[2025] JMSC Civ 56

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION

CLAIM NO. SU2023CV00706

BETWEEN	**RICHARD BENNETT**	**CLAIMANT**
AND	**THEODORE KENT MURPHY**	**DEFENDANT**

IN OPEN COURT

Abigail Henry Bryan instructed by Naylor & Mullings, Attorneys-at-law for the claimant
Suzette Campbell instructed by Burton Campbell & Associates, Attorneys-at-law for the defendant

Heard: 14th February 2025 and 9th May 2025

Negligence - Liability for motor vehicle collision - Rear end collision - Personal Injury - Contributory negligence - Assessment of damages.

C. BARNABY, J

BACKGROUND

[1] This claim arises out of a motor vehicle collision between motor vehicles owned and driven by the Claimant, Richard Bennett and the Defendant, Theodore Kent Murphy along the Rock Hall Main Road in St. Andrew (the Main Road), in the vicinity of the Rock Hall Primary and Junior High School (the School), on or about the 24th day of March 2022.

[2] The Claimant contends that the collision was caused by the negligence of the Defendant, and that he sustained injury and harm. He claims special and general damages as his relief. The Defendant denies that he was negligent and contends that it is the Claimant's own negligence which caused and/or contributed to the collision.

[3] The matter was tried on 14th February 2025 and judgment reserved to 9th May 2025. In arriving at a decision, all the authorities referenced in submissions were considered but I have not found it necessary to refer to them here.

DISCUSSION

LIABILITY

[4] It is the Claimant's case that he was travelling southerly along the Main Road towards the Red Hills Square and on reaching the vicinity of the School he put on his left indicator, pulled to the extreme left of the Main Road and brought his car to a stop. While so situated, the Defendant collided into the rear of his vehicle. He attributes the collision to the Defendant's failure to keep any proper lookout; to maintain a safe distance while travelling behind a vehicle; to maintain control of his motor vehicle; to apply his brakes within sufficient time or at all; and to stop, slow down, swerve, or otherwise manage and/or control his motor vehicle so as to avoid the collision. He also contends that the Defendant drove at a rate of speed that was too fast in all circumstances, operated his motor vehicle in a manner which was unsafe to other road users and drove along the road in a reckless and careless manner.

[5] This allegations are disputed by the Defendant who says that he was driving behind the Claimant's motor vehicle along the Main Road and on coming around a curve in the said roadway he realised that the Claimant had stopped in the middle of the lane to pick up a little boy and a woman. While he engaged his brake, he could not avoid the collision. It is his contention that the Claimant was negligent or contributorily negligent in stopping around a curve or corner without warning to approaching motor vehicles; stopping in the middle of the lane without warning to approaching motorists; failing to pull off the roadway while picking up passengers; failing to have any or any due regard for other users of the roadway; failing to so manage his motor vehicle so as to avoid an accident; and driving in a reckless and dangerous manner.

[6] There is no dispute that the parties owed a duty of care to each other as fellow motorists to use reasonable care in operating their motor vehicles along the roadway, or that the Defendant's motor vehicle collided into the rear of the Claimant's vehicle (rear end collision) whilst it was stationary.

[7] There is consensus that the existence of a rear end collision is not conclusive of negligence on the part of the driver of the motor vehicle which collides into the rear of the vehicle ahead of him, and that the question of where negligence lies is largely dependent on the circumstances leading up to the collision.

Use of indicator by Claimant

[8] Whether the Claimant engaged his indicator ahead of bringing his motor vehicle to a stop is in issue, which I find is to be resolved in favour of the Claimant.

[9] Consistent with his pleadings, it is the Claimant's evidence that he utilized his left indicator before pulling to the extreme left of the roadway and bringing his motor vehicle to a stop. His evidence in this regard was not impugned. Although the Defendant alleges that the Claimant gave no warning to approaching motor vehicles before stopping, the Defendant admitted in cross-examination that he could not say whether the Claimant had put on his indicator after going around the corner because he could not see the Claimant. In these circumstances, I accept the Claimant's evidence that he had put on his indicator before bringing his car to a stop.

Place of collision

[10] There is no dispute that the Main Road had curves and straights along it or that the collision took place in the vicinity of such a curve. A dispute nevertheless arises as to the precise location at which the Claimant brought his car to a stop, and by extension, the place on the roadway where the collision occurred.

[11] It is the Claimant's written evidence that he stopped his motor vehicle after clearing the corner in the vicinity of the School and that there were no stop signs or road signals which prohibited vehicles from stopping in the area. He goes further to say he stopped the vehicle "*to the extreme left of the road just a little below the entrance to [the School] as [he] intended to exit the said vehicle and cross the road to collect mail at the Post Office."*

[12] When the words "*below the entrance to [the School]"* are considered in view of the photographs admitted into evidence by agreement, of the locus of the collision, they give rise to ambiguity. The photographs show that there is an upward sloping drive from the Main Road which leads to the structure that is the school gate (the Driveway). Without more "*below the entrance to [the School]*" could mean a point on the Main Road after passing the Driveway, the point at which the Driveway intersects with the Main Road, or further still, a point along the Driveway but before the structure which is the gate.

[13] When asked in cross-examination where his car was when he pulled to the extreme left of the road, the Claimant replied that it was *"off the road, by the school gate*". He went on to admit that in so doing he had blocked the school gate. It was also disclosed for the first time in cross examination by the Claimant, that the photographs admitted into evidence were taken after the collision, and that the situation of the motor vehicles in them reflected their positions after the vehicles were moved. While the Claimant admitted that these things were not said in his witness statement, the enquiry did not proceed to enable me to make any adverse finding in respect of the witness' credibility relative to matters relating to the omissions or his testimony as a whole.

[14] The photographs show that the lanes in the vicinity of the School in particular are narrow. Pulling to the extreme left of the Main Road and stopping would have effectively caused the Claimant's vehicle to remain in the Main Road, unless the vehicle went onto and stopped on a part of the Driveway. There is no evidence in that regard. In fact, when the Claimant was asked on cross examination if he went into the *"turn up"*, which I have called the Driveway, he responded *"I pulled to the extreme left, but I did not drive up."*

[15] Further, on the Claimant's own evidence, he was content to knowingly block the school gate to attend to his business at the Post Office. The Claimant has provided no reason for his changed posture, or of any urgency or need to remove the vehicles only on account that the collision had occurred.

[16] Additionally, as submitted by Counsel for the Defendant in submissions, it would make little to no sense to remove the vehicles from the where the Claimant said he stopped and the collision occurred, to the place where they are positioned in the photographs, that is, in the middle of the left lane where they obviously impeded traffic in the said lane.

[17] In all these circumstances I find it to be more probable than not that the Claimant brought his vehicle to a stop on the Main Road, a little below the point where it intersects with the Driveway and not at the point of intersection so as to block the said Driveway. I accordingly prefer the evidence of the Defendant that the Claimant stopped, and the collision occurred at the place where the vehicles are positioned in the photographs.

Manner and purpose for stopping

[18] It is the Claimant's case, of which he gave evidence, that he had stopped his vehicle to go to the post office, which did not have parking to accommodate persons doing business there.

[19] It was unchallenged that a post office existed at which the Claimant could have gone to conduct business at the material time, and that it was without parking accommodation. The Defendant nevertheless contends that the Claimant stopped his vehicle to pick up a woman and a little boy.

[20] A woman and a little boy do appear at the door of Claimant's vehicle in the photograph admitted into evidence as Exhibit 14. This was shown to the Claimant in cross-examination, and he was asked whether they were leaving or going into his vehicle. He stated that they were in his vehicle. He disagreed with the suggestions that he had stopped to pick them up, or that he had stopped "suddenly" to pick them up.

[21] The presence of a woman and a little boy at the door of the Claimant's car is in the photograph is not probative of his having stopped suddenly or otherwise to pick them. While that is certainly a possibility, they could well have been passengers in the car before it came stop, and had come out of it to stand at the door after the collision. Their presence is equivocal at best. Further, although the Defendant alleges that the Claimant brought his car to a stop to pick up the woman and the little boy, it is his evidence that he could not see the Claimant's vehicle, that *"[he] had no way of knowing the [vehicle] had stopped around the curve as [he was] not able to see around it."* On that evidence, the defendant does not appear to have been placed to make observations as to what caused the Claimant to bring his vehicle to a stop.

[22] In these circumstances, I accept the Claimant's evidence that he had stopped his car to go to the post office and reject the Defendant's contention that he had stopped suddenly or at all for the purpose of picking up passengers.

The Defendant's actions

[23] The Defendant's evidence at paragraphs 7 to 8 of his Witness Statement is that he noticed the Claimant's vehicle ahead of him from the point of leaving Rock Hall Square. They were travelling in the same direction. He says that before reaching the School, the Claimant's vehicle went around a curve in the roadway and that he followed. When "going around the curve" he came upon the Claimant's vehicle which was stationary, in the middle of the lane.

[24] He goes further at paragraph 9 to say, *"[he] had no way of knowing the [vehicle] had stopped around the curve as I am not able to see around it."* He admitted in cross-examination that the curve of which he speaks is that shown on the photograph admitted in evidence as Exhibit 10.

[25] The following exchange occurred on the Defendant's cross-examination.

> *Q* *When you came around the curve and collided in the vehicle, his vehicle had already stopped?*
>
> *A* *Yes, it had just stopped.*

…

Q In this photograph [Exhibit 10] can you say if your car was parked behind Mr. Bennett's vehicle?

A Yes, my vehicle is in alignment with Mr. Bennett's vehicle.

Q Where would your car have been positioned when you first saw Mr. Bennett's vehicle?

Mrs. Campbell That presupposes that it is on the photograph.

J The witness can say.

A It would be impossible for me to mark it.

J Why would it be impossible?

A Because my car is directly behind him. That is where I first saw it, and that is directly behind him.

Q Where your car is positioned in the photograph [Exhibit 11], is that the first time you saw Mr. Bennett's car after coming around the curve?

A Yes.

[26] Exhibit 10 shows the Claimant's vehicle (it is the Defendant's evidence that his vehicle was behind it), a curve with a left leaning arch which appears to be of some length. It shows another car travelling in the same direction as the motor vehicles involved in the collision which were then stationary in the left lane. That other car is behind the stationary vehicles straddling the arched median line separating the right and left lanes of the Main Road. The photograph also shows an appreciable length of roadway between the collision point where the parties' vehicles were stationed and the other car which had a not insignificant stretch of roadway behind it. Exhibit 11 shows the Defendant's vehicle (the Claimant's vehicle though not pictured would be in front of it). There is a bit of roadway behind the Defendant's vehcile, including that part of the Main Road with which the Driveway intersects.

[27] On the Defendant's evidence, he only saw the Claimant's vehicle after coming around the curve, when he was directly behind it. Based on the position of parties' vehicles in the photographs - which I have found to be the point of collision - and the space which appears between the points of curvature and tangency along the curve, I find it to be more probable than not that the Defendant failed to see the Claimant's vehicle until he was directly behind it

was on account that he was not keeping a proper lookout. Although the Defendant said he applied his brakes when he saw the Claimant's vehicle, which evidence I accept, it would then have been too late to avoid the collision. In the circumstances I find merit in the Claimant's submissions that the Defendant was negligent in the operation of his motor vehcile.

Contribution

[28] Although I have found that the Defendant was negligent in failing to keep a proper lookout, I find merit in his submission that the Claimant was contributorily negligent.

[29] In the first instance, the Claimant appears to me to have failed to take reasonable care in stopping his motor vehicle in the middle of the narrow-left lane causing an obstruction to vehicles travelling behind it in that lane.

[30] Further, to the extreme of the left lane where I have found that the Claimant stopped and the collision occurred, is a grassy area. I accept as submitted by Counsel for the Claimant that the grassy area would be sloped considering the topography of the immediate area, and that the Driveway beside it also slopes. Motor vehicles may safely be brought to a stop on a slope however, and there is no evidence of any peculiarity with the slope in question to suggest that it would have been unreasonable for Claimant to bring his vehicle to stop on it so as to remove it from the left lane of the Main Road where is was obviously an obstruction.

[31] On consideration of the foregoing, I find that the Claimant contributed to the collision and any damage he suffered in consequence.

[32] Pursuant to section 3(1) of the **Law Reform (Contributory Negligence) Act**:

> *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 damage …

[33] Having regard to what I have found to be the Claimant's contribution to the collision, I find it just and equitable that any sum recoverable by him should be reduced by fifty-five percent (55%).

QUANTUM

Special Damages

[34] Special damages are to be specifically pleaded and proved. Under this head the Claimant claims the sum of **One Hundred and Five Thousand Eight Hundred and Ninety-Six Dollars and Thirty-three Cents ($105,896.33).**

[35] By agreement, several receipts were admitted into evidence. The following out of pocket expenses totaling **Fifty-eight Thousand Eight Hundred and Thirty-three Dollars and Seventy Cents ($58,833.70)** were pleaded, and have been proved in the amounts stated:

(a) Medical Report	$30,000.00
(b) Doctor's Office Visit	$ 3,200.00
(c) Prescriptions	$11,905.70[1]
(d) Diagnostics X-ray	$13,728.00[2]

[36] Although the cost of a police report and loss of earnings for a period of one (1) week were pleaded, they were not proved by the receipts admitted into evidence or otherwise. Special damages is accordingly assessed in the sum

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[1] Rx No. 734884: $2,114.32
Rx No. 734882: $7,689.01
Rx No. 734883: $2,102.37

[2] Invoice #INV42919 (no receipt evidencing payment)
Receipt for Invoice # 400241: $11,440.00
Receipt for Invoice # 400243: $ 2,288.00

of **Fifty-eight Thousand Eight Hundred and Thirty-three Dollars and Seventy Cents ($58,833.70).**

General Damages

[37] The Particulars of the Claimant's injuries were outlined in the Medical Report of Dr. Tasque Brown McCalla. Dr McCalla was admitted as an expert witness in these proceedings on 24th October 2024 and her medical report dated 12th August 2022 was admitted as expert evidence without the need for her to be called for cross-examination.

[38] The Medical Report shows that Dr. McCalla saw the Claimant on 28th May 2022. He complained of pain to his neck and lower back which began following a motor vehicle accident that occurred four (4) days before presentation. The Claimant had reported that immediately following the accident he began to experience pain in the neck which became progressively worse. So far as relevant, the following were observed on examination.

(i) Significant muscle bulk tenderness to the superior and middle aspects of the trapezius muscles bilaterally extending from the base of the occiput to the lower thoracic spine.

(ii) Range of motion at the neck was significantly limited in flexion, extension, lateral flexion and rotation due to pain.

(iii) Significant paraspinal tenderness to the lumbar spine extending to sacrum.

(iv) Range of motion at the lumbar spine was significantly reduced in rotation, flexion and extension due to pain.

[39] The Claimant was diagnosed provisionally with soft tissue injuries secondary to motor vehicle collision and prescribed medication including topical gel for mechanical relief of pain and muscle stiffness, as well as muscle relaxant. An intramuscular injection was also administered to attempt to lessen pain. In

order to facilitate his recuperation, the Claimant was advised to limit strenuous income-earning activity for at least seven (7) days.

[40] X-rays of the cervical and lumbosacral spine revealed no evidence of fracture or other bony injury, ruling out skeletal injury. On final assessment, the diagnosis which was given provisionally was confirmed - soft tissue injuries secondary to motor vehicle collision.

[41] Dr. McCalla also indicates that the Claimant had contacted her via telephone since his final assessment stating that he sometimes experiences lower back pain, for which she advised that an MRI may be needed for further evaluation.

[42] Nothing has been presented which shows that the Claimant heeded the doctor's advice or explain the failure to do so. It is nevertheless his evidence that to date he feels a sharp pain to his lower back and neck on occasion, when the weather is cold or he does heavy lifting, which he had not experienced before the collision. He presents no evidence of having seen any medical practitioner for treatment for his alleged continued suffering.

[43] Counsel for the Claimant relies on **St. Helen Gordon and Ors v Royland Mckenzie** Suit No. C.L. 1997G025 Ursula Khan's Personal Injury Awards Volume 5, page 152 and **Dalton Barret v Poncianna Brown and Leroy Bartley** Claim No. 2003HCV1358 (3rd November 2006)[3] in submitting than an appropriate award for general damages would be **Two Million Six Hundred Thousand Dollars ($2,600,000.00).**

[44] In the case of **St. Helen Gordon**, the claimant suffered from whiplash and pain centered around the neck and shoulder. She was seen on four (4) occasions and was prescribed painkillers. Physiotherapy was also recommended. Initially, the range of movement of the neck and right shoulder decreased about 50%. On her last visit some two and a half (2 ½) years post-accident, although she complained of pain and stiffness to the neck and examination revealed mild tenderness over the base of the neck and across the right shoulder, there was an 80% improvement in movement. The claimant was assessed as having a

[3] Khan's cited but it was the unreported decision which was included in bundle of authorities.

3% whole person disability which was likely to improve with time, albeit slowly. Her injury left her unable to lift children in her care and she had to use her left hand to do a number of chores. She had difficulty driving a car as she could not turn her neck to reverse but had nevertheless resumed driving after some time. She had difficulty sleeping on her right side and daily chores were curtailed. General damages were awarded in the sum of $400,000.00 in July 1998, which updates to $3,065,945.95 using the current available CPI of 141.8 (March 2025).

[45] While the claimant there suffered whiplash injury, with pain centred around the neck and shoulder, the duration and extent of pain and suffering, and the loss of amenities was far greater than the injury and suffering of the Claimant in this case, who has not suffered a whole person disability as a result of the collision. A significant downward adjustment would be appropriate.

[46] In **Dalton Barrett** the claimant first visited a doctor on the day of the accident and was found to be suffering from tenderness around the right eye and face, and tenderness in the lumbar spine and left hand. Some seven (7) days later he saw the doctor again. Pain in the lower back, left shoulder and left wrist as well as contusions on the mouth (especially the upper lip), lower back and left shoulder were observed. The claimant's injuries continued to cause him pain and prevented him from driving. Eight (8) months after the accident the claimant saw a consultant orthopaedic surgeon who diagnosed him as having mechanical lower back pains and very mild cervical strain. Physical therapy and lifestyle modifications were prescribed. The former treatment proved effective so that on examination ten (10) months post-accident the claimant was pain free. While he was not found to have suffered any permanent partial disability, the consultant cautioned that the claimant, a truck driver, would likely experience lumber pain upon resumption of prolonged driving. The sum of $750,000.00 was awarded for pain and suffering and loss of amenities in November 2006, which updates to $2,784,031.41 using the current available CPI of 141.80 (March 2025).

[47] Use can be made of the case, but a significant adjustment downwards is required considering the period and extent of Mr. Barrett's suffering, for which

medical treatment was required for some time after the accident, including physiotherapy. Further, while there was no whole person disability, the claimant, a truck driver was prevented at some point from driving and was considered likely to experience lumbar strain when he resumed prolong driving.

[48] The Defendant relies on **Roger McCarthy v Peter Calloo** [2018] JMCA Civ 7 in submitting that general damages is to be awarded in the sum of $754,468.98. In that case the claimant suffered acute back strain, post-traumatic vertigo with headache and acute whiplash injury with grade 2 whiplash associated disorder. He was observed as having a contusion to the face, but the doctor noted no permanent disorder. By way of prognosis, the treating doctor opined that Mr. McCarthy's injuries were serious, there was risk of impairment and would require one (1) to (3) months of rehabilitation.

[49] In **Roger McCarthy,** the decision of a judge of the Parish Court was appealed The treating physician had observed a contusion to the claimant's face, and assessed him as suffering acute back strain, posttraumatic vertigo with headache and acute whiplash injury with grade 2 whiplash associated disorder. There was no permanent disability. Among the grounds pursued on appeal is that the learned judge erred in awarding the sum of $800,000.00 as general damages for negligence. Among the complaints was that the inclusion of that figure in the cumulative award caused it to exceed the jurisdictional limit of the Parish Courts. The award was reduced to $500,000.00 in May 2017. When updated the award stands at $772,331.15.

[50] On its face, the injuries in the **McCarthy** case appear more severe than the Claimant's injuries. As I have observed elsewhere,[4] *"on the indication from the Court of Appeal that the sum [of $500,000.00] awarded which was contemplated by the learned Parish Court Judge but not reflected in her order* "was not inappropriate"*, and in the context of the other authorities … for whiplash injury"* I consider an upward adjustment appropriate.

[51] On consideration of the authorities, an award of **Nine Hundred and Fifty Thousand Dollars ($950,000.00)** appears appropriate. This is to be reduced

[4] **Kirlew and ors and Irons** [2025] JMSC Civ 44, [43]

by fifty-five percent (55%) on account of the Claimant's contribution to the collision.

ORDER

1. Judgment is entered for the Claimant against the Defendant.

2. Special Damages are assessed in the sum of **Fifty-eight Thousand Eight Hundred and Thirty-three Dollars and Seventy Cents ($58,833.70)**, reduced by 55% based on the Claimant's contribution to the collision.

3. General damages are assessed in the sum of **Nine Hundred and Fifty Thousand Dollars ($950,000.00)**, reduced by 55% based on the Claimant's contribution to the collision.

4. Interest on special damages at 3% per annum from 24th May 2022 to 9th May 2025.

5. Interest on general damages at 3% per annum from 14th March 2023 to 9th May 2025.

6. The Claimant is to recover 45% of his costs against the Defendant, which costs are to be taxed if not sooner agreed.

7. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge