's liability assessed at 10%.

2. General Damages for Pain and Suffering and Loss of Amenities awarded in the sum of $1,200,000.00 with interest at a rate of 3% from the 9th September, 2013 (date of service of the claim form) to the date of the Judgment.

3. Costs to the Claimant to be agreed or taxed.

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Hon. S. Wolfe-Reece, J