

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. C.L. 1996/B110

BETWEEN	RAMON BARTON (An infant by his father and Next Friend Wilburn Barton)	1 ST CLAIMANT
AND	WILBURN BARTON	2 ND CLAIMANT
AND	JOHN MCADAM	1 ST DEFENDANT
AND	WESLEY MCADAM	2 ND DEFENDANT
AND	LAWRENCE DENNIS	3 RD DEFENDANT
AND	WRIGHT'S MOTOR SERVICE LIMITED	4 TH DEFENDANT

Mr. C. Miller and Miss S. Wolfe instructed by Crafton S. Miller & Co.
for the Claimants

Ms. K. Wilson instructed by Taylor Deacon & James for the 1st and
2nd defendants

Mr. C. Samuda instructed by Samuda & Johnson for the 3rd and 4th
defendants

Heard: October 24, 25, 2007; January 28, 29; February 26 and
March 13, 2008

Beswick J

1. Nine-year-old Ramon Barton was involved in a motor vehicle
accident and in this matter, his father and next friend Wilburn
Barton, sues the defendants for damage which Ramon

suffered, and for the expense to which he, Wilburn Barton, was put.

2. On January 11, 1993, in rural St. Elizabeth, Ramon was a passenger seated in a bus driven by John McAdam, the first defendant, and owned by Wesley McAdam, the second defendant. There was a collision between that bus and one licenced PP 0809 being driven in the opposite direction by Lawrence Dennis, the third defendant, and allegedly owned by Wright's Motor Services Limited (Wright's) the fourth defendant. Ramon suffered head injuries.
3. The McAdams say that the sole cause of the collision was the negligence of Mr. Dennis. This was pleaded in their defence filed on January 14, 1998. Mr. Dennis and Wright's say that it was the negligence of Mr. McAdam that caused the accident or alternatively contributed to it. Wright's in its defence says that further or in the alternative it was the negligence of the child Ramon that caused or contributed to the injuries which he suffered. This defence was filed on June 28, 2005 after related suits and applications had been concluded.

4. **The Original Claim and Defence**

The claim was originally filed on April 9, 1996 and named the same defendants, except that instead of Wright's, Mr. Clinton Wright was named as the fourth defendant, the owner of bus involved, licenced PP 0809. In their defence of March 31, 1998, Mr. Dennis and Mr. Clinton Wright did not admit that Mr. Dennis was the servant or agent of Mr. Wright, nor that Mr. Wright was the owner of the vehicle.

The Bartons were granted permission on May 24, 2005 to substitute Wright's for Mr. Clinton Wright as 4th defendant.

5. Wright's thereafter filed a defence on June 27, 2005 including an admission that it was the owner of vehicle PP 0809 but denying that Mr. Dennis was its servant or agent. Wright's also alleged that Ramon himself was negligent in "failing to (1) have sufficient regard for his own safety (2) maintain a secure hold and was also negligent in travelling in an overcrowded bus which did not allow for safe conveyance." As regards Ramon's father, Wright's stated that he was negligent in causing/permitting Ramon to be conveyed in a public passenger vehicle without any or any proper supervision and

that he was further negligent in permitting/causing Ramon to remain unsafely in the vehicle when he knew or ought to have known that in so doing he was negligent or reckless and additionally, that he failed to take any proper steps to secure Ramon's safety.

6. **Liability**

In an earlier related suit, the McAdams sued Mr. Lawrence Dennis and Mr. Clinton Wright claiming damages resulting from this same accident. On May 18, 2001 McCalla J (as she then was) apportioned liability equally between both drivers.

7. Now, in this suit, Mr. Samuda challenged the evidence that Wright's owned motor vehicle PP 0809, one of the vehicles which was involved in the accident. Mr. Dwight Miller testified on behalf of the Bartons that on the 11th January 1993 he was the conductor on the Wright's bus with Mr. Dennis driving when an accident occurred with the McAdam's bus. He gave evidence that in 1993 he worked for Wright's as a conductor and that he would receive a pay envelope on Fridays from some Wright family members. He also observed Mr. Lawrence Dennis receive a pay envelope from them on Fridays.

8. Mrs. Elaine Wright, however, testified at first that Wright's did not own the bus. She was aware of the motor vehicle accident involving one of her buses, Licence # PP 0809, but according to her, the registered proprietor of that bus at the time of the accident was Clinton Wright, her now deceased husband, and the driver Lawrence Dennis was employed to Clinton Wright.
9. Mrs. Elaine Wright was very uncertain in answering simple questions about ownership of the bus. She eventually admitted in cross-examination by Ms. Wolfe, that Wright's at one time had owned the bus # PP 0809.
10. As regards whether or not Mr. Lawrence Dennis was employed to Wright's, her evidence vacillated between yes and no. Eventually she testified that he had been employed with Wright's in 1993. He received weekly pay in an envelope from her husband.
11. Mrs. Wright's evidence was anything but straightforward. She appeared to grope for answers to simple questions. She literally changed answers from one moment to the next. I place no reliance on her evidence.

12. Mr. Samuda argues that the facts of the accident have not been proved and that there was no evidence proving liability of Mr. Dennis or Wright's. Mr. Samuda described Mr. Dwight Miller's evidence as conflicting with the pleadings and commonsense. This description in my view would be more appropriately used to describe Mr. Samuda's submissions regarding liability. He acknowledged that McCalla J (as she then was) had found Mr. Dennis and Mr. McAdam equally liable for the accident, he swore an affidavit on 8th March 2004 that the court had ruled *inter alia* in the related suit that the vehicle was owned by Wright's on the date of the accident and Wright's admitted ownership in the pleadings. Yet in this trial he challenged the liability of Wright's. The defence argued by Mr. Samuda swung from one end of the pendulum to the other as the case wended its way through the courts.
13. Ms. K. Wilson, Counsel for the McAdams, accepted the court's decision that both drivers were equally to be blamed for the accident and therefore limited her submission to quantum of damages. There is no denial that Mr. McAdam owned one of the buses.

14. It has already been determined judicially that the other bus PP 0809 was owned by Wright's, not by Clinton Wright

15. I find on a balance of probabilities that Mr. Dennis was the servant/agent of Wright's. Mr. Dennis was driving the bus, plying a route, with passengers, when the collision occurred. The witness knew him to be the driver of the bus. He received his pay weekly and I accept on a balance of probabilities that he received that pay from Wright's. There is no evidence that Mr. Dennis was on a frolic of his own or that he did not have the permission of Wright's to be driving their bus.

16. **Negligence of Ramon and Mr. Wilburn Barton**

There is no evidence to support the pleading that Ramon or Wilburn Barton was negligent.

It boggles the mind as to the reason why Counsel, Mr. Samuda, filed these pleadings alleging negligence and has presented not even a scintilla of evidence of negligence either by Ramon or his father. Nonetheless, despite this, Mr. Samuda submits that there should be judgment for Mr. Dennis and Wright's or alternatively judgment for Wright's against the Bartons.

I reject this submission and enter judgment for the claimants against the defendants. I now consider the appropriate award for damages.

17. **Damages**

At the time of the accident, Ramon became unconscious and had an attack of fits which he had never had before. Medical attention came from a private doctor, then Black River Hospital where Ramon was admitted still unconscious. Bustamante Children's Hospital was the next stop. Ramon remained there for two months and two days until his discharge on March 14, 1993.

18. The undisputed evidence is that when Ramon was discharged he was neither speaking nor walking. His mother remembers that after he left the hospital and celebrated his tenth birthday, everything had to be done for him. At about the end of March 1993 he could take one or two steps like a baby starting to walk and the first time he spoke again was on April 17, 1993, over three months after the accident.

19. Ramon's parents described him as being a bright, active, energetic, engaging child, participating in football, track and

field, a cub scout. All of this of course was before the accident. They remember he played the piano and received high commendations for drama at his church. He was due to sit the Common Entrance Examination the following year. He had maintained a B+/A average and received outstanding achievements awards in mathematics, composition and physical education and his teachers described him as being gifted. His ambition had been to attend Munroe College, the University of the West Indies and to become a medical doctor.

20. Sadly, these dreams have been dashed. I now consider the extent of Ramon's injuries and treatment in three categories for convenience – physical injuries, mental injuries and psychological injuries

21. Physical Injuries

According to the parents' evidence, brain stem injury from the accident caused his fingers to be folded like a fist. He was able to use his right hand only for small tasks, but he learned to write with his left hand and to use it. He could not place his foot flat on the ground and he walked with a limp.

Dr. Randolph Cheeks, a neurosurgeon, treated Ramon at the Bustamante Children's Hospital, and he also received physiotherapy for about seven years after the accident.

22. At the University Hospital of the West Indies he had three surgeries to assist his movement. Professor Golding in July 1994 operated on his right elbow. In July 1998, Dr. Kenneth Vaughan did surgery on his right wrist to release the fist. A third surgery was performed by Dr. Vaughan in July 1999 on his right foot to assist him to walk flat.

Mrs. Barton in cross-examination said the last operation by Dr. Vaughan was successful so that Ramon can in fact walk on his foot but not as before and certainly not with his foot totally on the ground.

23. Psychological Injuries

Mrs. Barton says that his reasoning has been severely impaired. Dr. Ruth Doorbar, a psychologist, assessed Ramon and in April 2003 she found that he had "serious impairment in the areas of memory function and abstract reasoning ... (and) ...manifest[ed] physical disabilities and regressive child-like personality."

24. Mental Injuries

Ramon's parents testified that Ramon could no longer recall things he had previously learnt and they therefore worked with him to help recover those abilities. It was Ramon's good fortune that both parents were teachers and they together helped him to remember his alphabet and multiplication tables. They started over with him from scratch. In fact they taught him to the point where he was able to sit the Common Entrance Examination in January 1994. However, he was not able to take the examination at the Santa Cruz Preparatory School which he had been attending before the accident. Instead he sat the examination at the Learning Centre in Kingston where slower children are accommodated. Ramon had now become a slower child but he nonetheless received a place at the Maggotty High School in St. Elizabeth.

25. Performance in School

Ramon's father succeeded in transferring Ramon to St. Elizabeth Technical High School which was more convenient for the family. His performance there was less than stellar. He sat seven subjects in the CXC examinations and failed all. He

then attended the Educational Centre in St. Elizabeth and repeated some of the examinations. He passed Office Procedures and Principles of Business. From there he moved on to the Black River Vocational Training Centre where he passed two courses in Data Operations.

26. Mrs. Barton testified that she assisted her son as much as she could by providing books and by trying to show him some things. Eventually, he was able to do research on the computer, read books, write and make reports to his teachers. She did not however succeed in obtaining an apprenticeship for him. His parents have made no more effort to further his educational career.
27. Mr. Barton has bought a computer for Ramon and Ramon has been using it for over seven years. It is unchallenged that most of the time he uses it to play games though he does use it for other activities with supervision.
28. Mr. and Mrs. Barton are sure that had he not been injured, Ramon would have done very well because of the academic success which he had been achieving and also because his siblings, their children, have all succeeded academically. Two

of their children are being trained as teachers at Teachers' Colleges and a third child has passed eight CXC subjects obtaining seven distinctions and also four CAPE subjects receiving an award for the highest score in Physics in his school.

29. **Job Opportunities**

Ramon's parents testified that they have sought to obtain a job for him but have been unsuccessful. They agree that he is not unemployable but they face the hurdle of what they say is his need to be heavily supervised if he is to be given a job. That need has restricted the opportunity for employment because his parents' evidence is that he would need to be close to home in order for details to be worked out for him, even the choice of appropriate clothing. They agree however, that they have not gotten him assessed professionally to determine the type of job he could do nor has any doctor told them that Ramon would need to be heavily supervised if he is to be employed.

30. Mrs. Barton in an effort to obtain a job for Ramon returned to the Education Centre and asked for employment for him. There was none. Persons were aware of his disability and were

unable to assist. The Bartons also tried to gain him employment at the St. Elizabeth Technical School but failed. Mrs. Barton left a written application for a job for Ramon at HEART. She had no success. On being pressed by Defence Counsel, Mr. Samuda, she testified that she has not checked any voluntary agencies for a job for him. That, however, may not be surprising as she is not aware of any such agency in the rural parish of St. Elizabeth which is where they live. Mr. Barton's unchallenged evidence is that as late as January 2008, he tried unsuccessfully to secure employment for his son at a school that was establishing a library.

31. Defence Counsel, Mr. Samuda, pressed Mr. Barton, retired principal of the primary school, as to whether he had sought work for his son as a gardener or as a labourer. He had not. Mr. Barton's evidence is that Ramon is inclined to topple over at times and that he did in fact topple over within the last three years though he did not recall having reported that to the doctors in 1999, 2000 or 2002.
32. It is noteworthy that there is no mention of Ramon himself making these applications for employment. Clearly his parents

do not regard him as being able to so apply and neither Defence Counsel even suggested that Ramon himself could have applied.

33. **Ramon Today - Physically**

Ramon's mother said that he remained a humorous child right through the accident. Now he watches television and enjoys watching sports but cannot go to a sporting event by himself.

Since the accident Mrs. Barton has encouraged Ramon to get into Drama and he has in fact participated as much as he could, given his disability, and given the fact that there are no plays in St. Elizabeth.

34. At home Ramon does what his father describes as "regular duties a child does to help." He helps to mow the lawn, rake grass and leaves. At present he tries to use his right hand to write, wash underwear, clean shoes and make his bed. What he does well is to type with his left hand, and in fact he does not use his right hand for that at all.

Mr. Barton observed that there has indeed been much improvement over the years from the time of the accident to the

stage of recovery that Ramon has now reached, some 15 years later.

35. **Ramon Today – Mentally and Psychologically**

Mrs. Barton says that Ramon still suffers from a bit of memory loss and his father says he cannot remember things long term. He will start a conversation but get lost in the middle of it or stray from the point. He also still has psychological problems. When his brother graduated, Ramon cried through the entire ceremony. His parents interpreted this as his recognition of the loss that he himself had suffered. He is not however, receiving any psychological treatment now.

36. **Conflicts**

Mr. Samuda submitted that the integrity of Ramon's case has been impugned because of what he described as material conflicts between the evidence of Ramon's mother and father concerning his injuries and his recuperation.

He highlighted some conflicts:

(i) **Memory Loss**

Mrs. Barton in her witness statement said that Ramon's powers of recollection and reasoning has suffered severe impairment

but in cross-examination she said the memory loss suffered was only a bit.

Mr. Barton's witness statement indicates that Ramon cannot remember things long term but according to Mr. Samuda in cross-examination he gives the impression that both long and short-term memories have been severely impaired.

(ii) **Use of Hand**

Mr. Samuda argued that the parents did not agree as to the effect of the injury on Ramon's hand and on its present state.

(iii) **Medical Report**

Mr. Samuda submitted that there was no reference in Dr. Cheeks' report to Ramon having suffered severe brain damage though Mrs. Barton testified that Dr. Cheeks had so informed her.

37. Further, Mrs. Barton disagrees with Dr. Cheeks' finding that when Ramon was reviewed on May 8, 2000, he had full flexion of the right foot, had a well-balanced foot and was progressing well. In cross-examination, Mrs. Barton recalled that in March 1993 she had told Dr. Cheeks that Ramon was normal and that

his mental state showed steady improvement. She said she had done that because he was “coming around.”

38. Mrs. Barton emphatically denied the suggestion that Ramon was able to participate in sporting activity at St. Elizabeth Technical. She had no recollection of telling Dr. Vaughan in 1999 that Ramon had started to play football. In fact, it is her evidence he was exempted from being on the play field. Mr. Barton for his part does remember telling Dr. Vaughan that Ramon started to play football in 1999 but explained that the football that he played was by way of therapy, in accordance with the physiotherapist’s instructions. Mr. Barton did not recall telling the doctor that in November 1999 Ramon was doing well. According to Mr. Barton, Dr. Vaughan would ask Ramon himself how he was doing and Ramon would say he is doing fine. Ramon told everyone that he was doing fine whenever he was asked.

Because of the discrepancies in the evidence, Mr. Samuda invited the Court to view the credit of Mr. and Mrs. Barton as being impaired.

Where discrepancies arise between the evidence of the parents and the doctors concerning Ramon's condition, I prefer the evidence of his parents and regard conflicts appearing on the Reports as being the product of informal and imprecise communication.

39. **Medical Reports**

Dr. Cheeks' medical report contained his own findings as well as various assessments by Ramon's parents as to Ramon's day-to-day abilities. At the time of the accident he diagnosed Ramon as suffering from a severe diffuse head injury plus facial soft tissue injury. By 2003 he assessed Ramon's combined disabilities, as 28% of the whole person, comprised of impairment of the right extremities and recent memory deficit.

40. In his final assessment on November 1st 2002, Dr. Vaughan found that Ramon has a total permanent impairment of 39% of the whole man, comprised of impairment due to his hemiplegic gait and to impairment of his right hand. The report shows that, "[H]e has had major set back in terms of his education as his learning capacity is much slower than prior to the accident."

Dr. Vaughan was the last doctor to give Ramon medical care arising from the accident. Physiotherapy stopped in 2000.

41. Mr. Samuda argued that the only injury pleaded was severe head injury and therefore the Court could only have regard to that. He said that there can only be a finding of severe diffuse head injury and Ramon has recovered remarkably, leaving a memory deficit rated at 5% of the whole person according to Dr. Cheeks.

42. **Pain and Suffering**

Mr. Samuda acknowledged that given the nature of what he described as the “alleged injury,” there would be “an element of pain and suffering” although there was no evidence of the nature or extent of the pain and suffering. Further, he says, Ramon had been unconscious for a time and therefore had no right to damages for pain and suffering. He relied on **Lim Poh Choo vs. Camden Health Authority** [1979] 1 All E.R. 332 and **Croke vs. Wiseman** [1982] 1 WLR 71.

43. It is the dissenting judgment of Lord Denning in the **Lim Poh Choo** case that refers to awards for an unconscious claimant. There Lord Denning referred to a recommendation of a

Commission that non-pecuniary damages should no longer be recoverable for permanent unconsciousness. Lord Denning thought that that recommendation should also apply to permanent insensibility. The claimant in **Croke** was also permanently insensible.

I therefore reject Mr. Samuda's submission on this aspect of this case, based as it is on a recommendation. In any event, Ramon is not permanently unconscious.

44. Mr. Samuda submitted that Ramon "reengaged in sport and drama activities" and that there was insufficient evidence that Ramon suffered appreciable loss of amenities with adverse psychological or behavioural effects. He argued that the school reports show that Ramon has a very positive attitude, is determined and has a very high spirit of achievement.
45. Mr. Samuda submitted that Dr. Doorbar's assessment of Ramon having a 30% deficiency in memory functioning cannot be reconciled with Dr. Cheeks' finding and urged the Court to accept Dr. Cheeks' assessment, Dr. Cheeks being more qualified and having been exposed to Ramon for a longer period than Dr. Doorbar.

He invited the Court to find that Ramon is doing well as he has not sought medical attention for seven years.

46. **Quantum**

Ms. Wilson for the McAdams submitted that an award of \$3 million would be fair and reasonable as Ramon's memory loss deficit was 5%. She relied *inter alia* on **Brian Smith (by next friend Brian Smith) v Kenneth Smith** CL 1985/S393 where the five-year-old claimant had severe head injury with irreparable brain damage. He was unconscious and hospitalised for more than four months. He could use his hands but was restricted because of a permanent tremor. He was unable to use cutlery. He was unable to walk and moved about on his knees. He needed constant supervision and care. The updated award in this is \$3,857,868.00.

She also placed reliance on **Dudley Burrell (by next friend Margaret Hill) v United Protection Ltd.** CL 1992/B072, where the claimant had moderately severe cerebral contusion, was unconscious for two days, and had 25% reduced memory function. He laughed inappropriately, shifted attention easily and fidgeted significantly. He had 8% risk of epilepsy and was

likely to achieve a supervised level of semi-skilled labour. The updated award there was \$3,872,443.60.

Mr. Samuda submitted that an award for pain and suffering should not exceed \$750,000.00 if the award is made on the injuries proved, based on the pleadings and evidence. He also submitted that the award should be \$1,300,000.00 based on the nature of the injuries and his submissions "previously made." His submissions were bereft of an explanation for those amounts. In one of the authorities on which he relied, the award was not updated and might well have misled the Court.

47. Ms. Wolfe, Counsel for the Bartons, relied on **Deborah Salmon (by next friend Linton Salmon) v Kiskimo Ltd. and Others** CL 1982/S199 where the Court awarded the equivalent of \$11,918,367.34 to the claimant who was 13 years old at the time of the accident and who sustained severe close head injury, a fractured right femur and pelvis. She was comatose for six months, had left hemiplegia, intellectual impairment, depression, epileptic seizure, spasticity in the right leg, and she was unable to use her right hand.

48. She also relied on **Karen Brown (by next friend McLaughlin) v Richard English and Alfred Jones** – CL 1988/B102 where the equivalent of \$6,333,521.12 was awarded. Karen was unconscious for two days, and had brain damage assessed at 60% causing intellectual impairment. She had below average intellectual performance requiring remedial help. She also endured dizziness, headaches and poor memory. In addition there was swelling and tenderness to the thigh for more than 12 months.

Ms. Wolfe submitted that Ramon's injuries were far worse. She submits \$10 million as being a reasonable award for pain and suffering and loss of amenities.

49. I am mindful of the evidence of the assessment of the disability of Ramon as being 28% and 39% of the whole person in the view of Dr. Cheeks and Dr. Vaughan respectively. Ramon has suffered physically, mentally, and psychologically and has endured several surgeries and physiotherapy sessions.

I have compared Ramon's injuries with all the authorities submitted and find that an award which is reasonable for him

and for the defendants is \$10 million for pain and suffering and loss of amenities.

50. **Loss of Earning Capacity or Handicap on the Labour Market**

Mr. Samuda submitted that there was no evidence to support an award under this head. He submitted that Mr. and Mrs. Barton had a duty to mitigate the damage, as Ramon did not require future medical care and supervision and they had failed to properly seek employment or further education for Ramon. He argued that Ramon is able to function at a creditable level with the computer and has received positive reports from his schools.

51. In the Jamaican case of **Monex Ltd and Derrick Mitchell v Grimes** SCCA 83/96 at 13 Harrison J. A. in discussing the applicability of damages under this head to infants said it may arise:

“... [I]n a case where an infant victim, not yet employed, is injured and suffers a disability and the risk exists that subsequently he will be unable to work or will obtain employment at a level below that which he would have, with normal development, but for his incapacity. This deficit in earnings represents a handicap on the labour market. It attracts an award and is quantifiable, whether by way of a

global sum or by the use of the multiplicand and multiplier principle. This is so despite the fact that there is not yet any actual earnings attributable to the said infant.”

I accept as true the unchallenged evidence that both of Ramon’s parents are educators, that his three siblings have done well in the world of academia and that his school reports prior to the accident show he was a B+/A student with promise.

52. I am satisfied that his parents have tried to obtain employment for him with no success. It is no surprise that opportunity for employment in rural St. Elizabeth, for someone in Ramon’s health is limited, if not non-existent. Mr. Samuda’s cross-examination of Ramon’s father probed into whether or not he had sought work for Ramon as a gardener or as a labourer. Even there, there was no success. Had Mr. Barton succeeded in obtaining gardening work or manual labour for his son, this, in my view, would clearly be “at a level below that which he would have” obtained had he not been incapacitated. Certainly, Ramon, a bright child and the son of a Vice Principal and a teacher, brother of young teachers and Physics prize awardee, would not be expected to have become a manual labourer or gardener. His situation falls squarely in the

circumstances of **Monex** (supra) and he therefore must be awarded for handicap on the labour market.

The question is how much.

53. “The method by which such estimate is arrived at, whether by the use of the multiplicand/multiplier means or the global sum, depends on the circumstances of each case. Where the imponderables are numerous and the projections have not reasonably crystallized, the multiplicand/multiplier method is rarely used.” ... **Monex** (supra) p. 15.

Here, over 15 years have passed since the injury and his medical situation is reasonably clear.

I therefore apply the multiplicand/multiplier method.

Harrison J A in the **Monex** case (supra) at p. 15 said that,

“The earning power of the victim’s parents or the national average wage may have to be resorted to in the determination of the potential earning of an infant in the assessment of loss of earning capacity.”

54. Ms. Wilson, Counsel for the McAdams, relied on **Monex**, and submitted that the national minimum wage, now \$3,700.00 per week, would be the best starting point for the multiplicand. This would amount to \$177,600.00 per annum, which would

represent the multiplicand. She submitted that a multiplier of 14 would be appropriate as the claimant is now 23 years old but since Ramon is not unemployable, suggested that the multiplier should be 10. The multiplicand multiplied by 10, would result in \$1,776,000.00. She submitted that that figure should be reduced by 25% leaving \$1,332,000.00 as an appropriate amount for handicap on the labour market.

55. It is my view that the income of his mother, a teacher, should be used as a guide to the multiplicand as both his parents are teachers, two of his siblings are studying to be teachers and he himself was excelling in the academic world.
56. The undisputed evidence is that Mrs. Barton's net monthly salary is \$46,476.54. I use this as a starting point. Harrison J.A. at page 20 in **Monex** (supra) "taxed down" the starting point amount in order to achieve a fair balance to both the claimant and the defendant.
57. Adopting that approach I taxed down the figure of \$46,476.54 by 25%, yielding an approximate net earning of \$35,000.00 per month. This I regard as a reasonable net monthly salary which he might have been earning had he not been injured. I

therefore use \$35,000.00 x 12, being \$420,000.00 as the multiplicand. Assuming that Ramon would have had a professional life from when he was age 21 years to 60 years, an appropriate multiplier in my view is 9, bearing in mind the uncertainties in life. The amount I award for handicap on the labour market is therefore \$3,780,000.00.

58. **Special Damages**

Ms. K. Wilson for the McAdams accepted \$155,353.80 as being proved as special damages, being the documentary evidence.

I accept as true Mr. Barton's unchallenged viva voce evidence, of having paid additional sums not documented, so that the total amount for medical expenses is \$189,703.80 including doctors' reports and \$100,000.00 as transportation. This totals \$289,703.80.

59. **Interest**

Mr. Samuda argued that any award for interest must be discounted as the claimants delayed in (1) prosecuting the matter (2) "[putting] their house in order, respecting the party to be sued as the owner of motor vehicle licensed PP 0809" (3)

securing medical reports until almost 10 years after the accident.

60. Ms. Wilson submitted that interest should only run from the date of the accident until the date of the previous action, March 13, 2001 as the claimant had received judgment in March 2001 and failed to proceed to assessment of damages.
61. The matter was set for trial in December 2002 when it was adjourned because the medical reports were not ready, through no fault of the claimants. Thereafter, the Civil Procedure Rules 2002 overtook the matter and caused procedural delays. On the new trial date of February 26, 2007, the matter was left off the Court list. The matter finally commenced in October 2007.

Counsel for the McAdams maintained that her interest was only in a determination of the quantum. Mr. Samuda however, continued to dispute liability whilst providing no evidence to support his position. In my view, the Bartons had no option other than to await the slow turning of the wheels of justice. I see no basis to reduce the interest rate.

62. It is noteworthy that the parties had a more than passing acquaintance with each other yet this matter remained unresolved for so many years. Mr. Barton did his first interview for a job at Glenn Stuart Primary School in 1985 when Mr. Clinton Wright, the principal of Wright's Motor Services Co. Ltd. interviewed him in his capacity of a member of the school board. As for the driver Mr. Dennis, Mr. Barton taught his children at Glenn Stuart. Mr. Wesley McAdam, the owner of the other bus, preached at Mr. Barton's church and had on occasion given him advice on construction.

It is unchallenged that Mrs. Barton had an arrangement with Mrs. Wright that allowed her children to take the Wright's bus to school in the morning and she would pay at the end of the month for their travel. Up to now, she says, the Wright's bus continues to transport children to Hampton High School and Munroe College in St. Elizabeth. For seven years the Bartons' daughter was numbered among those students and Mr. and Mrs. Barton paid for her daily commute. The Bartons' other son also commuted daily on the Wright's bus for which Mr. and Mrs.

Barton paid the required costs. Indeed the entire Barton family is accustomed to travelling on the Wright's buses.

Despite these acquaintances, there was no meeting of the minds for over 13 years. Indeed Mrs. Wright's evidence is that she does not know Ramon.

63. **Costs**

I reject Mr. Samuda's argument that any award for costs should be limited to appearance of one Counsel as the matter was not complex requiring two Counsel.

64. **Orders**

The Orders are:

Judgment for the claimants as against the defendants

1. General Damages assessed for Ramon Barton for:
 - (a) Pain and Suffering and Loss of Amenities in the sum of \$10 million.
 - (b) Handicap on the Labour Market in the sum of \$3,780,000.00.
2. Interest on General Damages for Pain and Suffering at 6% per annum from date of service of the Writ to June

21, 2006 and at 3% per annum from June 22, 2006 to today.

3. Special Damages assessed for Wilburn Barton in the sum of \$289,703.80 with interest at the rate of 6% per annum from January 11, 1993 to June 21, 2006 and at the rate of 3% per annum from June 22, 2006 to today.
4. Costs to Ramon and Wilburn Barton to be agreed or taxed.