



[2023] JMSC Civ 67

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV03706

BETWEEN	KEMAR EARL DANIELIO BENNETT	CLAIMANT
AND	ANDREW SHEEN PORTER	DEFENDANT

IN OPEN COURT

Mr. Lance Lamey instructed by Bignall Law for and on behalf of the Claimant

Ms. Suzette Campbell instructed by Burton-Campbell and Associates for and on behalf of the Defendant

Dates Heard: November 14 & 15, 2022 and April 14, 2023

Civil Practice & Procedure – Negligence – Motor Vehicle Collision – Duty of Care – Breach of Duty of Care – Credibility of Parties – Assessment of Damages – Interest on Award of Damages

PALMER HAMILTON, J

BACKGROUND

[1] The Claimant is seeking to recover damages for negligence for personal injuries arising out of a motor vehicle accident which occurred on or about the 14th day of June, 2016 along Molyne's Road in the parish of Saint Andrew. He claims that he suffered injury, loss damage and incurred expenses when the Defendant's car struck him while he was a pedestrian in the process of crossing the road.

[2] The Claimant, who is relying on the doctrine of *res ipsa loquitor*, particularized the negligence of the Defendant as follows:

- (a) *Drove at an excessive and/or improper speed;*
- (b) *Drove into the path of the motor car [sic] claimant was in;*
- (c) *Failed to keep any or any proper lookout;*
- (d) *Drove without any sufficient consideration for other users of the road;*
- (e) *Failed to maintain sufficient control over the said motor vehicle;*
- (f) *Failed to apply brake within sufficient time or at all so as to prevent the collision from occurring;*
- (g) *Attempted to turn when it was manifestly unsafe to do so;*
- (h) *Failed to stop, slow down, swerve, turn aside or otherwise operate the said motor vehicle so as to avoid the said collision;*
- (i) *Failed to keep any or any proper and effective control of the said motor vehicle;*
- (j) *Failed to keep a safe distance from [sic] Claimant;*
- (k) *Drove with no regard for pedestrian's [sic];*
- (l) *Manifestly fled the place of accident after acknowledgment of collision.*

[3] The Defendant filed a Defence in which he admitted that there was a motor vehicle accident involving the parties, however he denies that he was the one who caused the accident. He indicated that he was driving along Molyne's Road when the Claimant suddenly and without any warning walked into the path of his moving vehicle. He further indicated that the accident was caused and/or contributed to by the negligence of the Claimant and he particularized the Claimant's negligence as follows:

- (a) *Failing to keep any or any proper look out.*
- (b) *Failing to see or to heed the presence of the Defendant's motorcar on the roadway.*

(c) Failing to ensure the roadway was clear or that it was safe to proceed before entering the roadway.

(d) Walking into the path of the Defendant's moving motor car.

(e) Failing to have any or any due regard for his own safety.

(f) Using the roadway in a reckless and dangerous manner.

CLAIMANT'S ACCOUNT

[4] The Claimant who is among other things, a Bus Operator who operates a Toyota Coaster motor bus from Half Way Tree to Spanish Town. In cross examination, he said that he has been operating on this route since 2003. He arrived at Molyne's Road at approximately 8:50 a.m. and parked the bus in the lay-by which is on the left side of Molyne's Road when heading in the direction towards Washington Boulevard. The Claimant was on the right hand side of the road in relation to his bus when he attempted to cross the road. At this time the road was clear and the Claimant crossed the right lane of traffic with vehicles heading towards Half Way Tree. While the Claimant was in the process of crossing the left lane of traffic with vehicles heading towards Washington Boulevard he heard a vehicle accelerating. He observed a Nissan Motor Car coming around the corner in the same left lane that was in the process of crossing. The vehicle was approaching at about 60kmph and it was about 9-10 car lengths away. The Claimant stated that he realized the danger from the oncoming vehicle and began moving more swiftly to complete crossing the road.

[5] The Claimant was in the middle of the left lane when the Nissan motor car started to move more quickly towards him. He had to jump out of the Nissan motor car's path. The left side mirror of the Nissan motor car hit the Claimant's right wrist and the left side of the vehicle rubbed against the right side of his body. The impact of the collision caused the Claimant to hit into the right rear section of his bus and he fell onto his right arm in the lay by.

[6] Mr. Nicholas Samuels in his witness statement stated that the Toyota Coaster motor bus was parked in the lay-by at the bus stop on the day in question. His evidence mirrors that of the Claimant. Mr. Samuels was behind the parked bus when the Claimant was in the process of crossing the road and he saw when the Claimant looked in the direction of where the Nissan motor car was coming from. Mr. Samuels saw when the Claimant began to move more swiftly to complete crossing the road as the vehicle was approaching at about 60 kmph. The Claimant was in the middle of the lane of traffic for vehicles headed towards Washington Boulevard when the Nissan motor car accelerated and swerved to its left. The Claimant jumped out of the roadway to avoid the Nissan motorcar but it came into his path and hit him.

DEFENDANT'S ACCOUNT

[7] The Defendant in his witness statement stated that on the 15th day of June, 2016 he was travelling on Molyne's Road in the left lane heading towards Washington Boulevard. He saw a Toyota Coaster bus which was illegally parked on the same left side as it was beside a yellow marking which restricted motorists from stopping or parking at that point. The Defendant stated that he was travelling at about 20 kmph as the illegally parked Toyota Coaster bus caused the speed of traffic to be reduced.

[8] When the Defendant was about to pass the bus a male figure stepped from in front of the bus into the path of his car and it seemed as if he was going to cross the road. The male figure jumped backwards towards the parked bus and his wrist hit the left rear view mirror of his car. The Defendant checked his mirror and saw the male figure continue to go across the road. He did not stop after the accident occurred as he did not believe the male was injured.

ISSUES

[9] The following issues have arisen for my determination:

- (a) Did the Defendant owe a duty of care to the Claimant?
- (b) Did the Defendant breach the duty of care, if any, which resulted in the collision and injury to the Claimant?
- (c) Was there contributory negligence on the Claimant's part?
- (d) Does the doctrine of res ipsa loquitor apply?
- (e) The quantum of damages, if any, to be awarded to the Claimant.

[10] In addition to the abovementioned issues, the question of the credibility of the parties is also an issue to be considered.

LAW & ANALYSIS

[11] This is a simple personal injury matter in which the main issue to be determined is the credibility of the parties. I am guided by the words of McDonald-Bishop J who stated in Alvan Hutchinson v Imperial Optical Limited and Hugh Foreman (unreported) Suit No. C.L. H 035 of 1999 delivered on the 16th day of September, 2005 that-

"It is the Claimant who must satisfy the Court on a balance of probabilities that they have proven the allegation of negligence against the Defendants. It has to determine which of the accounts put forward by the Claimant and the Defendant is more believable. Credibility plays a pivotal role in this exercise, and the Court in assessing credibility will have due regard to the demeanour of the witnesses."

[12] I also adopt the dictum of the Honourable Mr. Justice Kirk Anderson in the case of **Continental Petroleum Products Ltd. and Scotia DBG Investments Ltd** [2016]

JMSC Civ. 219 where at paragraph 57 he stated: -

“In assessing credibility, as between two (2) witnesses, one of whom is telling the truth in important respects and the other witness, who is not doing so, as regards those same matters, it is always important for the court of first instance to consider contemporaneous documents, probabilities and possible motives, in a case involving disputed facts. The Privy Council made this clear, in the case: Villeneuve and another v Gaillard and another – [2011] UK PC 1, per Ld. Walker, at paragraph 67. See also: Armagas v Mundogas SA (The Ocean Frost) – [1986] 1 AC 717, at page 757, per Dunn, L.J.”

[13] At the outset, I am compelled to say that the Claimant was a convincing witness. I was impressed with his demeanour as he faced cross-examination. He maintained his version of events. I accept that the Claimant was crossing the road and was almost completely done crossing the left lane when the Defendant’s motor vehicle collided with him.

[14] It is trite law that in order to establish liability in a claim for negligence there must be evidence to show that the Defendant owed a duty of care to the Claimant, that the Defendant acted in breach of that duty and that the Claimant sustained damage as a result of that breach. The principles in relation to the law of negligence were laid down in by Lord Atkins in **Donoghue v Stevenson** [1932] A.C. 562, where he stated that:

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be- persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question”.

[15] The standard of care established in **Donoghue v Stevenson** is that of the ordinary and reasonable man placed in the same circumstances as the Defendant. Where a case involves road users, that is pedestrians and motorists, the standard of care is that of the ordinary and reasonable user.

[16] It is not in dispute that there was a collision involving the parties in June of 2016. Both parties have admitted that the Claimant's Toyota Coaster bus was parked on the left side of Molyne's Road in the direction heading towards Washington Boulevard and the Defendant was driving in the said left lane heading toward Washington Boulevard when the accident occurred. They, however, have two diametrically opposed versions as to the issue of liability.

A. Did the Defendant owe a duty of care to the Claimant?

[17] **The Road Traffic Act** imposes a general duty on all motorists to drive with due care and attention and reasonable consideration for all other road users or he shall be guilty of an offence. Sections 27, 32, 51 and 87 of the **Road Traffic Act** provide useful guidance when dealing with circumstances such as this. Section 32 (1) imposes a general duty on all motorists and states that:

"if any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence"

[18] I also find useful paragraph 28 of **The Administrator General of Jamaica v National Commercial Bank and Dionne Ellis** [2022] JMSC Civ 69, where Hutchinson J relied on the following cases:

*"...There has also been a plethora of authorities on the common law duty owed by one road user to another which include **Nance v British Columbia Electric Company** and **Bourhill v James Young** 1941 S.C. 395, 429. In the latter Lord Jamieson enunciated the relevant principles which were later approved by the House of Lords (1943] A.C. 92) as follows; a. the duty of a driver is to use proper care not to cause injury to persons on the highway or in the premises adjoining the highway, b. this duty is limited to persons so placed that they may reasonably be expected to be injured by the omission to take such care. c. Reasonable care means the care which an ordinarily skilful driver would have exercised under all circumstances, and connotes an avoidance of excessive speed, keeping a good look out, observing traffic rules and signals."*

[19] I also wish to rely on **Nance v British Columbia Electric Railway Company Ltd** [1961] A.C. 601 where Viscount Simon speaking for the Judicial Committee of the Privy Council stated that:

*“...Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, **each owes to the other a duty to move with due care**, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. If it were not so, the individual on foot could never be sued by the owner of the vehicle for damage caused by his want of care in crossing the road, for he would owe to the plaintiff no duty to take care.” **[emphasis mine]***

[20] It is clear that the Defendant owed to the Claimant a duty of care, as a motorist to move with due care and attention. The Defendant is required to operate his motor vehicle in a manner that would not cause harm to others.

[21] It is also clear that the Claimant equally owes to the Defendant a duty of care as a pedestrian. Section 87 of the Road Traffic Act imposes a duty on a pedestrian to conduct himself in such a manner as to, or is likely to, constitute a source of danger to himself or to traffic which is or maybe on the road.

B. *Did the Defendant breach the duty of care, if any, which resulted in the collision and injury to the Claimant?*

[22] Having established the existence of a duty of care, I must now determine whether there has been a breach of that duty either by the Claimant and/or the Defendant. On the Claimant's account the Defendant was speeding and swerved to the left which is what resulted in the collision. On the Defendant's account the Claimant stepped out from the front of the Toyota Coaster Bus into the roadway and into the path of his motor vehicle.

[23] Learned Counsel Ms. Campbell contended that there were inconsistent statements made by the Claimant and his refusal to acknowledge proven facts made him an unreliable witness. The Claimant in his witness statement indicated that he heard the Defendant's car accelerate when he was in the process of

crossing the left lane. However, under cross examination he stated that he was on the right hand sidewalk when he heard the motor vehicle accelerate. The Claimant stated that he did not see a difference in those statements.

[24] There was also an inconsistency with where the Claimant was positioned when he first noticed the Defendant's motor car. However, in my view this does not go to the root of how the collision occurred. Whether the Claimant was on the right hand side walk or in the process of crossing the left lane, he saw the motor vehicle and was able to appreciate that he could continue to go across the road in order to get to the other side. Another inconsistency was the reason given for the Defendant swerving his motor vehicle to the left and towards the Claimant. The Claimant indicated that it was due to another bus that was making a U-turn ahead of the Defendant but in cross examination he stated that the alleged bus making the U-turn could not have caused the Defendant to make the left turn.

[25] While I am minded to accept that Mr. Samuels saw the accident, there is one glaring inconsistency in his evidence. Mr. Samuels could have seen the collision even though he was not standing directly behind the bus. He would have therefore been able to see the Claimant as he was crossing the roadway. He was therefore also able to see the Defendant's motor car as it entered Molynes Road. Learned Counsel Ms. Campbell submitted that there was collusion between the Claimant and this witness as the witness statement referred to him as suffering the injuries. By way of amplification at trial, Mr. Samuels corrected the statement and I formed the view that this was not an error of his. I therefore see no merit in this submission as put forward by Learned Counsel.

[26] On cross examination when asked by Learned Counsel Ms. Campbell what direction the Claimant was facing, he stated that, "*he was trying to get across the road so he was facing going to Half Way Tree side.*" Mr. Samuels was not confronted with this inconsistency. I am therefore unable to rely on this aspect of the evidence of this witness. Further, I resolve these inconsistencies by finding that

they are slight and do not go to the root of the issues to be resolved in this case. I also accept these explanations given by the Claimant and his witness.

[27] The Defendant himself admitted that the road was very busy with vehicles and pedestrian traffic. While he did not admit in cross examination that the bus was public passenger vehicle, he said that he knew the bus to be a coaster with passengers. He however stated that he did not expect passengers to be embarking or disembarking due to the location of the bus and his focus was trying to carefully manoeuvre passing it. Learned Counsel Mr. Lamey asked the Defendant if due to the possibility that people would be entering and exiting the bus he ought to have acted with more care in passing the bus along the roadway. The Defendant agreed with Learned Counsel.

[28] Wint Blair, J in the case **Claudia Henlon v Sharon Martin Pink Jeremy Davy, Wendel Abrahams and Richard Williams** [2017] JMSC Civ.144 stated in relation to the duty of keeping a proper look out that:

*“It is the duty of the driver or rider of a vehicle to keep a good look out. A driver who fails to notice in time that the actions of another person have created a potential danger is usually held to be negligent. (See **Foskett v Mistry** [1984] R.T.R. 1, CA.) He must look out for other traffic which is or may be expected to be on the road, whether in front of him, behind him or alongside him, especially at crossroads, junctions and bends...”*

[29] Even if it is to be accepted that the Defendants’ account of what transpired is correct, that does not exonerate him from liability. I appreciate that a Defendant cannot be found to be negligent for a pedestrian who steps into the path of their motor vehicle from in front of a stationary vehicle. However, the evidence of the Defendant shows that he ought to have had a greater appreciation for the fact that the roadway was busy with pedestrians and that they might have attempted to cross the road at the material time.

[30] This is what I accept as the chain of the events which resulted in the injuries suffered by the Claimant. The Claimant while in the process of crossing the street when he heard the Defendant’s motor car and he looked towards it. He was in the

middle of the left lane on Molyne's Road for traffic heading towards Washington Boulevard when the Defendant's motor car began to approach him and he started to move more quickly in order to complete crossing the road. The Claimant was at the right back corner of the bus when in an attempt to get out of the Defendant's way the Claimant jumped forward in such a way that his arms flung in the air and the Defendant's rear view mirror collided with his right hand. I do believe that for whatever reason, the Defendant did not see the Claimant and was therefore not keeping a proper lookout. The Defendant should have seen the Claimant crossing the street and ought to have exercised due care and attention in operating his motor vehicle.

[31] However, I have accepted that the Claimant was in the middle of the lane that the Defendant was driving in. The duty imposed on the Defendant required that he ought to have due care and attention and reasonable consideration for the other users of the road. It is therefore my view that the Defendant was not driving with due care and attention and failed to have a proper lookout in all the circumstances. He failed to have any proper lookout for other users of the roadway, in particular the Claimant, who he did not see him any at all until the collision occurred.

[32] I do not accept the evidence of the Claimant and his witness that the Defendant swerved towards him. The evidence as elicited in my view shows that the Defendant passed close by to the Claimant and his bus. I also do not accept that the Defendant was speeding. The injuries of the Claimant are minor. I agree with Learned Counsel Ms. Campbell that the injuries suffered by the Claimant do not confirm a high impact collision.

[33] I appreciate that there are inconsistencies on both sides, but I find that the Claimant's evidence is more plausible and credible on a balance of probabilities. In my view the inconsistencies on the Claimant's case do not go to the root of how the collision occurred. I am satisfied that what the Claimant detailed as to how the collision happened at the material time is credible. I am satisfied that the Defendant

had breached the duty of care owed to the Claimant and I accept that the evidence clearly showed that he failed to proceed with due care and attention.

- [34] While the Road Traffic Act does place a duty on a motorist to stop in case of a collision, I am unable to hold the Defendant liable for same. A person who breaches this duty commits an offence, which in my view is better suited for a criminal court.

C. Was there contributory negligence on the Claimant's part?

- [35] The Defendant has claimed that there is contributory negligence on the Claimant's part. The Defendant, in order to establish the defence of contributory negligence, must prove that the Claimant failed to take "...ordinary care for himself," or, in other words, such care as a reasonable man would take for his own safety, and, secondly, that his failure to take care was a contributory cause of the accident." (see Lewis v Denye [1939] KB 540 and Caswell v Powell Duffryn Associated Collieries Ltd. [1940] A.C. 1)

- [36] Section 3(1) of the **Law Reform (Contributory Negligence) Act**, states that-

"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damages".

- [37] There has to be evidence that the Claimant did not act as a reasonable and prudent man in the circumstances and he ought to have foreseen that his actions or omissions might cause harm to himself. In light of my earlier findings, I do not believe that the Claimant was contributory negligent in the collision. The Claimant was keeping a proper lookout and tried to complete the crossing of the road in order to get out of the motor car's path. The Defendant has not made out the particulars of negligence as claimed in his defence.

D. Does the doctrine of res ipsa loquitur apply?

[38] The maxim res ipsa loquitur (the thing speaks for itself) is a rule of evidence which applies where there is no evidence as to why or how the accident took place. Under this maxim, the Court may draw an inference that the Defendant was negligent in circumstances where the cause of the accident is not known but the thing that caused the accident was under the management or control of the Defendant, in circumstances where the accident would not have occurred in the ordinary course of things. (see **Igol Coke v Nigel Rhooms and others** [2014] JMCA Civ 54, **Bennett v Chemical Construction** (G.B.) Ltd. [1971] 1 W.L.R. 1571 and **Shaniel Gayle v Derven Hentley Patrick** [2021] JMCA Civ 157).

[39] In my view, there is sufficient evidence before the Court of a breach of the duty of care, on the Defendant's part, to establish a case of negligence. The credibility of the parties is what is to be determined. Therefore, this maxim is not applicable in the present case. Since the rule is applicable where there is no evidence as to why or how the accident occurred.

E. The quantum of damages, if any, to be awarded to the Claimant

Special Damages

[40] Special damages represent a Claimant's actual pecuniary loss between the date of injury and the date of trial and they must be specifically pleaded and proved. There is not much contention between the parties on the issue of special damages. During the trial an application was made by Learned Counsel Mr. Lamey to amend the Particulars of Claim as to the amount for special damages. The Application was granted and costs awarded to the Defendant. With that being said, I am satisfied that the sum to be awarded for special damages is \$60,000.00 as proved by the receipts in the claim as follows:

- (a) Receipt dated December 1, 2016 for Dr. Peter Glegg in the sum of **\$50,000.00** for Medical Report and Consultation; and

- (b) Receipt dated April 3, 2017 for Dr. Andrew Ameerally in the sum of **\$10,000.00** for Medical Report and Consultation.

General Damages

[41] In assessing an award for general damages, the Court must bear in mind that the Claimant ought to be placed in the position they would have been in had the accident not occurred. I also bear in mind that an award for general damages should be comparable, reasonable and moderate.

[42] Learned Counsel Mr. Lamey submitted that in the circumstances a figure of **\$1,500,000.00** is an appropriate award for general damages. He relied on the following cases:

- (a) **Anette Christie v Nutrition Products Limited and The Attorney General** (unreported) Suit No. C.L. 1990/C429 delivered on the 30th day of March, 2001 – the Claimant suffered a wrist fracture which was exacerbated by the fact that she did not get the surgery at the time as recommended. She was awarded the sum of \$450,000.00 in March 2001 (CPI 21.7) which updates to \$2,655,000.00 using the CPI for February 2023 (127.8);
- (b) **Peter Marshall v Carlton Cole & Alvin Thorpe** Claim No. 2006 HCV 1006 reported in Khan, Volume 6 at page 109 – The Claimant suffered moderate whiplash, sprain swollen and tender left wrist and left hand and moderate lower back pain and spasm as a result of a motor vehicle accident. The Court awarded **\$350,000** in October 2006 (CPI 38.2) which updates to **\$1,155,000.00** using the CPI for February 2023; and
- (c) **Dalton Barrett v Poincianna Brown and Anor** Claim No. 2003 HCV 01358 reported in Khan Volume 6 at page 104 – The claimant was diagnosed as suffering from lower back pains, tenderness in lumbar spine, contusion to lip and lower back, and a mild cervical sprain as well

as pain to his left shoulder and left wrist. The Court awarded **\$750,000.00** in November 2006 (CPI 38.2) which updates to **\$2,475,000.00** using the CPI for February 2023.

[43] On the other hand, Learned Counsel Ms. Campbell submitted that **\$500,000.00** is an appropriate award for general damages. She relied on the following cases:

(a) **Simeon Beckford v B.I.C. (Caribbean) Limited and Carlton Coulthrist** Suit No. C.L. 1985/B208 reported in Harrison's Assessment of Damages for Personal Injuries at page 292 – the Claimant suffered a cut on a finger of the left hand, bruises and swelling all over the left hand and severe pain in the hand. The Court awarded **\$6,000.00** in June 1990 (CPI 2.2) which updates to **\$348,600.00** using the CPI for February, 2023; and

(b) **Black v McDonald & Anor** Suit No. C.L. 1992/B344 reported in Harrison's Assessment of Damages (Cases on Personal Injury and Fatal Accident Claims) 2nd Edition at page 334 – the Claimant sustained the following injuries: tenderness of right scapula with pain on abduction of the right upper limb, limitation of range of movement of the right upper limb, undisplaced hairline fracture of the blade of the right scapula, anterior tendinitis of right shoulder and 30% loss of use of the right upper limb. The Court awarded **\$75,000.00** in January 1995 (CPI 11.2) which updates to **\$85,000.00** using the CPI for February 2023.

[44] Learned Counsel Mr. Lamey contended that in the circumstances using the range and the guidance offered by the awards referred to above and taking into consideration the declining value of money the figure submitted is suitable for pain and suffering and loss of amenities. While Learned Counsel Ms. Campbell contended that the injuries suffered by the Claimant are less severe than that suffered by the claimant in the **Black** case and the award must therefore be reduced in relation to the said case.

[45] The authorities failed to provide useful assistance as to the injuries suffered by the Claimant. The parties in the authorities as cited by the Claimant suffered more serious injuries than the Claimant at bar. However, the injuries of the Claimant in **Simeon Beckford** were more akin to those suffered by the Claimant at bar. An award within that range would therefore be comparable, reasonable and moderate. It is therefore my judgment that an appropriate award for the Claimant's pain and suffering would be **FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$550,000.00)**.

Interest on Damages

[46] Section 3 of the **Law Reform (Miscellaneous Provisions) Act** gives the Court the power to award interest on debts and damages. It gives the Court the discretion to award interest at such rate as it thinks fit on the whole or any part of the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of the judgment. It is my view that interest should be awarded on the sums awarded for damages at a rate of 3% per annum.

COSTS

[47] The general rule relating to costs is contained in Part 64 of the **Civil Procedure Rules 2002**, as amended (the CPR). Rule 64.6(1) states: "If the Court decides to make an order about the cost of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party". I see no need to depart from the general rule.

ORDERS & DISPOSITION

[48] Having regard to the forgoing, my Orders are as follows:

(1) Judgment for the Claimant.

- (2) Special Damages are awarded in the sum of **SIXTY THOUSAND JAMAICAN DOLLARS (\$60,000.00)** with 3% interest per annum from June 14, 2016 to April 14, 2023.
- (3) General Damages are awarded in the sum of **FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$550,000.00)** from September 1, 2016 to April 14, 2023.
- (4) Costs to the Claimant to be taxed if not agreed.
- (5) Claimant's Attorneys-at-Law to prepare, file and serve Orders made herein.