[2019] JMSC Civ 115

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014 HCV 02848

BETWEEN	**SATNAREN CLARKE**	**CLAIMANT**
AND	**JAMAICA URBAN TRANSIT COMPANY LIMITED**	**DEFENDANT**

IN OPEN COURT

ORAL JUDGMENT

Khadine Dixon instructed by Dixon & Associates Legal Practice for the Claimant.

Kimberlee Dobson and Ms. Karleen King instructed by Deidre Coy for the Defendant.

Negligence - Duty of Care - Bus Driver to Passenger - Res Ipsa Loquitur - Causation.

Heard: 8th April, 2019

THOMAS, J.

Introduction

[1] In the claim form filed July 11, 2014, the Claimant Ms. Satnaren Clarke claims against the Defendant Jamaica Urban Transport Company Limited damages for personal injuries sustained on or about the 17th of September 2013, arising out of an incident in which the Claimant travelled on, and was let down from the Defendant's bus. The incident, as agreed by both parties occurred in the Monza area of, Greater Portmore in the parish of St. Catherine. The Claimant alleges that whilst attempting to disembark the said bus at Braeton Parkway, she fell into a

ditch when the driver failed to stop the bus at the bus stop and instead let her off some distance away in the dark.

The Defence

[2] In defence to the Claim the Defendant company acknowledges that the Claimant was a passenger of the bus. However, the allegations of negligence are denied. The company denies the existence of a ditch in the area where the Claimant was let down. The Defendant avers that the incident occurred as a result of the Claimant losing her balance and falling on the ground on disembarking the stationary vehicle.

The Issues

[3] The issues which arise in this case are:

(i) Whether the Defendant owed a duty of care to the Claimant a passenger on its bus.

(ii) Whether the Defendant through its agent, the bus driver breached that duty of care.

(iii) Whether the injuries of the Claimant were caused by Defendant company breaching its duty of care owed to the Claimant.

The Law

[4] The principle in relation to the law of negligence was laid down in the case of ***Donoghue v Stevenson*** [1932] UKHL 100. Lord Atkins in his judgment stated that:

> "*a reasonable care must be taken to avoid an act or omissions which a reasonable man can foresee may cause injury to a neighbour*". He further stated that your neighbour is "*anyone who is directly affected by your actions*".

In the case of ***Glenford Anderson v. George Welch*** [2012] JMCA Civ.43 at paragraph 29 of the judgment, Harris JA stated:

> *"Liability will be affixed to negligence where the defendant's act is the sole effective cause of the claimant's injury or it is so connected to it to be a cause materially contributing to it. The negligent act as a cause of a claimant's injury may arise out of a chain of events leading to liability on the part of a defendant but the claimant must so prove. Proof that a claimant's injury was caused by the defendant's negligence raises a presumption of the defendant's liability. However, the claimant must satisfy the court that his or her injury was caused by the defendant's negligence, or that for want of care, the defendant's negligence substantially accounted for the injury".*

[5] As was stated in the case of ***Donoghue v Stevenson*** (supra), the care that is to be taken is based on the foreseeability test. That is the standard of the ordinary reasonable man placed in the same circumstances as the Defendant. Therefore, in the instant case the care will be assessed on the standard of the ordinary reasonable bus driver.

The Evidence of the Claimant

[6] In her the evidence in chief, Ms. Clarke states that:

She resides at Lot 127 Monza, Greater Port more in the parish of Saint. Catherine. On Tuesday, the 17th day of September 2012, at about 9:21 pm she along with her young child were passengers on a number 20A JUTC bus heading home from work. She noticed that the bus was being driven by a female driver she had never seen before on that route. She has lived and driven along that route for over twenty (20) years. Normally, she would come off the bus at a stop referred to as 'Monza Stop' which is located along the same side as the 2 North Housing Scheme. That night as the bus approached her stop she rang the buzzer indicating her intention to disembark the bus. The driver drove past the stop. She also observed that, that

was not an unusual occurrence that night because whenever persons rang the buzzer the driver would stop at a place which was not the usual stop and it was passengers who had to direct her as to the correct place to stop. When she passed the stop on that night, she shouted “driver I rang the buzzer”, the driver then suddenly stopped the bus. She and her young child proceeded to disembark the bus. As she stepped down the staircase to leave, she held on to the handrails. It was dark and she could not see the ground.

[7] She further states that when she first entered the bus she noticed that the last step of the bus was higher than usual from the ground level which made her proceed with even more caution. As she stepped down from the last step that night, she realized the ground was not level and her right foot and was far extended from the bus. She did not have enough control of her body to retreat into the bus. She stepped into a hole which she realized was a ditch and twisted her ankle. She felt great pain. The driver only exclaimed “She fell off the bus” before driving off. She observed that the area where she disembarked, the road was broken away and the bus stopped on the edge of the breakaway. She called her children to assist her home and they carried her bags. She was unable to walk properly due to the pain she was in and she had to hop with their help to her home. She sought medical attention on the following day at the General Practitioner’s office at Apex Medical Centre. An x-ray reveal that the 5th metatarsal of her right foot was fractured. She was treated with plastic cast and instructed to ambulate, with crutches.

[8] On cross examination she states that she has been taking public transportation for a while. She has walked in the area regularly but not in that particular place of the incident. It was not near her home it was some distance away. There was no bus sign in the vicinity of the community. Buses or taxis do not stop a little below or above the area where she describes as the usual bus stop. Braeton Parkway is a straight road and a main road. The bus unit is big and it would take some time to stop depending on the speed it had been going. The bus remained stationary for her to alight. It had pulled over her to allow her to come off. She agreed that the bus lights were on. In addition to the roof lights, lights were on the steps. There are

light posts along the road way. She cannot recall whether the street lights were on at the time of the accident. She further gave the following responses: The soft shoulder of the road was not paved. The road was uneven. She does not know if that is how the entire area along the roadway of the Monza community looked. It was the state of the road that caused her to fall. She agreed that it was the local government that was responsible for the state of the roadways. Her daughter, who is seven (7) years old, came of the bus before her. Her child did not fall. She is a young child so she jumped off the bus. She watched as her child came off the bus. She agreed that she was better able to see where she was stepping off the bus than the driver of the bus. She did not have any books in her hand, only a lunch kit and her handbag. She held on to the handrails as she was coming off the bus. She disagreed that she lost her balance on coming off the bus. She filed a complaint to JUTC the day following incident. She confirmed that in that statement of complaint she said that she lost her balance when coming into contact with the damaged roadway. When asked if it was a damaged road or a hole in the road she responded that it was uneven until it was dug out. When asked about the approximate depth of the hole she states that she did not measure it so she would not know if it was about 1 inch deep or not. She admits that she has observed people walking there. She agrees that she did not state in her initial statement to the JUTC that any of the bus stairs were higher than usual. She agrees that when using the stairs, she had a duty to look out for her own safety.

The Evidence of the Witness for Defendant

[9] Ms. Coretta Reid gave the following evidence in chief:

She is a driver and started working with the JUTC in May 2010. On the 17th of September 2013, she was a driving a JUTC yellow Volvo bus which plies from Half-Way-Tree to Greater Portmore. There are hand railings on the doors of the bus and along the steps of the bus. At the front door by the steps the following words are posted “watch your step while embarking and disembarking the unit”. At some time, closer to 10 p.m., she was driving along Braeton Parkway Boulevard

going at a speed of approximately 25 kmph. She heard the buzzer ring after leaving the Country Club bus stop. She decelerated to enable the bus to stop at the next bus stop because it takes less than a minute to reach from the Country Club to the Monza bus stop. Upon hearing the buzzer, she looked and ensured that the area was safe to stop. She then engaged her handbrake. The bus came to a complete stop exactly within the vicinity of the area considered to be the bus stop across from the Monza community. She engaged her park brake and folded her arms to await the Claimant to disembark the unit. When she looked in the aisle she noticed the Claimant walking towards her with books in one hand and her handbag on her shoulder. She had her daughter in front of her. Her daughter appeared to be sleeping as she heard her telling her daughter to wake up because they had reached their stop.

[10] She watched the Claimant placed one foot down successfully, then placed the other foot down, then fell to her knees. She was not holding on to the hand rails when she stepped off. She believed it was because She was paying attention to her daughter when she was coming off the bus why she was not watching her steps. The area was not well lit. That bus stop has always been like that it only recently got better lighting this year. The Claimant then got up, brushed off her knee, took up her bag then walked away with her child. She watched her walk away to ensure she was fine before she drove off. She did not see the Claimant limping. She has stopped at that said spot on may other occasions without an incident. Braeton Parkway is asphalted and the soft shoulder is uneven dirt with shallow holes in some areas and this includes where the bus stop is. She did not stop near a ditch nor is she aware of any within the vicinity of that bus stop, but there are shallow potholes/breakaways at the edge of the road way. These can be easily manoeuvred or even stepped in without incident. If there was an issue where she stopped there was nowhere else to stop near the Claimant's destination as most of the stretch of the roadway is riddled with uneven edges and surfaces. The bus the Claimant travelled on the said day is the usual bus that plies that route. As

such there was nothing different about the stairs or the bus features that day. No other incident occurred due to the steps of the bus.

[11] On cross-examination she states that:

She is employed to JUTC for nine (9) years. She has been driving on the particular route up to the night of the accident for one (1) year. The area she let Ms. Clarke off was in the Monza community. There is no designated bus stop in that particular area. The 100 Man Police Station and at the Country Club are used as bus stops. There is a bus stop but further below Monza where there is a designated sign and shed but before reaching there, there is a 'SLOW' sign which people would signal as their bus stop. The bus stop is further down past the slow sign near to the stop light. When the buzzer rang when she left the Country Club bus stop, it took less than a minute to reach the other stop. She stopped six (6) steps from the "SLOW" sign. That is between the 'SLOW' sign and the Monza stop which is marked by a big house. The big house is a part of the Monza community. The big house is on the left hand side and the "Slow" sign is on the right hand side. She heard the buzzer after just leaving the Country Club. The next stop would be the big house and not the 'SLOW' sign. She let off Ms. Clarke at the big house. It takes just a minute to drive from the Country Club to the big house.

[12] She was driving at 25 kilometers per hour (KMPH) even before hearing the buzzer. The bus limit on the road is 50 KMPH. She travels below the speed limit because if someone wants a stop, she cannot go fast. She did not look at the speedometer but she just knows she was going at 25 KMPH by estimation. She was not speeding at the time the Claimant pressed the buzzer and she had not missed the stop of several passengers on that night. She started working at 1 p.m. that day. The incident occurred around 10 p.m. She doesn't take her cell phone with her on the bus because gunmen came on the bus to rob the bus so she doesn't walk with her cell phone. She was not on her cell phone when the Claimant pressed the buzzer. She does not know where the Claimant was sitting as there are 53 seats on the bus. From where she was sitting she could hear when the Claimant spoke

to her child. When she looked in the aisle, she saw them in the middle of the aisle. She used the rear view mirror to look in the aisle.

[13] The bus is a right hand drive and there are no seats on the left of the driver's seat. The steps of the bus are on the left of the driver's seat and it is parallel to the seat. There are no seats between her seat and the steps. There are three (3) steps on the unit. It is not true that in order for a passenger to alight from the bus the steps have to be lowered. In order to come off the bus you would have to let go of the railings. Ms. Clarke did not hold on to the railings as far as she could in order to come off the bus. Her driver's seat was approximately eight (8) feet from the first stair. The stairs were not higher than usual. The Claimant's back was to her as she came off the bus and her head was positioned towards the ground. The Claimant did not say anything to her. When the Claimant fell, no part of her was in the bus. There is light at the big house now but there was none at the time of the incident. Light from the housing scheme would not be enough to reflect out onto the road. She disagreed that the area where the 'SLOW' sign is, was well lit. She said the area is dark as JPS did not put any light there.

Submissions by Mrs. Khadine Dixon for Claimant

[14] The submissions for the Claimant as they relate to the relevant issues are summarized as follows:

(i) It was reasonably foreseeable that the road was not suitable for the passenger to alight. Drivers ought to have in their contemplation that it is normal for passengers to get up from their seats in preparation for alighting and that they will not always be in a position to hold the rails with both hands firmly. Therefore, the bus should be so manoeuvred that a passenger would not be put in a state of imbalance, to occasion a fall. The driver in the instant case did not manoeuvre the bus with the "skill and care of a reasonable driver".

(She relied on ***Janet Stewart-Earle v Jamaica Urban Transit Limited [2015] JMSC Civ. 51)***

(ii) Based on the evidence given by the Defendant a reasonable inference can be drawn that there was some street light from the housing on the left and the right of the road which would have provided some amount of light to shine on where the Defendant ought to have let off the Claimant. The Claimant was let down past the designated bus area. The Claimant alighted in a dark area liable to cause harm and danger to her through a slip or fall which was a reasonably foreseeable outcome of allowing the Claimant to alight in a dark place. The driver was distracted by her mobile phone and not attentive to the needs of her passengers causing her to pass the designated let off area. She failed to lower the staircase to allow the Claimant to safely alight. The Claimant gave evidence that she noticed that the stairs, particularly the last step, was higher from the ground than usual. She took even more care and caution in stepping down but nevertheless fell.

(iii) In relation to the principle of Res Ipso Loquitur, quoting from the case of ***Ng Chung Put and Ng Wang King v Lee Chuen & Another Privy Council Appeal No. 1/1998 delivered on the 24th May 1988*** *Ms. Dixon* states that *"where the Plaintiff has suffered injuries as a result of an incident which ought not to have happened if the Defendant had taken due care, it will often be possible for the Plaintiff to discharge the burden of proof by inviting the court to draw the inference that on a balance of probabilities, the Defendant must have failed to exercise due care, even though the Plaintiff does not know in what particular respects the failure occurred."*

Submissions by Ms. Kimberlee Dobson for the Defendant

[15] The submissions for the Defence so far as they relate to the issues to be determined are summarized as follows:

(i) It is disputed that the state of the roadway was in fact in keeping with the definition of a ditch. A ditch is regarded as a narrow channel dug at the side of a road or field, to hold or carry away water. The area which the Claimant alleges to be unsafe or dangerous is in her evidence, an uneven surface, similar to a shallow pothole or breakaways along the road edges. The Claimant failed to take care for her own safety in traversing the area in question and failed to utilize the lights along its steps, which the bus carries, to aid her in seeing while disembarking. The immediate cause of her fall was her failure to take care on disembarking from the unit.

(iii) The area in and of itself did not pose an obvious threat to the Claimant. Her falling due to the roadway would not have been foreseeable since the area was simply uneven due to wear and tear of the roadway and its state was obvious to the road user. The uneven road surfaces are an everyday part of using the roadway in Jamaica. A driver is not obliged to keep scanning the surface of the road or the boulevard or the sidewalk at the bus stop area, to see if perchance there may be the odd little patch of dirt or gravel or other material that might be a hazard to the debarking passenger. Experience proves that passengers pass across such slight hazards without any mishap befalling them. They accept such risks as being incidental to that mode of travel. (She relies on the case of ***Domanski v Hamilton [1959] O.R. 262-273)***.

(iv) Even If this court is minded to find that where the Claimant alighted from the bus the potholes and undulations were dangerous in the

circumstance, the case of ***Mavis Smith v the Chief Technical Director and Attorney General of Jamaica*** C.L. 2002/S094) is relied on by the Defendant. The Claimant's response in cross-examination that she didn't measure the pot hole to see if it was 1-inch-deep should be viewed as her being reluctant to give a response which is unfavourable to her case. The Claimant's case is that she fell due to the state of the roadway and it was the Defendant who caused her to disembark the vehicle in that location. It is clear then that the main cause of the Claimant's fall was the state of the roadway. The state of the roadway is to be attributed to the maintenance of the roadway which would be a matter for the Town & Country Planning Authorities according to the Main Roads Act. The Defendant should not bear that responsibility. (She refers to the case of ***Sunbeam Transport Service Ltd. v The Attorney General, Lorna Smith et al v Sunbeam Transport Service Ltd. (1989) 26 JLR).*** It was not the management or operation of the bus that caused the accident but the state of the roadway. The presence of a ditch has been discredited. The Claimant refers to it as a ditch or hole in her evidence, yet no evidence has been led by the Claimant in her evidence that it is in fact a ditch or hole. So it should not be accepted that there was any such thing. In her evidence to the JUTC at the earlier time, she referred to it as uneven road surface.

(v) In relation to the doctrine of res ipsa loquitur, in order to meet the criteria for a prima facie case, one must prove (a) the happening of some unexplained event or occurrence (b) it would not have happened in the ordinary course of things without negligence on the part of some other person other than the Claimant (c) the circumstances point to the negligence in questions being that of the Defendant .The Claimant has not proved that the thing that cause the accident was under the management and control of the

Defendant. The mere fact of the Claimant falling outside of the bus while disembarking does not suggest or cause an immediate inference to be drawn that there was negligence on the part of the Defendant. In any event, case law has indicated that the maxim is now discouraged. It is therefore submitted that it should not be considered.

Analysis

Whether the Defendant Owes a Duty of Care to the Claimant

[16] In my analysis of the evidence, I bear in mind that the Claimant has the burden of proof on a balance of probability to establish that the injuries she sustained were as a result of the negligence of Ms. Reid the agent of the Defendant. The established fact on the evidence is that the Claimant was being transported as a public passenger on a bus owned by the Defendant and driven by Ms. Reid. In the case of ***Robson v North Eastern Railway Company*** (1876) 2 Q.B.D. 85, a train failed to stop at the designated platform. The passenger who had parcels in her hands, opened the door and waited on the iron step some time for assistance. No one came to assist and fearing that the train would move on, she tried to alight by getting on to the footboard, and injured herself in doing so. The court found that the Defendants had a duty to ensure that passengers had reasonable means to alight from their trains. In the case of **Icolyn Lawes v The *Jamaica Urban Transit Company and Metropolitan Management Transport Holdings Limited*** [2013] JMSC CIV 24, the Claimant was in the process of mounting the bus steps when the driver shut the door and moved off. The court found that the agent of the Defendant failed to ensure that the Claimant safely boarded the bus and that It was the sudden movement forward from a stationary position which precipitated the Claimant's fall. Consequently, the court found that the Defendants had breached their duty of care to the Claimant. Therefore, it is clear that in law a duty is placed on the carriers of passengers to take all reasonable precautions to ensure

the safety of their passengers while they are entering, remaining on, and leaving, the vehicle.

[17] However, whereas a driver is expected to exercise all reasonable care in the circumstances, the passengers are also expected to take care for their own safety. In the case of **Fletcher v United Counties Omnibus Co. Ltd**, (CA 1 DEC 1997) a 22 year old lady suffered serious spinal injuries after a bus driver had to perform an emergency stop shortly after driving off, but before the lady had sat down. She claimed damages for personal injury against the Defendant Company, on the basis that the driver was negligent in failing to wait until she was seated before driving off. The Court of Appeal held that drivers of public buses could not be expected to wait for all passengers to take their seats. If they were expected to wait until all passengers were seated before driving off, it would be extremely difficult for them to reach their destinations according to the anticipated bus timetables. However, it is the view of the Courts, that different considerations might apply if the boarding passenger was elderly, or infirm, or carrying a lot of luggage, or was very young child. (See ***W (A Child) v First South Yorkshire Ltd.***) In the case of ***Wooler v. London Transport Board*** [1976] RTR 206, CA, the court found that the driver was not responsible for a passenger who sustained injuries while not holding on to the bus rails. It should be noted also that the court in the case of ***Icolyn Lawes Jamaica Urban Transit Company and Metropolitan Management Transport Holdings Limited*** distinguished the case of ***Fletcher v United Counties Omnibus Co. Ltd***, on the basis that in the latter case the bus had in fact moved off safely. Additionally, when one reviews the above mentioned authorities, a common issue in all of them is that the courts were concerned with the driver's management of the particular carriage while transporting passengers. Therefore, in the case at bar the issue is whether Ms. Reid reasonably carried out her duties as expected of a JUTC driver.

Does the Doctrine of Res Ipsa Loquitur apply?

[18] At this juncture I will address the principle of res ipsa loquitur as this is one of basis on which the Claimant is seeking to establish her claim. As it relates to the principle of res ipsa loquitur, "Where a Defendant adduces evidence, that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the incident". (See ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat and Another*** Privy Council Appeal No 1/1988). This is against the background that the burden of proving negligence rests throughout the case on the Claimant Therefore "*in an appropriate case the Claimant establishes a prima facie case by relying upon the fact of the accident. If the Defendant adduces no evidence, there is nothing to rebut the inference of negligence The Claimant will have proved her case. But if the Defendant does adduce evidence, that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident*" (See the judgment of Lord Griffiths in ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat and Anoth***er Supra).

[19] Therefore, in order to succeed under this principle, the Claimant must first establish a prima facie case from which the court can infer the liability of the Defendant. Thereafter if the Defendant fails to raise sufficient evidence that is capable of rebutting the Claimant's case the Claimant would have succeeded on her claim. However, in the instant case the Defendant having adduced sufficient evidence, which is in essence a rebuttal to the Claim in relation to the cause of the Claimant's injuries, there is no basis for the court to draw the inference of negligence on the part of the Defendant merely from the fact of the Claimant's fall. This court must consider the evidence in totality before it can make a determination with regards to the breach of the Defendant's duty of care and the cause of the Claimant's injury. Consequently, the principle of res ipsa loquitur is not applicable to the instant case.

Whether the Defendant has breached its Duty of Care to the Claimant

[20] The substance of the negligence and the circumstances alleged by the Claimant are:

(i) The Defendant's bus driver drove past the usual bus stop.

(ii) It was dark where she was set down and she could not see the ground.

(iii) The last step of the bus which she noticed on entering the bus was higher than usual from the level ground. She proceeds with even more caution.

(iv) As she stepped down from the last step that night, she realized the ground was not level and her right foot was far extended from the bus.

(iv) She did not have enough control of her body to retreat into the bus.

(v) She stepped into a hole which she realized was a ditch and twisted her ankle.

[21] I will now examine the evidence to decide whether there is sufficient for me to deduce that:

(i) The area in which Ms. Reid set down the Claimant was dangerous

(ii) It was reasonably foreseeable that setting down the Claimant in this area would have caused injury to her. I note that the danger that the Claimant alludes to is the darkness in the area and the condition of the ground where she was set down, which she describes in her evidence in chief as a ditch or a hole.

[22] The cases have established that in deciding on the issue of breach of duty of care the conduct of the Defendant is assessed based on the standard of the ordinary reasonable man. Therefore, the issue of reasonableness is an important consideration in my determination as to whether or not the conduct of Ms. Reid amounted to a breach of her duty of care. In assessing the question of reasonableness I will first decide whether there was any other reasonable alternative open to her in letting down the Claimant. The Claimant agrees that the bus was stationary and the driver had pulled over for her to alight. Despite saying that the driver did not let her off at the "usual" bus stop; it is clear on the evidence that what she describes as the usual bus stop is not a designated bus stop. She admits that there was no sign as such. On both versions the incident occurred at night. The Claimant agrees that the bus lights on the steps were on. However, she has given no clear evidence of lighting in the area where she was expected to be left off, or even the condition of the surface of the ground or the side walk in that area. She states that she cannot recall whether the street lights were on at the time of the incident. In fact, greater clarity with regards to the lighting in the area came from the evidence of the Defendant's witness. Ms. Reid states that the area was not well lit and that, that bus stop has always been like that. It only recently got better lighting this year. She further asserts that, there is light at the big house now but there was none at the time of the incident. Light from the housing scheme was not enough to reflect out onto the road. She disagrees with counsel's suggestion that the area where the 'SLOW' sign is was well lit. Interestingly, despite making this suggestion, there is nothing on the Claimant's evidence supporting this suggestion. Ms. Reid further states that the area is dark as JPS did not put any light there.

[23] Therefore the Claimant who bears the burden of proof has failed to adduced sufficient evidence to establish that if she was let off in an alternate area she would not have had to contend with the darkness in that area. Additionally, she gave conflicting evidence with regards to condition of the ground in relation to the actual cause of her injury. That is whether it was a hole or a ditch or an uneven road

surface that caused her injury. In her evidence in chief she indicates that she stepped into a hole which she realized was a ditch. However, on cross examination she admits to filing a statement of complaint to the Defendant company prior to writing her witness statement. In fact, she indicates that this was done the morning after the incident. She further admits that, in that statement she stated that she lost her balance while coming into contact with the uneven road surface. She also admits that it is an area where she would previously observe other people walking. Additionally, she was unable to give any evidence with regards to the approximate depth of the hole. She agrees that the road surface was uneven. When asked if the road surface was uneven in the entire area along the roadway of Monza she said she did not know. However, as a person who has lived in the particular community and has driven along that route for over twenty (20) years, I would expect her to be more familiar with the area than the bus driver Ms. Reid, who on the Claimant's own evidence had been operating in the area for a relatively shorter period up to the time of the incident. On the Claimant's evidence it was the first time she was seeing Ms. Reid. On Ms. Reid's evidence, at the time of the incident she had only been operating in the area for approximately one year. Therefore I find that the Claimant has not established that if the driver had stopped at another location she could have avoided the uneven road surface.

[24] In the case of ***Robson v North Eastern Railway Company*** (Supra) in relation to the question of reasonableness the court took note of the fact that it was the train that had come to a final stop. It found that it was the Defendant that invited the passenger to alight. The court further reasoned that the Defendant could not assume that the Claimant had the ordinary knowledge of railway travelling and should have provided some assistance. On the facts of that case the train stopped at a small station where the train's engine and a carriage went beyond the platform. Consequently, the court's decision was also influenced by the fact that railways companies were bound by law to provide reasonable means for passengers to alight at every station they chose to stop their train. In that case it is clear that the danger of the Claimant alighting and suffering injuries would have been apparent,

and therefore reasonably foreseeable to the Defendant company in those circumstances.

[25] In the instant case, there is no evidence of a designated bus stop, but 'a usual stop'. There is no evidence from the Claimant that the condition of the side walk at the usual stop is different from that of the location where she was set down. Further there is no evidence from which I can draw the inference that Ms. Reid the driver of the bus knew or ought to have known that the area in which the Claimant was being let off was dangerous. In fact, there is no challenge to the evidence of the bus driver Ms. Coretta Reid, in which she indicates that, the Braeton Parkway, (that is the entire stretch of road) is asphalted, and the soft shoulder is uneven dirt and shallow holes in some areas, and this includes where the usual bus stop is located. Ms. Reid indicates that she did not stop near a ditch nor is she aware of any within the vicinity of where she stopped, but there are shallow potholes/breakaways at the edge of the road way which can be easily manoeuvred.

[26] Therefore having assessed the totality of the evidence and the demeanour of the witnesses I find that the Claimant has not discharged the required burden for me to find negligence on the part of the Defendant. She agrees that she was better able to see where she was going, in stepping off the bus than the driver of the bus. I find that if there was the presence of a ditch as the Claimant describes, her child would also have fallen in that ditch and sustained injury. I make this finding on the evidence, that the child's exit from the bus was not necessarily a careful exit, but a jump. On cross examination, it appears that the Claimant is saying that a ditch, is synonymous with an uneven surface. She was very dismissive in her demeanour and response when invited by counsel for the Defendant to provide some clarity with regards to the description of this ditch. I am well aware of the fact that she said the area was dark. However in light of the fact that she lives in the area, if there was the presence of such a ditch I expect that she would have returned in the day time in order to provide the court with a more detailed description, or distinction between the ditch and the uneven road surface.

[27] The Defence witness Ms. Reid was more forthright in her evidence than the Claimant. I accept her evidence that there was no ditch in the area but some shallow pot holes and the uneven road surface. I accept her evidence that she has let down other passengers in the same area and there was no incident. This is against the background that the Claimant admitted that her own child alighted, that is jumped, from the bus in front of her and suffered no injuries. Furthermore, the Claimant has not established that she falls in the category of vulnerable passengers, where a higher standard of care would be expected, (See ***Ted Allen Harris, an infant, by his next friends, Armand Hall and Lillian Harris*** [1967] S.C.R. 460) In fact her child who would have fallen in the category of vulnerable passengers was safely let down. Therefore, I find that, the Claimant has failed to demonstrate that the area where she was let down was in fact dangerous.

[28] Additionally, the Claimant has failed to demonstrate that it was Ms. Reid's management of the bus in transporting and letting her down that caused her injuries. In the case of the ***Wilsher v Essex Area Health Authority***; [1988] A.C. 1074 (H.L.), at p.1090 it is stated that: "The "but for" causation test must be applied in a robust common sense fashion. Further, the Claimant admits that it was the condition of the road that caused her injuries. The case of ***Janet Stewart - Earle v Jamaican Urban Transit Company Ltd,*** [2015] JMSC Civ. 51 which was relied on by the Claimant can be distinguished from the instant case. In that case despite the fact that the presence of a pot hole on the road was a factor in the incident that caused the injuries to the Claimant, it was the driver's manoeuvring of the bus away from the pothole that caused the Claimant's fall. The injuries were sustained while the Claimant was still a passenger on the bus. In those circumstances the Defendant was held to be liable in negligence. However, in the case at bar I find that it was not the driver's manoeuvring of the bus that caused the Claimant's injury. I find that her injury would have been sustained by her coming in direct contact with the road surface. Therefore, the question at the juncture is how far would the duty of care of the Defendant extend in these circumstances. The Claimant agrees that Defendant is not the authority that is vested with the

responsibility for the maintenance of the road or the ground in the area. Therefore, the Defendant cannot be held liable for the Claimant's injuries which are unconnected to the act of the Defendant's agent, but to the state of the road. (See ***Lorna Smith et al v Sunbeam Transport Service Ltd***. (1989) 26 JLR 1)

[29] On the evidence I find that the Defendant's agent Ms. Reid did all that was reasonably expected of her as a driver. She provided light for the Claimant to alight and waited for her to alight from the bus. There is no indication that the Claimant expressed any difficulty to her with regards to the height of the step or her inability to see before she alighted. It was the Claimant that requested to be let down and it was not by invitation of the agent of the Defendant. There is no indication that having perceived any difficulty in alighting at that precise location that the Claimant made any indication to the driver that she would prefer to be let down elsewhere. In the case *of* ***Brophy v. Shaw****, The Times, 25th of JUNE 1965*, It was stated that a driver is not under a duty to be a perfectionist. In any event I do not find there was any danger in the location to the Claimant, perceived or otherwise, as her daughter alighted safely from the bus. In the circumstances, the Claimant not being a vulnerable passenger could also have alighted safely. Therefore I am constraint to find that any injury she sustained was as a result of a mishap on her part and not the fault of the bus driver.

Conclusion

[30] I find that the Claimant has failed to establish on a balance of probability that the Defendant's agent Ms Reid failed to exercise reasonable care in letting her down from the Defendant's bus. Therefore, I find that any injuries sustained by the Claimant were not as a result of the Defendant breaching its duty of care to the Claimant.

Order

Judgment for the Defendant

Cost to the Defendant to be agreed or taxed.