IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2004 HCV 00651

BETWEEN	NORDIA BROWN	CLAIMANT
AND	COURTNEY CAMERON	1ST DEFENDANT
AND	JEMEL BLACKWOOD	2ND DEFENDANT
AND	HUBERT KNUCKLE	3RD DEFENDANT

Miss Catherine Minto for Claimant instructed by Nunes Scholefied DeLeon & Company

Mr. Donald A. Gittens for 1st and 2nd Defendants

Mr. David Johnson for 3rd Defendant instructed by Samuda & Johnson

Heard: January 7, February 26, March 14 and September 10, 2008

McDonald J

Miss Nordia Brown has brought action against the Defendants seeking to cover damages for personal injury and consequential loss arising out of a motor vehicle collision involving motor car registered PP 6096 owned and driven by Mr. Hurbert Knuckle and motor truck registered 5554 CC driven by Mr. Jemel Blackwood on the 24th February 1999.

There is no dispute that Mr. Blackwood was at the material time the servant and or agent/ authorized driver of the 1st Defendant Mr. Courtney Cameron.

The Claimant is asking the Court to find that Mr. Knuckle's motor car collided with her after it was rear ended by the motor truck.

The particulars of negligence of the 3rd Defendant set out in the Claimant's Amended Particulars of Claim are:

(i) driving at a fast or excessive speed in the circumstances;

(ii) failing to keep any or any sufficient lookout;

(iii) failing to have sufficient consideration and/or regard for other users of the roadway, including the Claimant

(iv) failing to stop, slow down, swerve, or in any other way manage and/or operate the said motor car to avoid the said collision.

The Particulars of Negligence of the 2nd Defendant as pleaded are:-

(i) driving at a fast or excessive speed in the circumstances;

(ii) failing to keep any or any sufficient lookout;

(iii) failing to travel at a reasonable and safe distance behind the 3rd Defendant

(iv) failing to observe the actions of the 3rd Defendant or in sufficient time to avoid the accident.

(v) Failing to have sufficient consideration and or regard for other users of the roadway including the Claimant and the 3rd Defendant.

(vi) Failing to stop, slow down, swerve, or in any other way manage and/or operate the 1st Defendant's said motor truck to avoid the said collision.

According to the Claimant's evidence in chief – she came off the taxi at Wilton Cross Roads, turned left and started walking on the left embankment when she heard a horn and then a loud noise.

She turned around and saw something like water flashing up in the air and she noticed that a truck had hit into the back of a car at the intersection of the cross roads. After the car got hit, it spun and came towards her. Everything happened in a matter of seconds.

In cross-examination she said that somebody had told her that the car spun and came towards them. She also admitted that she did not see the truck hit the car and that the last thing she saw was when the water went up in the air.

She was unable to say at what speed the said motor car was being driven and she could not say whether or not Mr. Knuckle was keeping a proper look out before the accident occurred.

Likewise she was not in a position to say that Mr. Knuckle failed to take any steps to avoid the accident and she denies ever saying that Mr. Knuckle was driving fast.

The Claimant's evidence has failed to establish how the collision occurred. The onus of proof lies on the Claimant to establish her case on a balance of probabilities. To do this, the Claimant must present credible evidence to prove those facts which are outlined in her pleadings.

Consequently, the only evidence of the circumstances of the collision is derived from Mr. Knuckle and Mr. Blackwood.

The Claimant has not pleaded the doctrine of res ipsa loquitor. It does not apply, and so the Claimant must rely on the evidence adduced at trial to prove her case against the Defendants.

There is no dispute that:

(1) the Claimant was hit only by the car driven by Mr. Knuckle and that at the time she was walking along the left embankment a graveled strip off the paved road.

(2) Mr. Blackwood was driving 'immediately' behind Mr. Knuckle's vehicle prior to colliding into the rear of his vehicle. (The word immediately is advisably used as the court is cognizant of the evidence of Mr. Blackwood that when he said at paragraph 3 of his witness statement that the truck was travelling immediately behind the Toyota corolla – it does not means that he was travelling close to Mr. Knuckle's car but that there was no other vehicle between them).

(3) That there was a bus stop at the corner of Brae's River, a minor road and Wilton Road a major road which obstructed the view of Brae's River as one travels on the left side of Wilton Road approaching the said intersection from Santa Cruz to Mandeville.

(4) Mr. Blackwood collided into the rear of Mr. Knuckle's vehicle after Mr. Knuckle braked suddenly and without warning on the Wilton main road.

(5) Mr. Blackwood was the servant and/or agent of the 1st Defendant at the time of the accident.

Case for the 3rd Defendant

The 3rd Defendant avers that the accident was caused solely as a result of the negligence of the 2nd Defendant in the way that he drove and or maneuvered the motor truck, or in the alternative that he significantly contributed thereto:

Further Particulars of Negligence of the 2nd Defendant allege:-

(i) failing to observe and/or heed the presence of the 3rd Defendant's motor car travelling in front of the motor truck being driven by him in sufficient time or at all.

(ii) Violently colliding with the rear of the 3rd Defendant's motor car thereby causing or permitting the 3rd Defendant to lose control thereof and further causing the said motor car to injure the Claimant and overturn.

(iii) Causing and/or permitting the said collision.

There are inconsistencies between paragraph 5 of the defence as pleaded and the evidence of Mr. Knuckle encapsulated in his witness statement and cross-examination as to how the accident occurred.

In paragraph 5 of the defence, the 3rd Defendant stated that upon reaching the vicinity of the intersection of Wilton Road, he noticed a blue car travelling on Wilton Road approaching the main road at a fast speed. The 3rd Defendant slowed down and the blue car came to a stop at the intersection of the roads.

The 3rd Defendant was in the process of proceeding when the blue car moved from its stationary position into the path of the 3rd Defendant's motor vehicle, where upon the 3rd Defendant applied the brakes of his motorcar to avoid colliding with the blue car and immediately thereafter the motor truck collided with the rear of 3rd Defendant's motor car causing him to lose control of the car which ran into the sidewalk hitting two pedestrians.

In cross-examination by Miss Minto, Mr. Knuckle denied that he was in the process of proceeding when the blue car moved from its stationary position into the path of his car. He denied the suggestion by the 1st and 2nd Defendants Attorney-at-Law in cross-examination that he slowed down and came to a stop when he first saw the blue car, and then moved off after the blue car came to a stop.

When paragraph 5 of his defence was shown to him he responded by saying that he was not aware of the legal words placed on the defence.

Mr. Knuckle maintained throughout his cross-examination by both Attorneys for the Claimants and the 1st and 2nd Defendants that the accident occurred as he stated in his witness statement and amplified in cross-examination.

In his witness statement/evidence in chief Mr. Knuckle stated that whilst negotiating the Wilton and Brae's River road intersection an unknown third party entered the said intersection causing him to apply his brakes to avoid a collision.

He also stated that immediately after he had applied the brakes, and the third party motorcar had cleared the intersection, he felt something crash into the rear of his motor vehicle, pushing it approximately 15 – 20' across the intersection, and causing his motor vehicle to collide into the left embankment and then overturn.

After exiting his motor vehicle, he noticed the said motor truck a few feet from the scene of the collision with its left front bumper in the left embankment. The driver of the truck advised him that he had collided into the rear of his said motor vehicle.

The cross-examination of Mr. Knuckle conducted on the Claimant's behalf elicited the following evidence –

(a) He had been operating taxis on the Santa Cruz to Mandeville route from 1980 i.e. 19 years.

(b) To his knowledge on one (1) or (2) two occasions vehicles had emerged .suddenly from Brae's Road a side road unto the main road i.e. Wilton Road before him

(c) Based on his experience this was an intersection which he had to approach with some caution.

(d) He noticed a blue car travelling on Wilton Road approaching the Main Road at a fast rate of speed.

(e) He could not see the blue car until he was right at the bus stop at the corner.

(f) On his approach to the intersection he applied his brakes once.

(g) He applied his brakes and came to a complete stop.

(h) Both cars came to a stop together.

(i) The blue car projected half way across his lane i.e. Wilton Road, when it stopped.

(j) When he stopped he was in the centre of the intersection

(k) The blue car stopped for a few seconds, drove off and made a right turn.

(l) He stopped only once and after stopping he did not move off, the truck moved him off.

(m) There was enough time for the blue car to drive off and clear his (Mr. Knuckle's) car. He immediately felt an impact after this, in the back of his car.

(n) He was traveling at 35 -40 mph as he approached the intersection and saw the blue car coming.

(o) He did not toot his horn when he saw the blue car coming up at a fast rate of speed.

The cross-examination of Mr. Knuckle by Mr. Gittens disclosed the following:-

(a) when he first saw the blue car he was 15' away (demonstration of the distance in court - was estimated at between 8 - 10 yards)

(b) the first time he saw the blue car it was coming to the junction of the road

(c) he started to apply his brakes as he saw the car

(d) when he first saw the car it was moving fast.

Case for 1st and 2nd Defendant

These Defendants in their defence say that any injuries sustained by the Claimant arose wholly or partly from the negligence of the driver of the one or the other car, and or of the drivers of the two cars aforesaid (i.e. driver of Nissan Sunny motor vehicle and Mr. Knuckle) or by the negligence of the Claimant.

At trial particulars of negligence of the Claimant outlined in the pleadings were not seriously pursued.

"Particulars of negligence of the one driver" (i.e. driver of the blue sunny motor car) were pleaded –

However this party is not before the Court, and only parties before the Court can be found negligent. See Cocoa Cola Bottling Co. v. Daniel Hurd et al 22 JLR 120.

The Particulars of Negligence of the other driver (i.e. the 3rd Defendant alleged are :-)

(a)" Having slowed down and appearing to come to a stop while traveling in front of the truck along the major roadway, moving off again but then coming to a stop again, only this time suddenly and without warning or signal, thereby causing the truck to collide in the rear of the other car.

(b) Failure to anticipate or see, in time or at all, that the first car was being manoeuvred in the manner alleged in paragraph 1 to 4 above and to warn the 2nd Defendant, by signal or otherwise, that he (the other driver) was about to stop.

(c) Failure to heed and give sufficient consideration to the presence of the first car towards it, albeit unlawfully, from the minor road, and of the truck lawfully traveling behind it.

(d) Failure to keep a proper lookout, or to swerve or otherwise manoeuvre the said car to avoid collision with the Defendant's truck."

The 2nd Defendant says in his witness statement that he was driving a truck immediately behind the Toyota corolla in the vicinity of Wilton at the intersection of Brae's River Road and Santa Cruz to Junction Main Road.

A Nissan Sunny was traveling on the Brae's River Road there was a stop sign against the Nissan Sunny. As the Nissan Sunny approached the intersection, the corolla slowed down and he applied the brakes of the truck and slowed down also to about 15 miles per hour.,

As the Nissan Sunny approached nearer the intersection it slowed down and came to a stop. The Toyota increased its speed and he increased the speed of the truck back to about 25 miles per hour.

He said that suddenly and without warning the Nissan Sunny then moved off and entered the major road, after and as a result of which the Toyota slowed down quickly and came to a stop.

In coming to a stop, it ended up in a broad side facing the Brae's River Road while still on the main road.

The Nissan Sunny by then had come out into the main road facing the direction of Santa Cruz and had almost collided with the southern embankment of the main road and was so positioned that it left no space for him to swerve away from either it or the Toyota.

Mr. Blackwood said that he applied the truck brakes sharply and swerved to the right in an effort to avoid a collision with the Toyota which was nearer to him, and continued to

apply the brakes of the truck to bring it to a stop, but it nevertheless collided in the rear of the Corolla, which then apparently collided with the Claimant.

In cross-examination Mr. Blackwood said:-

(a) He was driving a tipper truck, which was empty at the time

(b) He is aware of the provisions of the Road Code that he should drive at a safe distance and speed behind the vehicles proceeding ahead of him so that if that vehicle stops suddenly, he can stop without hitting that vehicle.

(c) The driver of a truck should keep a greater distance when the vehicle ahead is a car.

(d) The section of the road where Wilton intersects with Brae's River Road slopes in a downward direction.

(e) He collided into the rear of Mr. Knuckle's motor car when Mr. Knuckle stopped suddenly at the intersection.

(f) He was not driving fast.

(g) The truck was not close to the vehicle being driven by Mr. Knuckle.

(h) He hit into Mr. Knuckle's car to avoid oncoming vehicles that had almost collided with the Nissan Sunny that drove out.

(i) Immediately before the collision Mr. Knuckle's vehicle was approximately 40' – about 2 truck lengths in front of the truck.

(j) He collided into the back of Mr. Knuckle's car because it was total chaos at the intersection.

(k) At the intersection vehicles coming from Mandeville that ended up on his side of the road, did not collide with the truck.

(l) Vehicles coming from Mandeville were on their correct side of the Road right before he hit into Mr. Knuckle's car.

(m) The chaos in the intersection was not caused by vehicles coming in the opposite direction from Mandeville.

(n) The presence of the vehicles coming from Mandeville was not a reason for the collision

(o) The chaos was caused by the blue Nissan motor car that drove unto Wilton Main Road.

(p) He did not see the Sunny Nissan before it entered the intersection.

(q) The truck collided into Mr. Knuckle's vehicle before it came to a stop.

(r) When Mr. Knuckle continued into the intersection, he increased his speed and proceeded behind him.

(s) When he increased his speed behind Mr. Knuckle the Nissan Sunny had entered the intersection.

(t) The tipper truck and motor car (being driven by Mr. Blackwood) were not at the same height. The tipper truck was higher than the car.

(u) Mr. Blackwood was able to see over Mr. Knuckle's vehicle ahead of him.

I do not find Mr. Blackwood to be a credible witness and his demeanour in the witness box was unconvincing. There are several inconsistencies in his evidence which calls his credibility into question.

The first reason he proffered for colliding into Mr. Knuckle's car was to avoid oncoming vehicles. Later he retracted this and said that the vehicles were on their correct side of the road and that they were not the reason for the accident.

At paragraph 7 of his witness statement Mr. Blackwood said that as the Nissan Sunny approached the intersection, the Toyota Corolla slowed down and he applied the brakes of the truck and slowed down also. At paragraph 6, he said that as the Nissan Sunny approached nearer the intersection, it slowed down and came to a stop.

In cross-examination he said that he would not be able to see the Nissan until it projected into the Main Road/into the intersection and that the first time he saw it was when it entered the intersection.

He said that he would not be able to see the blue car on Brae's River Road because there was a bus stop and some JPS light posts on the left which obstructed his view.

Mr. Blackwood has offered no satisfactory explanation for this inconsistency in his evidence which is clearly irreconcilable.

In cross-examination he told the Court that Mr. Knuckle slowed down and then moved off again increasing his speed, he also increased his speed behind and at that time the Nissan Sunny had entered the intersection.

In re-examination when confronted with this statement and what he said in his witness statement i.e. that it was after the Nissan Sunny came to a stop, the Toyota increased its speed and he increased the speed of the truck back to 25 miles per hour, he said that what he had said in the witness statement was the correct account.

Mr. Blackwood is asking the Court to accept that Mr. Knuckle slowed down and then moved off again before coming to a sudden stop, after the Nissan Sunny which had stopped, suddenly and without warning entered the intersection. Further that this sudden breaking up by Mr. Knuckle caused him to collide into the rear of Mr. Knuckle's motor vehicle.

In light of the above and especially paragraph 5 of the Defendants particulars of Negligence, the Court would have thought it prudent for these Defendants to have filed an Ancillary Claim.

Liability

In order to establish negligence on the part of Mr. Knuckle, it has to be established not only that he owed .a duty of care to other road users but that he breached this duty.

On the accounts given by the 2nd and 3rd Defendants both agree that there was either some slowing down or stopping on Mr. Knuckle's part.

The Claimant cannot say anything to the contrary. The Claimant has not established that Mr. Knuckle has breached any duty of care.

In my opinion no breach is evident. There is no evidence that Mr. Knuckle was driving too fast or failed to keep any or any sufficient lookout. The only evidence in this regard is that when he stopped suddenly, Mr. Blackwood was not able to stop and did not have enough space on the right to pass.

I find that the proximate cause of the collision was that Mr. Blackwood was driving too close behind Mr. Knuckle's vehicle and was in breach of his duty to ensure that he kept a sufficiently safe distance behind the motor car.

I find that Mr. Knuckle was paying sufficient attention to what was happening in the intersection, and this is why he was able to stop in time to avoid hitting the Nissan motor car.

I find that the collision occurred in the manner described by Mr. Knuckle in his witness statement and in cross-examination.

I have viewed his credit on the issue as to the manner in which the collision occurred as set out in paragraph 5 of his Defence against his demeanour in the witness box and the obvious approach by litigants of average intelligence to Court documents which are given to them by their Attorneys to sign.

Having had the opportunity to assess Mr. Knuckle's demeanour in the witness box I accept him as a witness of truth.

I find that Mr. Knuckle had experience of driving on the said road and approached the intersection with caution.

It was Mr. Blackwood's duty to take up such a position and to drive in such manner as would enable him to deal successfully with all traffic exigencies reasonably to be anticipated. His clear field of vision ahead of Mr. Knuckle's vehicle made his duty of care greater.

Mr. Blackwood could see ahead, he had a clear vision ahead of Mr. Knuckle as a result of the height of the tipper truck that he was driving and was therefore in a position to assess the events taking place at the intersection and therefore prevent the collision with Mr. Knuckle's motor car.

He was not paying sufficient attention to what was happening at the said intersection.

He failed to appreciate early enough that Mr. Knuckle was stopping.

I find Mr. Blackwood solely negligent for the accident.

In any event if the account given by Mr. Knuckle in the Defence and that advanced by Mr. Blackwood were to be accepted, I am of the view that Mr. Blackwood would have admitted his negligence as he had time to observe what was happening and should have acted with greater care in the circumstances.

Special Damages

At trial Mr. Gittens withdraw his client's notice in response to the Claimant's notice of intention to tender hearsay documents except for items 38 and 41.

By consent items 1 – 37 were tendered in evidence as exhibits 1 – 37. Item 39 of notice was marked exhibit 38 and item 40, exhibit 40.

Items of special damages proved and supported by receipt are as follows:

Hospital stay	$ 1,600.00
Outpatient Clinic	$ 3,770.00
Prescriptions	$ 6,115.19
Dr. Smith	$ 3,500.00
Medical report Dr. Smith	$ 3,000.00
Police report	$ 1,000.00
Total	$18,985.19

There is no evidence before the Court to support Claimant's claim for transportation. In her Amended Particulars of Claim Miss Brown claims $405,600.00 for loss of earnings but Miss Minto in her closing submission claimed $67,600 on her client's behalf. The unchallenged evidence is that at the time of the accident she was employed at E & J Superette through the HEART Trust from February 9, 1999 to February 23, 1999 as a Cashier and earned $1,300 per week. She did not pay tax. Her training was scheduled to finish in February 2000.

The Claimant's evidence is that she was unable to work for one year after the accident because of her injuries. She was a Cashier which required her to sit for long periods, and she had difficulty doing this.

Miss Minto submitted that one year is a reasonable claim in light of the medical evidence that three years after the accident (2002) the Claimant was still required to do therapy, and five years after the accident Dr. Rose opined that she was still smarting from injuries which would affect her daily activities.

Mr. Johnson submitted that the evidence does not support her claim for loss of earnings for the period indicated as she failed to prove that she could not work for the period claimed either at the pre-accident rate or a lesser sum. He said that any award made under this head must be limited to the period for which she was placed on sick leave. There is no evidence before the Court that the Claimant was granted sick leave by a doctor.

In fact the letter signed by the manager of E & J Superette states that "she met in an accident in which disabled her from working".

Implicit in her claim is that after one (1) year she became employable.

There is no evidence before the Court as to whether or not the Claimant sought employment during this one year period and if not why not and if so with what results.

In law the Claimant has a duty to mitigate her losses. Although the one year period was not challenged at trial, the onus rest on the Claimant to establish this claim for special damages.

I am not satisfied on the medical evidence that the Claimant was unable to work and or that she tried to work and failed during this one year period. However she is clearly entitled to some loss of earnings because of her injuries. In the circumstances I find a reasonable award to be 6 months loss of earnings.

Handicap on the Labour Market/Loss of Earning Capacity

The Claimant claims $400,000 under this head of damages.

In determing this claim, the court is guided by the principles set out in Moeliker v Reyrolle & Co. (1977) 1WLR 132 and Gravesandy v. Moore (1986) 40 WIR 222.

The Court has to assess whether there is a real or substantial risk that the Claimant may lose her job at sometime in the future and may then, as a result of the injury be at a disadvantage in getting another job or an equally well paid job before the end of her working life.

At the time of trial, the Claimant was employed as a trainee waitress at KFC. Prior to this she worked at H & G Merchandise Wholesale Distributors checking off goods.

She started working there in February 2006. The Court is unaware of the salary she earned, the duration of this employment and the reason for its termination.

There is no evidence before the Court that she has been in and out of the labour market throughout the years because of her injuries or that during these years because of her injury she has lost her job.

There is no indication that the circumstances of this Claimant falls within the criteria for such an award and that because of her injury she has suffered any harm on the labour market or been put at any disadvantage.

Pain and Suffering & Loss of Amenities

The particulars of injuries of the Claimant listed in the Amended Particulars of Claim are as follows:-

(i) severe muscular spasm affecting the sternocleidomastoid, upper trapezius, levator scapulae and splenius capitis muscles;

(ii) tenderness on palpation over SCM, levator scapulae and upper trapezius;

(iii) limitation in the range of movement in the cervical spine;

(iv) decreased mobility

(v) loss of normal lumber lordosis

(vi) decreased L5-S1 disc spaces;

(vii) cervical compression

(viii) cervical distraction

(ix) hyperextension

(x) post traumatic lumbar discopathy L4 – L5 and L5 – S1

(xi) post traumatic cervical strain

(xii) post traumatic lumbar facet syndrome

(xiii) promotion of scar tissue formation

(xiv) head injury

(xv) server tenderness and spasms along the entire cervical column

(xvi) severe pain to head, neck , mid upper and lower back

Disabilities outlined are:-

(a) severe neuro-musculo-skeletal functional limitations

(b) decreased mobility

(c) short term memory loss

(d) diminished ability to do daily activities

(e) 15% whole person permanent disability

On examination of the Claimant in January 2002, Dr. Smith assessed her as having a 15% disability of the whole person and he recommended further treatment.

Dr. Rose examined her on 24th June 2004 and assessed her with a 10% whole person permanent partial disability.

The Court accepts this assessment as accurate.

He made the following diagnoses:-

(1) cervical strain (whiplash injury)

(2) mechanical lower back pains

(3) mild dorsal strain (interspinous ligament strain)

Miss Minto has urged me to make an award of $3,000,000 for pain and suffering and loss of amenities.

She has placed reliance on 2 cases in support of this head of damages

These cases are **Icilda Osbourne v. George Barned Claim No. 2005 HCV 294** (unreported) and **Marie Jackson v. Glenroy Charlton** reported at page 167 of Khans Volume 5.

In the case of Icilda Osbourne v. George Barned (Supra) the Claimant suffered whiplash injury, tenderness to the posterior aspect of the neck; and chronic mechanical lower back pains and chronic cervical strain. Her total partial percentage disability was 10% whole person.

On the 17th February 2006 she was awarded $2,500,000 which updated would be $3,292,528.02 (using CPI April 2008 of 124.8).

In Jackson v. Charlton (supra) the Claimant suffered the following injuries:-

Whiplash with sequelae and left sacro-iliac contusion, loss of cervical lordosis and lumbar disc prolapse. Her permanent partial disability was assessed at 8% whole person.

In May 2001 he was award $1,800,000 which updated would be $3,914,270.6.

Mr. Johnson referred the Court to Anthony Gordon v. Chris Meikle and Esrick Nathan reported at page 142 of Khans Volume 5. The Claimant suffered cervical strain, contusion to the left knee and lumbo sacral strain. His permanent partial disability regarding the lumbo sacral spine was assessed at 5% of the whole person. On the 7th July 1998 he was awarded $220,000 for general damages. This figure updated would be $567,624.55 (using CPI for April 2008) of 124.8.

Mr. Johnson submitted that the award be increased by $114,000 to take into consideration the Claimant's period of unconsciousness.

In seeking further assistance in the calculation of the award I have examined the cases of **Carolyn Cooper & Kathryn Shields Brodber v. Ralson Smith and Kathleen Earle v. George Graham et al** both reported at Khans 4 pages 159 and 173 respectively

In the former case this Claimant suffered whiplash, severe neck pains with radiations of pain into both shoulders, mailed restriction in all movements of the cervical spine, headache, in an accident on 20th June 1989. Up to 1992 she was significantly disabled, after 1992 moderately disabled.

PDD was assessed at 6% whole person

On 29th April 1997 she was awarded general damages in the sum of $275,000 updated this amounts to $799,254.74.

In **Earle v. Graham** the Claimant was diagnosed with a severe whiplash. Dr. Rose assessed her permanent disability at 10% of the cervical spine which is equivalent to 6% whole person disability. On 11th December 1996 she was awarded $800,000 for pain and suffering and loss of amenities. This translates to $2,382,816.1 today.

I have also examined two other cases i.e. Earl Lawrence v Denis Warmington and Stacey-Ann Mitchell v. Carlton Davis et al both reported in Khans 4 at page 144 and 146 respectively where the Claimants were diagnosed with moderate whiplash injury.

In Lawrence's case – the updated award amounts to $1,043,478.2 and in Mitchell's case to $1,269,935.2 (using CPI – 124.8).

Looking at the range of awards including not only the percentage disability where applicable but the actual pain and suffering and loss of amenities in each case and the instant case I find that an award of $2million would be appropriate in the circumstances for pain and suffering loss of amenities

Judgment for the Claimant as against the 1st and 2nd Defendants.

General Damages assessed as follows:-

Pain and suffering - $2 million

and loss of Amenities

Interest at the rate of 6% per annum from the date of service of the Claim Form to 21st June 2006 and at 3% per annum from 22nd June 2006 to date of judgment.

Special Damages

In the sum of $50,185.19 at the rate of 3% per annum from 24th February 1999 to 14th July 1999 and 6% from 15th July 1999 to 21st June 2006 and at 3% from 22nd June 2006 to date of judgment

Costs to the Claimant as against the 1st and 2nd Defendants to be agreed or taxed.

Judgment for the 3rd Defendant as against the Claimant.

Costs to the 3rd Defendant to be agreed or taxed.

It is regrettable that the Attorney-at-Law for the 1st and 2nd Defendants failed to furnish the Court with any written submissions as requested.