



# IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CL 2001/T143

BETWEEN	PAMELA THOMPSON	1 <sup>ST</sup> CLAIMANT
AND	HORACE HUGGINS	2 <sup>ND</sup> CLAIMANT
AND	MURET FORRESTER	3 <sup>RD</sup> CLAIMANT
AND	VENETIA HUDSON	4 <sup>TH</sup> CLAIMANT
AND	TANYA SCOTT	5 <sup>TH</sup> CLAIMANT
AND	JUNIOR ROBINSON	6 <sup>TH</sup> CLAIMANT
AND	KEVIN WALKER	7 <sup>TH</sup> CLAIMANT
AND	DEVON BARROWS	1 <sup>ST</sup> DEFENDANT
AND	HENRY KENNEDY	2 <sup>ND</sup> DEFENDANT
AND	ERROL REID	3 <sup>RD</sup> DEFENDANT

Miss Dorothy Gordon for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants.

Miss Christine Hudson, instructed by Churchill K. Neita & Co. for 5<sup>th</sup> and 6<sup>th</sup> Claimants.

Lensley Campbell, instructed by Campbell & Campbell for 1<sup>st</sup> Defendant.

Pollard Lee Clarke & Association for the 7<sup>th</sup> Claimant

Mrs. Andrea Walters-Isaacs instructed by Palmer & Walters for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

Heard February 27, 28, March 1, 2, 3 2006 & December 22, 2006

Campbell J

(1) On the 2<sup>nd</sup> September 2001, at about 5.00 pm, the Claimants were passengers in a Toyota coaster mini bus, which was being driven by the 3<sup>rd</sup> Defendant. It was a Sunday afternoon, the bus, which had 21 passengers, was travelling easterly along the Freetown Main Road from May Pen to Kingston between 4:00pm and 5:00pm. There was no issue that the driver, Errol Reid was the servant, and agent of the owner Henry Kennedy, for the purposes of the trip.

(2) Travelling in the opposite direction was a Toyota Corolla motor car, owned and driven by the 1<sup>st</sup> Defendant, Devon Barrow. There was a collision between both vehicles. As a result of which the Coaster overturned. The Claimants received injuries of varying degrees of severity. A third vehicle, a Lada, was hit. Although joined as a party in one of the actions that was consolidated, neither the owner nor the driver of the Lada participated in this matter.

(3) The claims were consolidated because they dealt with common questions of law and facts. The rights and reliefes claimed by the Claimants arose out of the same accident, and it is economical and expedient to deal with these claims together.

(4) There is no dispute that the area in which the accident occurred was a dry, asphalted surface that slopes downward as one proceeds easterly. The road accommodates single-lane traffic in both directions. There is also agreement that in the immediate vicinity of the collision there was a trench, although whether it was restricted to one-half of the road or extended the entire width of the road was the source of contention. There is evidence that within the vicinity of the accident, there

is a corner sufficiently deep that it cannot be seen around. The area was bounded by a gully or precipice on one hand and the lower slopes of a hill or embankment on the other.

### **The issue of liability**

(5) The issue before the Court is, which of the drivers, or in what portion are they responsible for the collision and the loss that flowed there from. The evidence of both drivers are diametrically opposed.

(6) In their witness statements, Thompson, Huggins, Forester and Hudson (represented by the same attorney), all recited that the Corolla “came out of a line of traffic it was travelling in and collided with the said Toyota Coaster bus. The said Toyota Coaster bus got out of control and collided with Lada motor car ..... and the Toyota Coaster bus overturned.” Tanya Scott, the most severely injured of the passengers, offered no assistance, she states, she “heard a loud sound as if something hit the bus or glass breaking and then the bus overturned and I heard screaming and I realized that I was pinned under the bus.” Junior Robinson stated, “The bus was travelling down a hill. I also observed a motor car travelling in the opposite direction swerved out of a line of traffic, the driver of the motor car lost control of the vehicle and it collided with the motor bus”

(7) The driver of the Coaster, Errol Reid, testified that he observed two approaching vehicles slowed to negotiate a trench that was on their side of the road. After they passed, a third vehicle came and swerved to avoid the trench. That vehicle came to the Coasters’ side of the road and collided with the right front wheel

of the bus. He said he lost control of the Coaster which climbed the embankment to his left and overturned. It stopped on "the opposite side of the road."

(8) In respect to the Coaster, Kevin Walker testifies that it was going very fast. Huggins describes it as "a good speed." The Corolla was being driven at 35- 45 k.p.h, according to the driver. It is important that neither driver felt obliged to take evasive action. The evidence was that two vehicles could pass on one side of that road. Both drivers blame the other for the collision. Both claim the accident happened on their correct side of the road. There was no mention of either party braking or swerving in order to avoid the collision.

(9) Barrows testifies that there was a development in progress on that section of the road. He says there was a trench which traversed the width of the road. He had been unaware of it before the accident. It had not been there when he took his nephew down a week before. Reid claims that the trench was only on Barrow's side of road.

(10) I find that both vehicles were operating too fast for the circumstances that obtained in that area. A speed limit is the maximum speed at which a vehicle may legally travel. The circumstances of the roadway may dictate a travelling speed well below that maximum. On that section of the roadway, there were corners on the hilly terrain, there was a development in progress on one side of the roadway, and there was also a two and a half foot trench that stretched at least half way across the road, by one account. Although both drivers were able to testify of the

manoeuvrings of the other vehicle prior to the accident, neither driver took the necessary evasive action to avoid the collision.

(11) Section 23 of the Road Traffic Act places a duty on each driver to take steps to avoid an accident. I find that neither driver was exhibiting the necessary care and skill in light of all those circumstances. Mr. Campbell submitted that the driver, who is on his correct side, should not be saddled with additionally responsibility. I understand this to mean that a driver, who is operating correctly, if confronted with a collision which he can avoid, has no responsibility to do so. I find that repugnant to the spirit and intendment of section 23 of the Road Traffic Act.

(12) I further find that the accident was more in the middle of the road than either driver has admitted. Both drivers claim the accident occurred on his correct side of the road, and they might honestly believe that it did. The determination of the middle of that road would not be made easier by the fact that the road was not straight and was on a gradient. In **Davidson v Legett 1969 Current Year book 2417** (see Bingham's Motor Claims Cases, page The Court in applying dicta of Denning L.J., in **Baker v Market Harbournough Industrial Co-operative Society**, held that where there was a motor vehicle collision in the middle of the road and the evidence is insufficient to enable the judge to decide which of the drivers is to blame, he ought to conclude that they are equally culpable: that rule applies even if it is perfectly feasible that neither was negligent. I find that both drivers were equally negligent.

## Damages

### **Muret Forrester**

(13) Domestic worker, 39 years old, suffered trauma to chest, right lower leg, and right arm. In submissions on her General Damages, her Counsel referred the Court to **ERIC Ward v Lester Barco** (Suit No. C.L. 1989/W2459 (Cor: W.A. James J.) in which the Claimant had received blows to right foot, side of chest, resulting in tenderness and pain and was awarded \$16,000.00 on the 29<sup>th</sup> May, 1991, updated that amounts to \$194,000.00. The injuries in Eric Ward were more severe than those sustained by Forrester. An award of \$170,000.00 is made for General Damages. With interest at 6% from the 16<sup>th</sup> September, 2002 to the 22<sup>nd</sup> December 2006 .

Mrs. Campbell submitted that, in respect of special damages, a total of \$22,480.00 of the medical expenses have been proved by receipt. She argued that, in respect of the claim for loss of earning, no supporting evidence was before the Court. The pleadings indicate a claim for \$5,000.00 per week; however, a letter in support claims \$2000 per week. I make an award for Loss of Earnings for one week at \$2000. An award of \$22, 480 for medical expenses. In respect of dress, jacket and hat \$10,000.00 and transportation of \$5000.00. The Claim for extra help was not proved. For a total of \$37,480.00 for Special Damages with interest at 6% from the 2<sup>nd</sup> September 2001 to the 22<sup>nd</sup> December 2006.

### **Tanya Scott**

(14) Hairdresser, 32 years old, she was pinned under the Coaster; she testified that her head was bashed in and her left hand was bleeding. Taken to May Pen

Hospital, she suffered severe pains, remained for four days and was transferred to National Chest Hospital and from there to Kingston Public Hospital.

(15) On assessment by Dr. Arscott, Consultant, the following injuries were noted; (1) obvious large wound with soft tissue loss and bone exposure involving the left tempora parietal scalp forehead extending unto the left ear. (2) The upper half of the pinna of the left ear was completely lost. (3) Deep wounds and abrasions over the left and right shoulder. (4) Wounds and abrasions over the dorsum of her left hand. Skin grafting was done in relation to the left temporal parietal scalp. She was unable to eat for three weeks. The complainant said, when she first saw her face she was horrified. She had scarring and deformity to left hemiface. There was graft and scar over the left tempora parietal scalp, raised hyperpigmentation, hypertrophic scar on right and left shoulder and left hand. She remained in KPH for one month and had three surgeries at National Chest Hospital, from which she was discharged in November 2004.

(16) Dr. Franklyn Ottey, Consultant Psychiatrist, certifies that she was suffering from post traumatic stress disorder, as well as an adjustment disorder with depressed mood and states that she was functioning at 55% of her full overall psychological functioning. She is paranoid when travelling by motor vehicles. Badly scarred, she always wears hats. She considers herself ugly and disfigured and is unable to work in the hairdressing business due to weakness in her hands. She requires two surgical operations at a cost \$380,000.99 plus US\$1,000 for tissue expander. Dr. Arscott opines that, corrective surgery will not provide a cosmetically

acceptable result and recommends tissue expansion to provide approximately a 50% to 60% improvement.

(17) The Court was referred to **Dorrel Steele v Midel Distributors Ltd.**, a 46 year old, factory worker, had partial burns to face, left hand, both legs and left side of neck. There was mild hyperpigmentation, facial superficial burns healed without scarring. Mr. Justice Smith, on the 18<sup>th</sup> June 1999 awarded General Damages of \$315,000.00 with interest at 3%, updated that represents \$600,000.00 and in **Maisha Paige v Malcolm Campbell**, suit CL 2002/P006, where the Claimant suffered keloid scarring; an award of \$1.7m was made updated that represents \$2,100,000.

(17a) In **Alfred Thomas v Pastry Specialist T/as Allans Pastry**, a 29 year-old Baker, injured when an oven exploded at the Defendant's pastry establishment on 19<sup>th</sup> December 1989, resulting in permanent disfigurement by scarring to 35% of his total body area. Court awarded \$275,000.00 pain and suffering and loss of amenities. That sum updated represents \$1,577,050. A sum for future treatment of \$84,000.00 was made. Counsel submitted Scott's injuries were more severe. She submitted that an award of \$2.5m would be reasonable. Counsel for the 1<sup>st</sup> Defendant relied also on Alfred Thomas, there was no suggestion that the instant Claimant injuries were not more serious than those of Alfred Thomas. It was submitted that an award of \$2.5m would be reasonable in the circumstances.

(18) The Court was urged that there was a cultural distinction between the way deformities and scarring were regarded in Europe and in our jurisdiction. Reference



was made to **Delmar Dixon v Jamaica Telephone Co.** student, 9 years old, hit down by motor van, fractures well healed but (genuvalgum) knock knee could be corrected by surgery, post surgery immobilisation of between six to twelve weeks.

Ratray J.

"In determining a proper award for a young boy in the Jamaican jurisdiction in considering the effect of an injury which as in this case causes an obvious disfigurement which is permanent and affects the injured person in terms of mobility, a court, in our view, may properly take into account two additional factors;

- (1) The importance of athletic prowess in our culture not only in respect of games but of recreation involving the movement of the body and form e.g. the dance. The recognized phenomenon in dancehall and carnival as avenues of enjoyment and expressions are well established.
- (2) The inhibiting effects of an obvious deformity particularly among young people in terms of social relationships.

These elements may not assume such magnitude in countries which have been subjected to wars with their aftermath of obvious scarring on numbers within the population, a feature to which its populace has become conditioned and accustomed."

(19) This principle is relevant. The Claimant is a young divorcee who has been severely scarred. She will be viewed as strange and different by a society that is unaccustomed to such deformity. Her prospect of a second marriage has been greatly diminished.

(20) It was further submitted that the Court could make a separate award for Post Traumatic Disorder, as was done in **Marva Mocchio v Ernst Smatt**, where a sum

that updated amounts to \$155,000, was awarded to a 33 year-old female who suffered scarring over calf and thigh. I am guided by the principle enunciated in **Winston Layne (bnf Stanley Layne v Beverly Dryden SCCA 44/87 9 unreported)** delivered June 12, 1989, Campbell J.A. stated;

**“In United Dairy Farmers Ltd. Lloyd Goulbourne SCCA 65/81 9 unreported dated January 27, 1984, this court emphasized that the separate award of damages for physical, mental, or intellectual disability or impairment especially where this is substantial in addition to awards for physical, mental, or intellectual disability or impairment especially where this is substantial in addition to awards for pain and suffering, loss of amenities, loss of earning capacity, loss of prospective earnings, future medical, nursing and other expenses or for any other consequence of disability, as appropriate, amounts to a duplication of the award. This is so because a physical injury without consequence would attract only a nominal award. It is the consequence of the disability which really measures the loss for which the disabled is compensated.”**

An award of \$2,350,000.00 is made for pain and suffering and loss of amenities. No separate award is made for post traumatic stress disorder.

### **Special Damages**

(21) In respect of loss of earnings, no evidence was adduced to ground her employment as hairdresser e.g. the certification of her training other than the unchallenged statement of her occupation. I would imagine that hairdressers would have evidence of a permit, licence or fee that we understand the practice of that craft requires. The utility bills for the shop she operates, advertisement she may have placed in the media, to publicise her business, receipts from products, e.g., the

wigs, hair pieces, dyes and other products that are essentials in that trade. Anything from which the Court may devise some basis for the claim submitted. There was none. It is reasonable to expect her to substantiate her claim, bearing in mind the nature and scope of her business. The Court of Appeal reiterated the principle in **Murphy v Luther Mills** (1976) 14 JLR 119, recently in the matter of **Attorney General of Jamaica v Tanya Clarke**, SCCA No. 109/2002, where the Court also quoted with approval the dictum of Bowen, L.J. In **Ratcliffe v Evans** (1892) 2 QB 524, and in **Desmond Walters v Carlene Mitchell** (1992) 29 JLR 173 at 174, at page 8 of the judgement; Cooke J.A. states;

From the authorities reviewed, I extract the following considerations:-

- 1) Special damages must be strictly proved; **Murphy v Mills; Bonham-Carter v Hyde Park Hotel Ltd;** (supra).
- 2) The court should be very wary to relax this principle; **Ratcliffe v Evans** (supra).
- 3) What amounts to strict proof is to be determined by the court in the particular circumstances of each case; **Walters v Grant v Mobilal Moonan Ltd. and Another** (supra).
- 4) In the consideration of 30 supra, there is the concept of reasonableness.
  - a) What is reasonable to ask of the plaintiff in strict proof in the particular circumstances; **Walters v Mitchell; Grant v Motilal Moonan Ltd. and Another** (supra) and
  - b) What is reasonable as an award as determined by the experience of the court; **Central Soya of Jamaica Ltd, v Junior Freeman**. See also **Hepburn Harris v Carlton Walker** SCCA No. 40/909

(unreported) to which there will be reference subsequently.

- 5) Although not usually specifically stated, the court strives to reach a conclusion which is in harmony with the justice of the situation. See specifically **Ashcroft v Curtin**; **Bonham-Carter v Hyde Park Hotel Ltd.** (supra).

Nonetheless, in respect of loss of earnings, I make an award of \$2000 per week for a period of one year, from 2<sup>nd</sup> September 2001 to 3<sup>rd</sup> September 2002 for a sum of \$104,000. This is based on the medical evidence of hospitalization and surgical procedures that would have prevented the Claimant from working for at least one year and the unchallenged evidence that she was a hairdresser.

Medical expenses at \$1,750.00 granted. The claim for extra help at \$1,000.00 for a year is granted. The Claim for Future Medical Cost of \$380,000 and tissue expander US\$1,000.00 is granted. Special Damages in the sum of \$158,750.00 with interest at 6% from the 2<sup>nd</sup> September 2001 to the 22<sup>nd</sup> December, 2006

### **Junior Robinson**

(22) Conductor, Mechanic, 39 years old suffered (1) a fracture of the right foot (2) abrasions and lacerations to left hand (3) Wounds to left side of body (4) injury to head and face and eye associated with loss of consciousness (5) Stitches in the left side of scalp and left eyebrow (6) Permanent loss of upper piece of right external ear (7) Deep abrasions to left shoulder, chest, abdomen, left hip, knee and left hand (8) Deep abrasions with laceration wound to right lower thigh.

The case of **Gilbert McLeod v Keith Lemard** (Suit No. C.L. 1993 M196, is a useful guide. Contractor, injured in motor vehicle accident on the 23<sup>rd</sup> October 1991, assessed on the 20<sup>th</sup> March 1996, in respect of pain and tenderness right side of

chest, loss of consciousness, lacerations to right side of forehead and right foot. McLeod was hospitalised for two days. He was awarded \$100,000.00 for General Damages, that figure update is \$245,000.00. Robinson's injuries appear more serious. An award of \$400,000.00 is made for General Damages.

In respect of the claim for loss of future earning, and loss of extra help, there is no evidence to support the claim. However, the nature of the injuries suffered would have rendered him incapable of working for a period. The Claimant was hospitalized for a period of two weeks, awarded loss of earnings for period of four weeks, at \$1200 per week for a total of \$4,800.00. No award is made for future loss of earning. An award of \$1,500 is made for medical fee.

**Pamella Thompson,**

(23) Caterer, 42 years old, suffered a mild whiplash injury to neck. Complained of pains in neck, lower back and shoulder.

Counsel relied on **Evon Taylor v Eli McDaniel** (Suit No. C.L. 1997 T128) unreported Khan Vol. 5 page 140, moderate whiplash injury, in which the injuries were much more serious than in the instant case. Taylor had lost consciousness had difficulty hearing from the left ear and suffered foginess in sight. Mrs. Campbell contended that although the cases relied on dealt with whiplash injuries, they dealt with moderate whiplash injuries with delayed healing, and were not appropriate guides.

(24) She proposed that a suitable guide would be **George Wint v Vincent Goloub** (Suit No. C.L. 1993) W110, where a 49 year-old Salesman injured in a motor vehicle

accident and suffered moderate to severe tenderness over lower back. He was awarded \$30,000.00 for pain and suffering and loss of amenities. Updated the sum was \$145,000. Thompson's case is more serious. I would make an award of \$250,000.00 for General Damages. With interest at the rate of 6% from 16<sup>th</sup> September 2002 to the 22<sup>nd</sup> December 2006.

(25) In respect of Special Damages, Thompson claimed loss of earnings for four weeks at \$5,200.00 per week. The Claimant has provided proof that she is in the Catering business, but no evidence of her earnings. I am aware that Catering would involve the purchase of foodstuffs, large percentage of written orders, hiring of staff, transportation the court would have been assisted with some of those receipts with which to ground an award \$8000.00. In the absence of such, the award is nominal. A sum of \$5,000.00 is awarded for the period claimed. Extra help for four weeks at \$2000.00 per week awarded. Proof has been forwarded in respect of \$8,330.00 of medical claims, which is awarded. With interest at the rate of 6% from the 2<sup>nd</sup> September 2001 to 22<sup>nd</sup> December 2006.

### **Horace Huggins**

(26) Supervisor, 38 years old, Dr. Nesbeth noted his injuries as follows;  
two lacerations on the right triceps shoulder muscle, bleeding, pain in the neck worst on the right side than on the left, frontal headache with soft tissue swelling on the left, right shoulder very tender, two soft tissue laceration 5 centimetres and 7 centimetres long sutured and inflammation in joint, mild lumbar spasm, backache.

(27) Counsel cited two authorities to the Court (a) **Earl Lawrence v Dennis Warmington**, student, part time peanut vendor, injured in motor vehicle accident on 11<sup>th</sup> October 1992 and had severe tenderness in back of neck and head, laceration on back of head, laceration on both hands with difficulties in lifting weights, laceration on both feet from upper part of leg down to ankles with difficulties in walking marked tenderness in back of neck with movement in all directions. On the 12<sup>th</sup> April 2000 an award of \$450,000.00 was made for General Damages, updated \$798,103.36

(28) The injuries in **Earl Lawrence v Dennis Warmington** are more serious than the Huggins. In **Earl Lawrence**, two weeks after the incident, there was still complaint of severe pain and dizziness, injury assessed as moderate whiplash. On the 15<sup>th</sup> March 1993, Dr. Lee MBBS, DA prognosis was for the severe pains to continue for nine weeks resulting in total disability partial disability for a further seven months and intermittent pain for a further five months. Lawrence was incapacitated for a period of nineteen months. In comparison, Huggins was unable to work for four weeks.

(29) Similarly, the injuries in **Stacy-Ann Mitchell v Carlton Davies, Kenneth Boyd, Harold Henry and Keith Lindsay** were more serious than in the instant case. Student, 19, injured in motor vehicle accident on 6<sup>th</sup> May 1993. Diagnosed with whiplash injury. On the 10<sup>th</sup> May 2000, an award of \$550,000.00 for General Damages, updated \$971,257. Counsel submitted that an award of \$750,000.00 should be made in the instant case.

(30) A useful case is **Gilbert McLeod v Keith Lemard** (supra). The injuries in Gilbert McLeod are more severe than Huggins injuries; note the loss of consciousness and the hospitalization. An award of \$230,000.00 is made for General Damages. With interest at the rate of 6% from 16<sup>th</sup> September 2002.

(31) Special damages - awarded for medical expenses \$14,000.00, a Police Report \$1000 and Loss of earnings for four weeks at \$4,000 per week \$16,000. Transportation \$3,900.00. Damages to watch and shirt \$7000.00, for a total of \$41,900. With interest at the rate of 6% from the 2<sup>nd</sup> September, 2001 to the 22<sup>nd</sup> December 2006.

#### **Venetia Hudson**

(32) Missionary and businesswoman, 76, suffered severe traumatic right shoulder injury sustaining fracture to the right shoulder. Trauma to lower back transient loss of consciousness, whiplash, pain in lower back, shoulder, and neck. There was an 11% permanent disability.

(33) The Court was referred to the cases (a) **Thomas Williams v Carl Brown Farmer**, 63, assaulted and beaten on 20<sup>th</sup> July 1990. Suffered deformed right shoulder with loss of normal contour, limited range of motion, gross muscle wasting. Whole person disability of 23%, awarded \$355,000.00 for General Damages, updated \$794,785.93 Counsel submitted that instant case more serious despite the discrepancy in permanent partial disability.

(34) Reference was also made to, **Delroy Bucknall v Alimont Forester**, unemployed security guard knocked down by motor vehicle on 8<sup>th</sup> June 1987,



suffered fracture of the humeral head of left shoulder and lacerations to left forearm and right eyebrow, permanent partial disability assessed at 15% -20%. Awarded \$80,000.00 on the 18<sup>th</sup> January 1990, updated to \$885,686.72. Counsel submitted that an award of \$900,000.00 would be reasonable in these circumstances. These cases relied on by counsel for Ms. Hudson, had injuries and suffering that were far more severe than the instant case, with permanent partial disability of 23% and 5% - 20%, respectively. The fracture was only minimally displaced in Hudson's case, not so in the cases to which we were referred.

(35) Mrs. Campbell referred us to the case of **Ivan Clarke Lionel Baylis & Anor.** (Suit No. C. L. 1990/C232 (Cor. Panton J.) damages assessed 17<sup>th</sup> May 1992) – displaced fracture of the greater tuberosity of the humerus, abrasions to left palm. Awarded \$40,000.00 for pain and suffering, updated by \$250,000.00. She pointed to Dr. Sawh's report, that she had a duty to mitigate, the doctor having said he did not hear from her. I make an award for the sum of \$500,000.00 for pain and suffering with interest at 6%.

(36) In respect of Special damage, the Court has nothing before it to uphold the claim for boarding children at the house, no award is made for loss of earning. For the extra help we note that the claim of Muiret is to the effect that she works with the Claimant, Hudson. In testimony, the sum was for \$2,000.00 per week for five months. An award of \$40,000.00 is made for extra help. An award for \$18,300.00 is made for transportation. A total award of \$138,304 is made for special damages with interest at the rate of 6% from the 2<sup>nd</sup> September 2001 to the 22<sup>nd</sup> December, 2006.

**Kevin Walker**

(37) 36 years old, cabinet maker, suffered 15 cm lacerations to dorsum of left foot. Massive 15cm x 30cm degloving injury to medial aspect of the right knee, bone fragments in wound, swelling of right knee and right leg restriction of right knee flexion to 90% and extension of right knee decreased by 30%.

(38) Counsel invited the court to use **Sheila Darby v Jamaica Telephone Company Ltd.** (C.L. 1984/D105) Darby, 37 year-old, model, injured in motor vehicle accident. Severe shock, loss of blood, fracture of the third, fourth, and fifth rib, severe blow to the head and face - loss of four teeth, comminute fracture of the mid-shaft of the left femur. Darby had a permanent partial disability of 10% of the whole body. One leg shorter, loss of 5-10% flexion of knee. Hospitalised for two months, she was admitted in hospital for periods of four days in October 1982 and May 1984. On the other hand, the instant Claimant was hospitalized from 2<sup>nd</sup> September to 5<sup>th</sup>. She was assessed by Dr. Gilbert as having 13% whole person impairment. An award of \$70,000.00 was made in Sheila Darby's case, updated that sum is \$1,815,807.80.

(39) The Court was also referred to Beverly **Francis v Donovan Pagon** and **Maurice Smith**, fracture of left femur on the 15<sup>th</sup> June 1994, award of \$350,000.00 for pain and suffering, updated, \$1,275,793.80 counsel submitted that \$1,700,000.00 be awarded.

(40) Counsel for the Defendant Relied on **The Attorney General of Jamaica v Calbert Smith**, where the Claimant suffered a 15 - 17% permanent partial disability.

On the 16<sup>th</sup> December 1996, the Court awarded the Claimant \$300,000.00 for General damages, advised the updated sum is \$680,990. Although not assessed, the Claimant suffered a permanent partial disability that severely restricts his mobility \$1,000,000.00 would be a reasonable sum.

(41) An award of \$50,000.00 is made for a period of three (3) months for loss of earnings. Court makes the following awards; hospital expenses \$33,779.50 Police Report \$1,000.00 medical reports \$2,000.00. Cellular phone \$2,800.00, clothing and accessories \$24,900.00, orthopaedic consultations with Dr. Neil \$1,630.00. And the equivalent of said claim at \$US620 which is \$39,252.20.

(42) Interest on the awards of General Damage at the rate of 6%.

Interest on Special Damages at the rate of 6%. Each party will bear their own costs.