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***IN THE SUPREME COURT OF JUDICATURE OF JAMAICA***

***IN COMMON LAW***

***SUIT C.L. 1997/C442***

<b><i>BETWEEN</i></b>	<b><i>DONOVAN CHAMPAGNIE</i></b>	<b><i>PLAINTIFF</i></b>
<b><i>A N D</i></b>	<b><i>ATTORNEY GENERAL FOR JAMAICA</i></b>	<b><i>1<sup>st</sup> DEFENDANT</i></b>
<b><i>A N D</i></b>	<b><i>LYNDON WRIGHT</i></b>	<b><i>2<sup>nd</sup> DEFENDANT</i></b>

***Danesh Maragh instructed by Fay Chang Rhule & Co.  
for plaintiff.***

***John Francis instructed by Director of State Proceedings  
for Defendant.***

***Heard: January 16, 18 & February 16, 2001***

***Harris, J.***

The plaintiffs' claim against the defendants is to recover damages for negligence. The genesis of this suit is an accident which occurred on March 10, 1997 along the Labyrinth main road in the parish of St. Mary between a motor bus owned and driven by the plaintiff and a truck, owned by the first defendant and driven by the second defendant, a servant of the first defendant.

Leave was sought and obtained by the defendants to amend their defence.

The plaintiff seeks general damages for injury to his leg and special damages with respect to his vehicle, which, were outlined as follows: -

Pre-accident value	450,000.00
Less Salvage	<u>50,000.00</u>
	400,000.00
Wrecker's fee	4,863.00
Loss of Earnings	4,500.00
22 days @ \$4,000 each day	<u>88,000.00</u>
	\$497,363.00

It has not been disputed that a collision occurred on the Labyrinth main road about 7 or 8 o'clock on the morning of March 10, 1997 between the two vehicles, one driven by the plaintiff and the other driver by the 2nd defendant. However, competing versions as to how the accident happened were advanced by the plaintiff and his witness on one hand and by the 2<sup>nd</sup> defendant on the other hand.

The plaintiff's case is that he was proceeding along the road in his minibus in which he had passengers. He was travelling about 20 – 25 m.p.h. on his correct side of the road. He applied his brakes, pulled closely to side of the road and stopped. The truck however collided with his bus. His vehicle was then pushed backwards onto an embankment.

After the collision occurred his foot became trapped beneath the steering wheel of his vehicle. He requested the 2<sup>nd</sup> defendant to reverse. Before reversing, the truck again moved forward.

The defendants' case is that the 2<sup>nd</sup> defendant, on the morning in question, was driving the 1<sup>st</sup> defendant's truck loaded with 600 curb walls along the road.

About 1½ chains before he arrived at a corner, he stopped to allow a vehicle to pass, as that area of the road is narrow. After negotiating the corner he saw the plaintiff's minibus approaching, travelling at a rate speed of about 80 kilometers per hour. He stopped. The minibus skidded, the rear end hit the embankment. The right side of the bus hit the truck's air tank. After the accident he was told by the plaintiff that he was stuck and requested him to take him out. He assisted the plaintiff.

I will now address the issue of liability. Both parties have declared that they were stationary at the time of the impact. Each party maintained that he was on his correct side of the road. The question therefore, is how did the accident happen?

The plaintiff recounted that there was a large pothole at that point of the road where the accident occurred. This pothole was on that side of the road on which the 2<sup>nd</sup> defendant ought to have been travelling. Mr. Albert

Smith, the plaintiff's witness gave evidence that such a pothole had existed at the time of the accident.

The plaintiff travelled the road often and said that it is the custom of motorists to drive on the opposite side of the road to avoid that pothole. The 2<sup>nd</sup> defendant initially denied the existence of the pothole but later admitted in cross-examination that potholes, which were repaired in 1999, were present, at the time of the accident, on that part of the road.

A Report from the loss adjuster, Trans Jam Loss Adjusters which was tendered as an exhibit, shows damage mainly to the right side of the bus but also damage to the left rear side body panel, left tail lamp and tail gate. There is no dispute that the right side of the bus collided with the truck. This would have accounted for the damage to the right side of the bus.

There remains to be explained, the damage to the left rear side of the body panel, the left tail lamp and tail gate of the bus. The plaintiff and his witness asserted that the bus was pushed back on the embankment by the truck. It was declared by the 2<sup>nd</sup> defendant that the bus skidded, hit the embankment, then veered to the right and hit the air tank of his truck. He stated that before the bus hit the embankment the plaintiff had reduced his speed from 50 m.p.h. to 20 m.p.h.

The account given by the 2<sup>nd</sup> defendant, I may venture to say, is preposterous in light of the evidence contained in the Assessor's report relating to the damage to the left areas of the bus and the tailgate. Damage to those areas of the vehicle are inconsistent with a skid and a vehicle being thrown on an embankment at 20 miles per hour. In addition, Mr. Smith stated that the surface of the road was dry that morning.

Further, in paragraph 3 of the defence the defendant stated inter alia: -

“The first defendant will say that the 2<sup>nd</sup> named defendant stopped to allow a minibus off pass on a narrow section of the roadway, a corner. Immediately following, that the minibus registered number PP363 N which came around the said narrow corner at an excessive rate of speed, lost control and hit the Ministry's Dump Truck No. 800 driven by the 2<sup>nd</sup> defendant.”

The second defendant testified that after stopping to allow the first minibus to pass, he again stopped when he observed another minibus coming at a distance of about 1½ chains away. This aspect of his evidence has clearly departed from his pleading. There is nothing in the defendant's pleading to indicate that the 2<sup>nd</sup> defendant had stopped immediately before the accident.

In my judgment the narrative of events as related by the plaintiff and his witness as to how the accident happened is credible. I accept their evidence.

I find that on the morning of March 10, 1977 the 2<sup>nd</sup> defendant drove his truck around the corner of the Labyrinth main road, in order to avoid a pothole which was on his side of the road, and collided with the plaintiff's minibus damaging same and injuring the plaintiff's left leg.

I will now address the matter of general damages. The plaintiff has given cogent evidence that he received cuts and bruises on his leg as a result of the accident. His leg was trapped in the vehicle after the impact. Mr. Smith also gave evidence to support of t his. The plaintiff pointed out to the Court the areas on his leg on which he sustained injuries. Scarring was observed on those areas.

He stated that his leg was sutured and that he received medical treatment from Dr. Francis in St. Ann's Bay. He also said he received 3 stitches. This I accept. Although no medical evidence was adduced in support of his injury. I am satisfied that he did sustain the injury of which he complained. I am also satisfied that he experienced swelling of the limb consequent on receipt of the injury. There is no doubt he suffered pain and ought therefore to be compensated.

The case of *Smith v Reid, Harrison Report page 362* offers an appropriate guide in determining an award. In that case the plaintiff experienced severe swelling and bruising of both legs. An award of

\$4,000.00 for pain and suffering was made on February 8, 1991. This award, when updated would amount to \$31,711.60.

In the case under review, the plaintiff sustained cuts bruises and swelling of one leg while the plaintiff in *Smith v Reid* suffered bruising and swelling of both legs. The lacerations suffered by the plaintiff in the present case, were small, one of which was serious enough to require 3 stitches. In my opinion, the sum of \$35,000.00 would be adequate compensation for his pain and suffering.

There remains to be considered the matter of special damages. Special damages must be specifically proved see *Mills v Murphy* 1976 14 *J.L.R pg.* 119

Items of special damages which have been proven and allowed are as follows: -

Value of bus	-	\$400,000.00
Assessor's fees	-	4,863.00
Wrecker's fees	-	<u>4,500.00</u>
		\$409,363.00

The plaintiff's claim for loss of earnings of \$4,000.00 daily for 22 days has not been proved and must accordingly be disallowed.

Judgment for the plaintiff in the sum of \$444,363.00 being general damages of \$35,000.00 with interest thereon at rate of 6% per annum from date of service of the Writ and special damages of \$409,363 with interest thereon at rate of 6% per annum from March 10, 1977.

Costs to the plaintiff to be agreed or taxed.