[2017] JMSC. Civ. 6

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2009HCV04563

BETWEEN	**OSBOURNE WHYTE**	**CLAIMANT**
AND	**CLEMENT POWELL**	**1ST DEFENDANT**
AND	**DONALD BEAM**	**2ND DEFENDANT**
AND	**DONALD BEAM**	**2ND DEFENDANT/ANCILLARY CLAIMANT**
AND	**CLEMENT POWELL**	**1ST DEFENDANT/ANCILLARY DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. 2010HCV02621

BETWEEN	**DONALD BEAM**	**CLAIMANT**
AND	**CLEMENT POWELL**	**DEFENDANT**
AND	**CLEMENT POWELL**	**ANCILLARY CLAIMANT**
AND	**DONALD BEAM**	**ANCILLARY DEFENDANT**

CONSOLIDATED WITH

CLAIM NO.2010HCV02618

BETWEEN	**BARRINGTON GARDENER**	**CLAIMANT**
AND	**CLEMENT POWELL**	**1ST DEFENDANT**
AND	**CLEMENT POWELL**	**ANCILLARY CLAIMANT**
AND	**DONALD BEAM**	**ANCILLARY DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. 2012HCV01999

BETWEEN	**ADMINISTRATOR GENERAL FOR JAMAICA (Representative for the Estate of Patrick Alexander Clunie, deceased)**	**CLAIMANT**
AND	**DONALD CLIVE BEAM**	**1ST DEFENDANT**
AND	**CLEMENT POWELL**	**2ND DEFENDANT**
AND	**DONALD BEAM**	**ANCILLARY CLAIMANT**
AND	**CLEMENT POWELL**	**ANCILLARY DEFENDANT**

Ms C. Campbell instructed by Kinghorn & Kinghorn for Claimant, Osbourne Whyte

Ms G. Hamilton instructed by Georgia Hamilton & Co for Claimant, Barrington Gardener

Ms R Barker instructed by K Churchill Neita &Co for the Administrator General of Jamaica

Ms K Sewell and Ms S Radlein instructed by Bignall Law for Donald Beam

Ms R. Dunbar instructed by Dunbar & Co for Clement Powell

Negligence –Motor vehicle collision - Liability of parties – Apportionment of Liability

Damages – Assessment

Heard: May 30, 2016, June 1 and 2, 2016, and February 8, 2017.

LINDO, J.

[1] The claims in this matter, which sound in negligence, arose out of a motor vehicle accident which took place on or about March 23, 2009 along the Ewarton Main Road, in the parish of Saint Catherine. It involves motor car registered 3161ES owned and driven by Clement Powell and motor vehicle CF9421, owned and driven by Donald Beam. Osbourne Whyte and deceased, Patrick Clunie,

were travelling as passengers in the motor vehicle driven by Clement Powell, while Barrington Gardener was a passenger in the vehicle driven by Donald Beam.

[2] There is also a claim by Donald Beam against Clement Powell in which an ancillary claim is filed by Clement Powell against him, and ancillary claims against each other have also been filed in other claims. Mr Beam has pleaded, *inter alia*, that the accident was wholly caused and/or alternatively contributed to by the negligence of Mr Powell, while Mr Powell avers that the accident was caused solely, or substantially contributed to, by the negligence of Mr Beam.

[3] The claims and ancillary claims are tried together, having been previously consolidated, as they deal with common questions of fact and law which arose from the accident and it is more cost effective and time-saving to deal with them together.

[4] It is not disputed that the accident took place just after 5 am on March 23, 2009 and the motor vehicles were travelling in opposite directions. Mr Beam was travelling towards Spanish Town and Mr Powell was travelling towards St Ann. It is also not in dispute that both drivers had their headlights on, both vehicles were extensively impacted and both drivers were unconscious immediately after the collision.

[5] Both drivers are blaming each other. Osbourne Whyte and the estate of Patrick Clunie are blaming both drivers, while Barrington Gardner is blaming Clement Powell only. The court therefore needs to determine whether the drivers encroached on his incorrect side thereby causing the collision and determine who should bear responsibility for the accident and the extent of such liability.

Claimants' Evidence

[6] Osbourne Whyte gave evidence that he saw the car in which he was travelling drifting to the right so he shouted to the driver, Mr Powell, who swerved to the left, but it was too late and both vehicles collided. He states that he "blocked out " for a while and was taken to the Ewarton Medical Centre where he was treated and then taken to Medical Associates Hospital where he did a 'body scan'. He indicates that during this time he was in excruciating pain and that he went home, was unable to go to work and unable to do usual household chores. He states that he did eight sessions of physiotherapy on the recommendation of the doctor.

[7] His evidence further is that his ability to perform his work was affected and that he was "eventually terminated" as he had to be absent from work for "medical treatment and mediation sessions" and he lost his job at the end of 2010. He also states that he incurred expenses as a result of the injuries and was away from work for approximately five months and that at the time of the accident he earned approximately $50,944.00 per fortnight.

[8] When cross examined by Ms Dunbar, he agreed that it was dark and there was fog. He indicated that Mr Powell was driving at a moderate speed of about 40kmph and that he could see 'good, good'. He agreed there were no vehicles ahead or behind him and that there was no stationary vehicle and Mr Powell did not overtake any vehicle that morning. He indicated that they had not reached the corner when the accident occurred. He was unable to say whether the bus travelled some distance before it stopped, after the accident, but indicated that "all me know when me wake up me see it lick out some peg over the post office side".

[9] In relation to the speed at which Mr Beam was travelling, Mr Whyte said he was going "at a good, good speed" and when it was suggested to him that the accident took place on Mr Powell's correct side of the road he emphatically said "no, no, no". He also maintained that Mr Powell's car drifted over to the other

lane and he shouted to him and he insisted that the accident did not happen in the corner.

[10] In response to Ms Sewell, Mr Whyte indicated that the point of impact was close to the soft shoulder on the left hand side of the road approaching Kingston, but could not say if the driver of the bus swerved or it was the impact "shub him" and it knocked down pegs even beyond the soft shoulder. He agreed that if Mr Powell's car had not been on his incorrect side of the road the accident would not have occurred.

[11] Barrington Gardener's evidence is that when they reached in the vicinity of "Charlie Mount" crossing he saw a black car coming from the opposite direction overtake an object around a bend, at a fast rate of speed and entered their side of the road. He indicates that Mr Beam shouted "Barry woiee", swung to the left, and he heard a loud noise and felt an impact to the vehicle. He states further that he felt the bus "sliding then rocking and afterwards it came to a stop between two columns on the left soft shoulder in the direction in which we were travelling".

[12] He states that he was feeling pain to his right knee and leg and later felt pains to his lower back and was taken to the Linstead Hospital where he was treated, sent to do X-rays and sent home.

[13] In response to Ms Dunbar in cross examination, he indicated that it was dark but not "pitch black" and there was light fog. He agreed that the road was wide, both sides had soft shoulders and that there was no object on the side of the road. He also maintained that the accident did not happen on Mr Powell's side of the road.

[14] When cross examined by Ms Sewell in relation to visibility, he indicated that "you could recognise vehicles and structures like shape of building and so on". He also stated that there was fog in Moneague, "by camp" and that up to the point of the accident, there was no fog.

[15] Mrs Hyacinth Clunie, widow of Patrick Clunie, gave evidence on behalf of the estate of Patrick Clunie, deceased. She states that they had two children at the

time of his death and that he was employed to Bouygues as a truck driver. She states further that he earned a salary of $22,009.94 per fortnight which went into a Scotia Bank account for which she had a card to access the money. She also states that she used the money to “run the house and look after the family and pay the bills”

[16] She gave evidence as to the monthly expenses which were paid from her husband’s salary and also states that at the time of his death she was employed and earned about $15,000.00 to $20,000.00 per month which also assisted with the household expenses and motor car upkeep. Her evidence further is that she paid for the costs of the funeral arrangements for her husband including the construction of the grave which in total amounted to $270,850.00.

[17] In cross examination, she admitted that at the time of her husband’s death she was a dressmaker and worked at the hotel also and that she earned $25,000.00 per week from dressmaking but could not recall how much she earned from the hotel. She indicated that she was paid fortnightly by the hotel. She also stated that her husband earned more than she did, but if the money she earned from dressmaking was included, she would earn more. She indicated that there was money he spent on himself but that she would purchase his personal care items, clothes and shoes.

Defendants’ /Ancillary Claimants’ Evidence

[18] Mr Beam’s evidence is that he was driving Toyota Hiace motor truck travelling along the Ewarton main road going to Kingston and on approaching a right hand corner he saw a bright light coming towards him, he shouted to Mr Gardener and swung to his left and the next thing he knew was that he was in the Linstead Hospital.

[19] In amplifying his witness statement, Mr Beam gave evidence that the vehicle he was driving was damaged and he had to pay for wrecker services. He states that the damage was assessed and he also had to pay for the assessor’s report.

[20] He also gave evidence that he required physiotherapy for about six to eight weeks as he suffered a whiplash and that he had to visit Dr Nallapati, as his teeth were shaking as a result of the accident.

[21] When cross examined by Ms Campbell, he indicated that he encountered fog when coming from Moneague, but up to the Ewarton main road there was no fog. He admitted to driving at about 45 to 60kmph and maintained that he saw the light coming straight at him, called out to Mr Gardener and indicated that he does not know if he got the opportunity to lock to the left.

[22] When asked why he did not stop, he said that his "reflex" told him to swerve to "get away from the lick". He stated that if he had stopped he could not avoid it. He agreed that maybe he failed to apply his brakes within sufficient time upon seeing the light coming and that he failed to stop or slow down. He insisted that he could not avoid the accident and agreed that it was the light of the vehicle he saw and when it was suggested to him that he was not paying attention to the road, he disagreed.

[23] In answer to Ms Barker, Mr Beam indicated that the lights he saw before the impact came straight in front of him, in his lane. He stated that he saw the vehicle in time and tried to avoid it. When it was suggested to him that he didn't apply his brakes he replied, "honestly, I don't know if I did, all I was doing was to get out of the way of the light that was coming at me" and when asked if all he did was to swerve, he indicated that that was what he remembered.

[24] In response to Ms Dunbar, he stated that he saw the bright light "probably more than a second" before the impact. He admitted that he was not wearing his seat belt and indicated that the distance from the 1st to the last yellow peg was about 500 feet. He stated that he did not notice any fog on the road where the accident happened, insisted that it was not very dark but that he had on his headlights. He admitted that the lights blinded him momentarily, he saw them coming at him on his side of the road and that the collision happened on the roadway itself and there was about 6 feet of space on the soft shoulder.

[25] He agreed that the damage to his vehicle was to the front involving the headlight and front section where the bumper would be. When asked if the damage showing the front right wheel missing was caused by the collision with Mr Powell's car, he said "I think so". He disagreed that he was speeding that morning and insisted that he was paying attention.

[26] Clement Powell's evidence is that he was driving with Patrick Clunie sitting in the seat behind him, and Osbourne Whyte sitting beside him. He states that the road is wide and was in fairly good condition and it was dark and "very foggy". He states that he had on his headlights and could not see very far ahead of him.

[27] He states further that on reaching the vicinity of Charlemont High School entrance, he saw a bright light "come up suddenly" out of the fog from the opposite direction on his side of the road and as he saw the light he felt an impact to the front right side of his vehicle and did not know anything else and woke up at the Linstead Hospital. He adds that he was transferred to the Spanish Town Hospital where he was admitted and spent about ten days.

[28] He told Ms Campbell, in cross examination, that from the time he picked up Mr Clunie and Mr Whyte they never spoke. He said it was "dark like night", he had his headlights on from he left his house and the fog was thick so he could see probably two car lengths ahead of him and it was difficult to see the white line in the roadway. He said when he saw the pair of headlights it was right upon him. He pointed out a distance, agreed to be 14 feet. He said it was on his side of the road and coming at "lightening speed", which he said could not be less than 80 kmph. He said he was not travelling fast so he pressed his brakes to slow down as he was already turning left, but he did not get to swerve. He disagreed that Mr Whyte shouted to him and he also disagreed that since he saw the light from 14 feet he could have avoided the collision.

[29] In cross examination by Ms Hamilton, he said it probably took 22 minutes to get to where the accident took place but he was hesitant in stating how long it would

take from his home to Angels. When pressed, he said it would be 10 or 12 minutes and then said he had no idea how long it takes.

[30] He indicated that he was unconscious and cannot really say at which point on the road the accident happened. He admitted that at some point in time after regaining consciousness he had difficulty remembering how the accident happened, but while in the hospital bed "clarity came back ..."

[31] He agreed that he should have seen Mr Beam's vehicle from it was about 22 feet away and in answer to Ms Barker, he indicated that there was space to his left where he could have swerved, but he did not have enough time.

The submissions in relation to liability

[32] The parties have provided the court with written submissions in which they have set out the law and its application to the facts of the case, for which I am grateful. I note that all Counsel appear to be in agreement that on the issue of liability a determination rests on the court's assessment of the credibility of the witnesses. I will not restate the submissions, but it is to be noted that I have given due consideration to them, as well as to the authorities cited, in coming to my decision.

[33] I must also note at this point, that where there were conflicts on the evidence, I prefer and accept the evidence of the claimants, as well as the defendant Beam, to that of the defendant Powell. Having assessed the demeanour of the witnesses, I found Mr Beam to be hesitant and uncertain in his reply to some questions although he was willing to concede that he made a mistake, for example, when he said he was a restrained driver, when in fact he was not wearing a seatbelt that morning. Mr Powell on the other hand, was very shaky in cross examination. He was not forthright, his responses were defensive and he too was quite hesitant in giving answers to a number of the questions posed to him, even indicating that he did not want to say something that he might regret, when asked to give an estimate of the time it would take him to travel from his house to Angels. I was not at all impressed by him.

[34] I find that although there were discrepancies and inconsistencies on the evidence of the witnesses, for example, Mr Whyte in relation to whether he saw the Hiace bus or the lights of the bus first when he shouted to Mr Powell; Mr Beam in relation to being a restrained driver when in cross examination he said he was not wearing a seat belt and the evidence of Mr Gardener that Mr Powell had overtaken a black object to his left just before the collision, these were not so material as to affect the court's finding on liability.

[35] I cannot agree with Counsel for Mr Powell that the fact that Mr Powell was the only witness who, in his witness statement, gave evidence of the road and weather conditions makes the other witnesses' accounts untruthful and neither can I agree that the failure to give such evidence shows lack of credibility.

The Law

[36] It is a well established principle of law that in every claim for negligence, in order to succeed, the Claimant must prove on a balance of probabilities that the defendant owed him a duty of care, there was a breach of that duty and damage resulted from that breach. It is also settled, that all users of the road owe a duty of care to other road users (see **Esso Standard Oil SA Ltd & Another v. Ian Tulloch** (1991) 28 JLR 553) Additionally, drivers of motor vehicles must exercise reasonable care to avoid causing injury to persons or damage to property.

[37] Reasonable care is said to be the care which an ordinary, skilful driver would have exercised under all the circumstances. This includes avoiding excessive speed and keeping a proper lookout. (See **Bourhill v Young** [1943] AC 92)

[38] Section 51(2) of the Road Traffic Act, as cited by Counsel, and the case of **Nance v British Columbia Electric Railway Company Ltd** [1951] AC 601, show that there is a common law duty as well as a statutory duty for drivers of motor vehicles to exercise reasonable care while operating their vehicles on the road and to take all necessary steps to avoid an accident.

[39] I note also that their Lordships of the Judicial Committee of the Privy Council, in the case of **Nance**, *supra,* speaking through Viscount Simon, at page 610 said:

> *"Generally speaking when two parties are so moving in relation to one another so as to involve risk of collision each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle."*

[40] I have therefore carefully reviewed the evidence, assessed the credibility of the witnesses, applied the statutory and common law principles and considered the submissions of Counsel. I find that the credibility of all of the witnesses came into question at some point in time. As stated earlier, the issue of their credibility was not in my view, so fundamental as to affect the question of liability, as I prefer the evidence of the claimants over the defendants and the evidence of Mr Beam over Mr Powell.

[41] I find that the collision took place along the Ewarton main road in the vicinity of the Charlemont High School at some time after five o'clock on the morning of March 23, 2009. This is a wide road with soft shoulders on both sides and what I accept as described a "long corner". There are yellow pegs running alongside the soft shoulder on the left side of the road going towards Kingston. .

[42] Mr Powell, while driving towards Saint Ann, drifted onto the driving side of the Mr Beam. Mr Whyte shouted to him. Both drivers saw the lights of the other oncoming vehicle. Mr Beam shouted to Mr Gardener and swerved to his left. The impact took place as soon as Mr Powell was alerted by Mr Whyte and he saw the light of the vehicle driven by Mr Beam. The collision took place on Mr Beam's driving side of the road, closer to the middle of the road. At the time of the accident, along that section of the roadway there was fog, it was dark and this caused visibility to be poor.

[43] For the impact to have occurred immediately as Mr Powell saw the light, it must mean that he was not keeping a proper lookout. Had he been keeping a proper lookout he would have recognized that an impact was imminent and would have been able to take some evasive action.

[44] In relation to the speed at which the respective drivers were travelling on that morning, I find that Mr Powell must have been travelling faster than he would have the court believe. I find it hard to believe that he could have covered so many miles in such a short space of time, unless, of course, he was speeding. Although I do not find that Mr Powell is in a position to state the speed at which Mr Beam was travelling, I also find that Mr Beam must have been speeding as well and that would account for his inability to swerve in time and or stop in order to avoid the accident.

[45] I find that Mr Powell drove without due care and attention, encroached onto the driving side of Mr Beam and caused the collision. I find that it is more likely than not that Mr Powell failed to keep a proper lookout as he had to be alerted by Mr Whyte that he was drifting on the other side of the road and it is clear that he failed to take the necessary action to avoid the accident as he failed to swerve to his left even though his evidence shows that although there were visibility issues, he could see about 22 feet in front of him and there was ample space, roadway, as well as soft shoulder, on which he could have done so.

[46] An examination of the Assessors Report by MSC McKay dated March 3, 2009, including the photographs, shows the damage to the vehicle driven by Mr Beam to be on the right side of the front section of the vehicle by the driver's door and also that the right front wheel is dislodged. This, in my view, points to a finding that Mr Beam in fact swerved to his left and Mr Powell's vehicle came over, onto Mr Beam's lane caused by Mr Powell drifting onto the other side as indicated by Mr Whyte.

[47] On the other hand, the damage to Mr Powell's vehicle is concentrated to the right front section and the vehicle is twisted to the right which in my view points to a finding that the vehicle was either moving straight or to the right at the time of the collision. The fact that the point of impact as seen on Mr Beam's vehicle is to right side of the front section supports the claim that Mr Powell's vehicle came over onto Mr Beam's driving side.

[48] On the visit to the *locus in quo* it became clear to me that the point of impact was on the driving side of Mr Beam, but closer to the middle of the road. The positions of the vehicles after the accident, as pointed out to me and as I accept as true, also supports a finding that the collision took place more on Mr Beam's driving side of the road.

[49] It also became clear that Mr Powell having drifted to Mr Beam's driving side of the road, had taken no evasive action to avoid the collision as there was ample space to his left to which he could have swerved but he failed to do so. The positions of the vehicles and the fact that the right front wheel of the vehicle driven by Mr Beam was dislodged also point me to a finding that Mr Beam must have been speeding and had not been keeping a proper lookout otherwise he would have seen Mr Powell's vehicle in time to have taken such evasive action to avoid the collision.

[50] I find that if Mr Beam had been travelling at a moderate speed and was keeping a proper lookout, on seeing the light in his path some distance away, and having indicated that prior to the collision he could see approximately 40 feet ahead, he should have been able to slow down and manoeuvre safely further to his left, and away from Mr Powell's car without the collision taking place.

[51] I find that Mr Powell encroached onto the driving side of Mr Beam, he failed to keep a proper lookout as a reasonable prudent driver of ordinary skill would have done in the circumstances and is therefore negligent. I accept that Mr Beam swerved left but, in my view, he also failed to keep a proper lookout and failed to exercise reasonable care to avoid the collision. Mr Beam should have been proceeding with sufficient care and have given himself sufficient time to stop his bus or to swerve to prevent the accident. The court therefore finds that Mr. Beam is also negligent.

[52] Both defendants failed to discharge their duty to exercise reasonable care when driving on the road to prevent injury to the claimants and to each other, when they collided. They did not exhibit the necessary care and skill in the

circumstances, they failed to keep a proper lookout and failed to take the necessary evasive action at all, as in the case of Mr Powell, or in sufficient time, as in the case of Mr Beam, and are therefore negligent and are therefore liable for the injuries and loss sustained by the claimants and each other.

[53] Having found that both drivers were negligent in the driving of their respective vehicles on that morning, and they have filed ancillary claims against each other, the issue of contributory negligence arises and it becomes necessary to determine the extent of the liability of each defendant.

[54] In determining the apportionment of liability, I find that an instructive authority is **Brown v Thompson** [1968] 2 All ER 708 in which it was stated, *inter alia,* that*:*

> *"...regard must be had not only to the causative potency of the acts or omissions of each of the parties but to their relative blameworthiness".*

[55] In **Uden v Associated Portland Cement Manufacturing Ltd.,** [1965] 2 All ER 213, Lord Pearce, at page 218, made the point that the question of apportioning blame *"is one of fact, opinion and degree".*

[56] Having weighed all the circumstances of this case as to causation and blameworthiness, I am led to the conclusion that Mr Powell is more to blame for the accident as I am of the view that it is his act of encroaching onto the other side that was the proximate cause of the collision. I therefore apportion 60% liability to Mr Powell as it is my considered view that he should take more responsibility for the accident and Mr Beam 40%. Mr Beam, having been confronted with an imminent collision, although he was on his correct side, was closer to the middle of the road, and had a responsibility to act in order to avoid the accident. He was under a duty to stop and take some defensive action to prevent the collision and the fact that he swerved and the collision still took place, is in my view an indication of his failure to keep a proper lookout and to exercise reasonable care.

[57] There shall therefore be judgment on the claim, in favour of the claimants Osbourne Whyte, Barrington Gardener and the Administrator General of Jamaica

against the 1st and 2nd defendants with liability apportioned 60% on the part of Mr Powell and 40% on the part of Mr Beam. There shall be judgment for Mr Beam on his claim and on the ancillary claims, with contributory negligence assessed at 60% on the part of Mr Powell and 40% on the part of Mr Beam.

[58] I will now consider the quantum of damages to which each party is entitled.

Damages.

Osbourne Whyte

[59] Counsel for the claimant, Osbourne Whyte, relied on the following cases to substantiate an award of $1,800,000.00 for general damages:

Talisha Bryan v Anthony Simpson & Andre Fletcher, Claim No. 2011HCV 05780, unreported, delivered March 13, 2014 where an award of $1,400,000.00 was made; **Elaine Graham v Daniel James and Ezra Nembhard,** Khan, Vol. 5, pages 154-155 where an award of $600,000.00 was made in September 2000; **Wilford Williams v Nedzin Gill & Anor.,** CL1999/W169, where in November 2000 an award of $350,000.00 was made **Kenroy Higgins v Ralston Ebanks and Delroy Buckridge**, Claim No. 2007HCV 00442, unreported, delivered July 2008 where an award of $1,300,000.00 was made.

[60] The injuries sustained by the claimants in the cases referred to by Counsel for Mr Whyte include whiplash injuries to cervical spine and lower back injuries and in the case of **Wilford Williams**, he also had cerebral concussion with post traumatic emesis. When the awards made in those cases are updated using the CPI of 236.3, they range between $1.5m and $2.3m.

[61] In relation to his special damages claim, Ms Campbell noted the medical expenses of the claimant, the transportation costs as well as a sum for loss of earnings and submitted that Dr Hassan and Dr Gogineni indicated in their respective reports that Mr Whyte's job was seriously affected by his injuries. She indicated that he was out of work for a whole week and he was terminated from work as a result of his absence from work due to the injuries he received. She

asked the court to make an award of $1,081,900.00 in respect of his special damages claim.

[62] The court was referred to the case of **Lacquan Harvey (bnf Ann-Marie Nelson) v Phillip Mighty**, Claim No. 2010HCV05684, unreported, delivered October 25, 2013, by Ms Dunbar, Counsel for the defendant/ancillary claimant Powell. In that case an award of $463,680.00 was made for general damages. When updated, it amounts to $524,246.81. She submitted that the court should deduct 25% from the award as his evidence is that he was not wearing his seatbelt at the time of the accident.

[63] Ms Dunbar also submitted that special damages for Mr Whyte can be agreed at $33,000.00, being his medical and physiotherapy expenses. She indicated that his claim in relation to consultation at Apex Health Centre done on April 12, 2012 ought to be disregarded as there is no causal connection with the accident and that the same applies to expenses incurred at Pines Imaging Center on June 10, 2012 and involved x-rays on his femur, as none of the medical reports indicate he had any injury to his femur.

[64] She expressed the view that no award ought to be considered for loss of earnings since he was working until December 2010 and he has failed to show that the loss of his job was directly related to the accident. She also expressed the view that he is exaggerating his claim as when his testimony is examined against his medical evidence, it is clear that he was fully resolved by April 2009.

[65] Ms Sewell submitted that the sum of $650,000.00 would be adequate compensation for his pain and suffering and loss of amenities. She referred to the authorities of **Joseph Whittick v Hopal McLean- Levers and Ors.,** Claim 2010HCV 02306, where an award of $480,000.00 was made in June 2013 to the claimant who sustained muscular spasm and tenderness in the left side of his neck and his lower back and tenderness in buttock, and **Peter Marshall v Carlton Cole,** Khan,Vol.6, page 109, where the claimant sustained moderate whiplash, sprain, swollen and tender left wrist and left hand and moderate lower

back pain and spasm and was awarded $350,000.00 in October 2006. She submitted that the injuries sustained by the claimants in the authorities cited were more severe than those suffered by Whyte. The awards made in these cases update to $563,801.90 and $823,446.89, respectively.

[66] Ms Sewell stated that for his special damages claim, only the sum of $47,100.00 is supported by documentary proof and suggested that as the amount on Invoice no. 23223 is the same as that paid on receipt from Apex Health Care dated April 17, 2012, the sum should be reimbursed to Mr Whyte.

[67] In relation to the costs for transportation, Counsel submitted that he should not be reimbursed for the trips made to the University Hospital of the West Indies, (UHWI) as there is no medical report, receipt or prescription from this institution corroborating his allegation that he was treated there. She also submitted that the claim for loss of earning should be refused as it is not supported by the evidence.

[68] Mr Whyte pleaded in his Particulars of Claim, as amended, a total of $1,052,300.00 for special damages including loss of earnings. He has provided documentary evidence to support the sum of $72,100.00. I find that the invoice, no 23223 (Ex 9) and receipt from Apex Health Care Associates (Apex) (Ex10) reflect the charge and payment of the sum of $4,600.00, payment being made by Cheque no 6001075, and this was for consultation on March 14, 2012. I also find that Invoice dated August 10, 2012 shows payment of $9,500.00 at Pines Imaging Center for x-rays done in June 2012 and I agree that he has not shown that his visits to Apex and Pines had any connection with the accident, so his claim in relation to those expenses will not be allowed.

[69] On his claim for $12,400.00 for transportation expenses, Mr Whyte gave evidence that he had to take taxi to Oasis Health Care for his physiotherapy sessions and I find that he would have incurred transportation expenses in that regard. He has not shown that he visited the UHWI as a result of the accident so

his claim for transportation to that institution will not be allowed. I therefore believe a reasonable sum for transportation would be $6,000.00.

[70] He has also made a claim for loss of earnings and as such loss must be strictly proved and his evidence reveals that he was working up to December 2010 and he has not satisfied the court on a balance of probabilities that he had to be absent from his job due to the accident, no award will be made under that head. The award for special damages will therefore be $64,000.00.

[71] Having examined the cases provided for comparison, the court finds that based on the medical evidence presented, his injuries are more comparable to those of the claimant in the case of **Talisha Bryan**. However, it is noted that on April 27, 2009 after having done eight sessions of physiotherapy, he was discharged and at that time he was pain free with normal muscle strength, but he had also suffered soft tissue injury to his right arm, elbow, thigh and left shoulder. I note that in the medical report of Dr Hassan dated June 15, 2009, it is indicated that the soft tissue injury "should resolve within two to three weeks..." The second medical report dated November 17, 2012, is a carbon copy of the first, with the additional paragraph which indicates that the claimant was last seen November 2011and was still complaining of mild persistent lower back pains. In this report, the doctor gave no prognosis. It is therefore my view that the award made in the case of **Talisha Bryan**, as updated, would provide adequate compensation to him.

[72] In view of the foregoing, I find that a reasonable award for general damages for pain and suffering would be an award of $1,500,000.00. I have taken into consideration the submission of Counsel for Mr Powell in relation to the wearing of the seatbelt, and I find that as Mr Powell did not plead contributory negligence against Mr Whyte, he cannot now avail himself of that defence.

Barrington Gardener

[73] Ms Hamilton, Counsel for Gardener painted a dismal picture of the injuries sustained by Gardener. She submitted that his injuries negatively impacted his

activities of daily living, in particular his work, ability to look after himself and his sexual relations with his wife. She noted that Dr Dundas opined that Gardener's spinal condition "cannot be unequivocally attributed to his trauma from the road accident". She submitted that it is more likely than not that the accident was the competent cause as the mechanism of the accident which Gardener said involved Mr Beam making a sudden swerve followed by the impact and then with the bus sliding and rocking before coming to a stop and that ten days after the accident he attended on Dr Lawson and complained of lower back pains and an MRI done on May 5, 2009 showed a mild disc bulge at L5/S1.

[74] She referred to the following cases: **Beverley Francis v Donovan Pagon & Maurice Smith,** Khan Vol. 4, page 52; **Charmaine Powell v Milton O'meally** Khan 4, page 56**; John Thomas v Marcella Francis & George Fagan,** Khan 5, page 54; **Lewis v Lewis** 2006HCV02643, unreported, delivered November 19, 2007; **Dawnette Walker v Hensley Pink** SCCA No.158 of 2001, unreported, delivered June 12, 2003 and **Valoris Smith v UGI Group Ltd.,** CL 1997/S 298, unreported, delivered March 11, 2010. These cases show awards made for claimants who suffered injuries such as fractured femur and fractured left knee, requiring surgery; soft tissue injuries to the spine resulting in WPI of 5%, 7% and 9%. When the awards made in these cases are updated, they range from $2.m to $6.5m. She submitted that an award "in the region of $5.5m would be reasonable" and indicated that Gardener's attendance at physiotherapy was interrupted due to his inability to afford the costs.

[75] For handicap on the labour market, Counsel proposed the sum of $750,000 and made reference to the cases of **Wayne Ann Holdings Ltd (t/a Super Plus Food Stores) v Sandra Morgan,** SCCA 73/2009, unreported, delivered December 2, 2011 where an award of $750,000 was made and **Noel Davis v TankWeld Limited**, 2009HCV00687, unreported, delivered April 20, 2010 where the award was $500,000.00. She also submitted that since being injured, Mr Gardener has been forced to quit two jobs and has been dismissed from two others owing to difficulties he has had with coping, owing to the effects of his

injuries. This, she said, evidences not just a substantial risk of him being thrown on the labour market, “but a reality which he has already lived multiple times”.

[76] In relation to his claim for special damages, Counsel submitted that he claims $149,137.00, all of which she said are reasonable and have been specifically proven.

[77] The following cases: **Johnathan Johnson v The Attorney General of Jamaica**, Khan, Vol. 4, page 50, where an award of $800,000.00 was made on March 30, 2007 (CPI 102.50), **John Thomas v Marcella Francis,** Khan Vol. 5 page 54,(also referred to by Counsel for Gardener) where an award of $450,000.00 was made September 1999 (CPI 51.50) , **Noel Robinson v The Attorney General of Jamaica,** Khan Vol. 4, page 50 where an award of $600,000.00 was made February 1997(CPI 42.54) and **Winnifred Hunter v Michael Brown**, Khan, Vol. 6, page 56 where an award of $850,000.00 was awarded to an octogenarian who had a residual disability of 24%, were referred to by Ms Dunbar, Counsel for Mr Powell, as instructive in determining an award for general damages in respect of Barrington Gardener . The updated awards for the cases referred to range from $2m to $4.7m.

[78] She noted that the cases involved more severe injuries and more intense treatment than the injuries and treatment of Mr Gardener and suggested that the award should be discounted by 25% for his failure to wear his seatbelt.

[79] Counsel for Mr Powell also submitted that the amount claimed by Mr Gardener to see Dr Dundas was unreasonable. She applied the principle in **Derrick Munroe v Gordon Robertson** [2015] JMCA Civ 38, that where a medical report is garnered solely for that purpose and the doctor did not treat the claimant, then it ought not to be considered. Counsel also expressed the view that the costs claimed for transportation to and from Kingston, to see various doctors was also unreasonably incurred and ought not to be awarded.

[80] In relation to the general damages to be awarded, I find that the injuries sustained by Mr Gardner were not as serious as those of the parties in the cases

referred to by Counsel. His evidence in relation to his curtailed sexual activities has been referred to by Dr Lawson but there is no evidence that he sought any further medical treatment after his last visit to Dr Lawson on June 16, 2009.

[81] It is quite clear that the doctor who examined and assessed him at the Linstead Hospital on the day of the accident did not consider his injuries to be as serious as Dr Lawson has described in the medical report provided over one year after the accident. However, I bear in mind that Mr Gardener had been in the care of Dr Lawson since April 2, 2009 and I note that on his visit on that date "he was able to walk with assistance and crutches but displayed severely antalgic gait (limp)" and the doctor saw it fit to refer him to an orthopaedic surgeon, Dr Waite.

[82] Using the case of **John Thomas** as the preferred guide, and bearing in mind that Mr Gardener was assessed as having 12% WPI, I am of the view that an award of $2,500,000.00 would be reasonable compensation for him. I will make no reduction in respect of the damages to be awarded. Although it was elicited in cross examination that he was not wearing his seatbelt, Mr Powell had not pleaded contributory negligence against Mr Gardener and therefore could not now seek to rely on it. He had a duty to show on a balance of probabilities that if Mr Gardener had been wearing his seatbelt he would not have suffered the injuries claimed or would have been less severely injured than he was.

[83] For special damages, Mr Gardener has provided evidence to substantiate expenses incurred in the sum of $151,251.00. In keeping with the principle in the case of **Derrick Munroe**, I will make no award for the sum claimed as having been paid to Dr Dundas ($45,000.00) as I find it was not reasonable for him to have incurred that expense and neither was he treated by that doctor. The sum allowed for special damages is therefore $106,251.00.

[84] He has also made a claim for handicap on the labour market and although he has stated that he has had to quit two jobs and was dismissed from two others, he has not provided any medical evidence to confirm that this was a result of the accident, neither has he shown on the evidence that as a result of the accident

his earning capacity has been diminished. I will therefore make no award under this head.

Estate Patrick Clunie, deceased

[85] Ms Dunbar, Counsel for Mr Powell, submitted that the sum of $100,000.00 is a reasonable sum for loss of expectation of life in relation to Patrick Clunie. She sought to distinguish the case of **Elizabeth Morgan v Enid Foreman & Anor**., Claim No 2003HCV 00427, where the deceased was 16 years at the time of his death and an award of $150,000.00 was made. She noted that the deceased in the case at bar was 41 years old at the time of his death and stated that "the loss of expectation of life is lower".

[86] In relation to loss of earnings to the estate of the deceased, Counsel indicated that the loss is the sum of money the deceased would have left over after meeting his sole living expenses. She submitted that based on the evidence of Hyacinth Clunie, the total expenses of the deceased for the month was $28,662.75 and the balance of his salary was $15,356.93 per month or $184,283.16 per year. She suggested that a multiplier of 9 is reasonable and therefore submitted that the sum of $1,658,548.44 is the sum recoverable for loss of earnings to the estate. She also noted "testamentary expenses of $60,000.00".

[87] Ms Sewell, Counsel for Donald Beam, submitted that the court find that Mrs Clunie was not a witness of truth and that she intentionally withheld information from the court in an effort to mislead. She suggested that a fair assessment of Mr Clunie's share of the joint expenses of the family is to divide the total annual expenses by four, as the evidence is that theirs was a family of four. She arrived at a figure of $100,687.81per annum as Mr Clunie's share and when she added his personal expenses and his share of the shared expenses, she found the annual sum lost to the estate to be $210,540.19. She also submitted that a reasonable multiplier is 9 and indicated that the sum lost to the estate is $1,894,861.71.

[88] She also submitted that the sum of $120,000.00 be awarded for loss of expectation of life based on the authority of **The Attorney General v Devon Bryan** [2013] JMCA Civ 3, in which Panton P reduced an award of $250,000.00 to $120,000.00. She submitted that the sum of $1,894,861.71 be awarded as general damages and $450,850.00 as special damages to the estate of Patrick Clunie.

[89] The damages recoverable by the estate of Patrick Clunie are for loss of earnings, loss of expectation of life, funeral expenses and other special damages incurred and the claimant has specifically pleaded the total sum of $480,850.00 for funeral and testamentary expenses and has also included the sum of $150,000.00 for loss of expectation of life. The court has to calculate the annual dependency on the deceased by the near relations and then determine the estimated years that the deceased would have supported that dependency.

[90] The case of **Davies v Powell Duffryn Associated Colliers Ltd.** [1942] AC 601 provides some guidance in arriving at the award to be made. Lord Wright said :

> *"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of employment. Then there is the estimate of how much was required or expended for his personal and living expenses. The balance will give a datum of basic figure which will generally be turned into a lump sum by taking a certain number of years purchase"*

[91] I accept the evidence that he earned an annual salary of $528,238.56 as a driver. The court has to do the best it can in estimating what sum he would have spent on himself based on the evidence, to determine the loss to the estate.

[92] I find on the evidence that the amount deceased would have spent on himself includes $30,000.00 per year for clothing and shoes, about $36,000.00 per year on his personal care items, including going to the barber and about $3,600 per year on telephone credit. Taking into consideration the evidence that his salary was placed in the bank and Mrs Clunie used a card to access the funds and did most of the purchases, including personal care items and clothing for the

deceased, I estimate that on the whole he would spend about 3/5 of his salary on himself, which amounts to $316,943.13 and the balance would be $211,295.43.

[93] Patrick Clunie was 41 years old at the time of his death and although there was no evidence given as to the state of his health, it is estimated that he would likely work to the age of retirement. I agree with the submissions of Counsel that a reasonable multiplier would be 9 years.

[94] This leads me to a finding that the loss of dependency would be $1,901,658.87

[95] For loss of expectation of life, damages are in respect of loss of life and not of loss of future pecuniary prospects. (See **Benham v Gambling** [1941] 1 All E.R. 7).

[96] In **Brenda Hill & Administrator General Jamaica v The Attorney General,** *supra*, this court, citing the case of **Rose v Ford** [1937] AC 826, stated:

:

> "*… A claim for loss of expectation of life is maintainable on behalf of the estate of the deceased. A conventional sum is usually awarded under this head of damages as such a loss is incapable of quantification using any known arithmetical formula. I have considered the cases cited by Counsel (**Gordon & Others v The Administrator General** 2006HCV1878, unreported, delivered January 6, 2011, in which the sum of $150,000.00 was awarded and **The Attorney General of Jamaica v. Devon Bryan (Administrator for the estate of Ian Bryan) [**2013] JMCA Civ 3 where the Court of Appeal reduced an award of $250,000.00 made in 2007 to $120,000.00."*

[97] The court then made an award of $150,000.00 in respect of a deceased who was 41 years old at the time of his death. I will therefore make an award of $150,000.00 in respect of this deceased.

[98] The estate of Patrick Clunie has claimed the sum of $270,850.00 as funeral expenses and $60,000.00 as Testamentary expenses. There is proof that a grant of administration has been made in the estate and Mrs Clunie has proven on the evidence that she incurred funeral expenses amounting to the sum claimed. Special damages will therefore be awarded in the sum of $330,850.00.

Donald Beam

[99] Counsel for Mr Beam submitted that he should recover the sum of $5,600,000.00 as an award for pain and suffering and loss of amenities. This, she said, is supported by the case of **Tanya Reid v Vanyard Dacres and Carla Dacres**, Khan, Vol. 5, page 242, where the claimant sustained injuries similar to those suffered by Mr Beam, was assessed as having 2% whole person disability and was awarded $1,375,000.00 which was confirmed on appeal.

[100] In relation to his special damages, Counsel indicated that Mr Beam has proven his special damages of $835,475.00 and that he claims $56,000.00 for loss of use of his vehicle, as after the collision, his vehicle which he used to transport goods from Kingston to Saint Ann was a total loss and he was unable to replace it until November 2009. She noted that his evidence is that he made several trips to Kingston to collect goods and that while he was without his vehicle he had to ask suppliers to deliver goods to him and this cost on average $2,500.00, per trip. She stated that the sum claimed equates to approximately 23 days at $2,500.00 and in the circumstances is not unreasonable and ought to be allowed.

[101] Counsel for Mr Powell submitted that special damages for Mr Beam can be agreed at $149,675 for medical expenses, $1,000.00 for the police report and $623,000.00 for the property damage. She objected to the expenses claimed to be incurred for treatment by Dr George Lawson as unreasonable, noting that the medical reports of Drs James and Lawson indicate that they were both treating him at the same time and Mr Beam lives in Ocho Rios and Dr Lawson is stationed in Kingston. She relied on the case of **Michael Baugh v Juliet Ostemeyer & Ors** [2014] JMSC Civ 4, where the court said :

> *"It has to be demonstrated that the reasonableness of the expenditure was influenced by the type of injury. In other words, there has to be evidence which point to for example, that the Claimant had to stop working, or that it was medically necessary for his recovery."*

[102] She also objected to the cost incurred to see Dr Phillip Waite as, it too, she submitted, was unreasonably incurred as Dr Waite is an orthopaedic surgeon and given the injuries sustained by Mr Beam, he would not require that kind of expertise to address his injuries.

[103] In relation to the general damages to be awarded to Mr Beam, Counsel for Mr Powell indicated that the case of **George Dawkins v Jamaica Railway Corporation**, Khan, Vol. 5 page 233, is instructive. In that case the claimant suffered unconsciousness and had fractures of the upper jaw and lower jaw, fractures of the inferior orbital area on the left side of his face as well as lacerations of the tongue and above the elbow and below the left eye and upper lip. He was awarded $450,000.00 in January 1997 which updates to $2,522,775.80.

[104] Counsel however expressed the view that the injuries sustained by Dawkins were far worse than those sustained by Mr Beam and submitted that the sum of $1,500,000.00 was reasonable, but that it should be reduced by 25% to account for Mr Beam's own negligence in failing to use his seatbelt.

[105] In his Further Amended Particulars of Claim, Mr Beam has claimed a total of $985,975.00 as special damages. The evidence in relation to the claim for loss of use of his vehicle is that while he was without his vehicle he had to ask suppliers to deliver goods to him. Although no documentary proof has been shown for the loss of use, his evidence in this regard has gone unchallenged and the sum claimed appears reasonable. I am therefore of the view that he should be compensated in the sum of $56,000.00. (See **Grant v Motilal Moonan Ltd & Anor.** (1988) 43 WIR 372). He has provided documentary proof of other expenses to a total of $857,475.00. I will therefore make an award of $913,475.00 in respect of his special damages claim.

[106] I find that the injuries sustained by the claimant in the case of **George Dawkins** are comparable with those suffered by Mr Beam. A distinguishing feature however is that Mr Beam had multiple comminuted fractures to the right side of

his face and multiple bruises and lacerations to his face, neck and upper back and shoulder, the laceration to his right ear had to be sutured and he had to attend on a dental surgeon as his teeth were shaking. I therefore do not agree that Dawkins' injuries were more serious. I also find that his attendance upon Dr Waite was reasonable as Dr Waite is a consultant orthopaedic surgeon and the injuries suffered by Mr Beam were of the kind that would have necessitated such consultation.

[107] I am of the view that the award to Dawkins should be augmented to adequately compensate Mr Beam. I therefore believe reasonable compensation would be an award of $3,500,000.00. I agree that the award ought to be discounted by 25% as Mr Beam admitted in evidence that he was not wearing his seatbelt and Mr Powell had pleaded contributory negligence in respect of the claim against him.

Clement Powell

[108] Counsel for Mr Powell, in submitting that an award of $2,500,000.00 is fair, relied on the following cases to support his claim for pain and suffering and loss of amenities: **Lloyd Robinson v Denham Dodd & Audrey Wilson**, Khan Vol.4, page 47 - 49, where the claimant sustained comminuted fracture of the left acetabulum, posterior dislocation of the left hip and blows to head and left hand as well as chop to lip in January 1986 and remained in hospital until March 1, and up to July 31, he was still using crutches and limping was assessed as having a WPI of 12% and was awarded $650,000.00 in April 1997; **Cecil & Sheldon Bassaragh v Roger Brown**, Khan Vol.6, page 51 , sustained injuries to face and right side of body, painful right hip with significant restriction and swelling and tenderness in right foot and an award made for pain and suffering and loss of amenities was reduced to $750,000.00 in September 2005 by the Court of Appeal and **Winnifred Hunter v Michael Brown,** Khan Vol.6, page 56 where the claimant had "left hip to foot restricted", suffered laceration to back of head, fracture to lateral tibial plateau and marked antero-lateral bruising over the left knee. She had a residual disability of 24% of the whole person and was

awarded $850,000.00 in July 2002. The updated awards in these cases range from $1.8m to $3.5m.

[109] She noted that Mr Powell was unconscious until he came to the hospital, he sustained a fractured hip, had surgery, was hospitalized for 10 days and was unable to work for 10 months. She added that he still suffers from the effects of his injuries as he still has pain in the hip especially when he sits for too long, when he gets up, steps off and when it is cold.

[110] In relation to his special damages claim, she submitted that he has proven $288,400.00 as well as the sum of $1,092,000.00 as loss of earnings.

[111] In relation to general damages, Counsel for Mr Beam submitted that a sum in the region of $1.5 to $2m would be fair compensation for Mr Powell's pain and suffering. She referred to the cases of **Alton Bennett v Hector Pryce**, Harrisons, 2nd Edition, page 269, where the claimant who suffered loss of consciousness, abrasions to arm and foot, fracture of right femur and was hospitalised for 8 weeks in skeletal traction and suffered six months of total disability, was awarded $210,000 in May 1995, which updates to $1,625,384.86, and the case of **Mavis Morgan v The Attorney General of Jamaica**, Khan, Vol. 4, page 43, where the claimant suffered abrasions to knees, elbow and ankle, swelling of right hip and thigh and posterior fracture dislocation of right hip, was assessed as having 5% WPI and was awarded $500,000.00 in July 1997, which updates to $2,691,343.96

[112] On his claim for loss of earnings, Counsel noted that he provided no documentary evidence to support this claim and in the absence of this evidence his claim is not proved and as such no award should be made. She also submitted that the sum claimed for wrecker fees should be refused as the receipts tendered in evidence do not bear his name, the date of the accident or the date the sum was paid.

[113] The medical report shows that Mr Powell was unconscious after the accident and he sustained mild head injury, with lacerations to the face, blunt injury to his

chest and abdomen and fracture of his right hip and that he had to do surgery and he spent ten days in the hospital. I find that his injuries are more comparable to that of the claimant in the case of **Alton Bennett,** although when last seen on April 20, 2010 there was no disability rating given as he had not yet reached maximum medical improvement, while Bennett was assessed as having 10% permanent partial disability of the right lower leg and spent a longer time in hospital. I therefore find that reasonable compensation would be $1,850,000.00.

[114] In relation to his special damages claim, Mr Powell has tendered in evidence documents to substantiate the sum of $288,400.00. I have excluded Ex 59 (b) which is a receipt showing payment of $6,000.00 for wrecker fees as this does not relate to Mr Powell or his vehicle.

[115] With regard to his claim for loss of earnings, I find on the evidence that, like Mr Whyte and the deceased Patrick Clunie, he too was employed to Bouygues. He has given evidence that he earned $455.00 per hour and worked six days per week and that he was unable to work for about ten months. While this court finds as a fact that Mr Powell was incapacitated and therefore unable to work for some time, he has not provided any evidence from which it can be determined how long he was away from work as a result of the accident. There will therefore be no award made under this head.

Disposition

[116] In view of all the foregoing damages are assessed and awarded as follows:

Osbourne Whyte .

[117] General damages for pain and suffering and loss of amenities awarded in the sum of $1,500,000.00 with interest at 3% from the date of service of the claim form to date of judgment

Special damages awarded in the sum of $64,000.00 with interest at 3% from March 23, 2009 to date of judgment.

Costs to the claimant Osbourne Whyte to be paid by the defendants and apportioned 60:40 as between Mr Powell and Mr Beam.

Barrington Gardener

[118] General damages for pain and suffering and loss of amenities awarded in the sum of $2,500,000.00 with interest at 3% from the date of service of the claim form to the date of judgment.

Special damages awarded in the sum of $106,251.00 with interest at 3% from March 23, 2009 to today.

Costs to the claimant Barrington Gardener to be paid by the defendants and apportioned 60:40 as between Mr Powell and Mr. Beam

Administrator General (Administrator of estate Patrick Clunie), deceased

[119] General damages for loss of expectation of life awarded in the sum of $150,000.00.

Loss of dependency awarded in the sum of $1,901,658.87

Special damages awarded in the sum of $330,850.00 with interest at 3% p.a from March 23, 2009 to today

Costs to the claimant, to be paid by the defendants and apportioned 60:40 as between Mr Powell and Mr Beam

Donald Beam

[120] General damages for pain and suffering and loss of amenities in the sum of $2,625,000.00, ($3,500,000.00 discounted by 25%) with interest at 3% from the date of service of the claim form

Special damages awarded in the sum of $913,475.00 with interest at 3% from March 23, 2009 to today.

Clement Powell

[121] General damages awarded for pain and suffering and loss of amenities in the sum of $1,850,000.00 with interest at 3% from the date of service of the claim form to today

Special damages awarded in the sum of $288,400.00 with interest at 3% pa from March 23, 2009 to today.

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