

- [2] In his Amended Claim Form filed on June 26, 2012 he alleges that the 1st defendant's servant and/or agent negligently drove, managed or controlled 2000 Hiace motor truck registered CE4887, and the 2nd defendant whether by himself, his servant and/or agent so negligently drove motor car registered 5956BS, that they caused a head on collision with motor car registered 9312FK which he was driving, causing him to suffer injury, loss and damage and incur costs.
- [3] The first defendant has admitted that it is the owner of motor vehicle registered CE4887 but has denied any involvement in the accident, denied negligence as alleged and has averred that the accident was solely caused by the negligence of the driver of motor vehicle registered 5956BS.
- [4] On March 26, 2012 the first defendant filed an ancillary claim against the second defendant alleging that he so negligently drove and/or manoeuvred motor vehicle registered 5956BS along the Gutters main road in the parish of Saint Elizabeth that same collided with motor vehicle registered 9312FK being driven by the claimant. The first defendant claimed "contribution and/or indemnity against any successful judgment had by the claimant against the defendant."
- [5] The second defendant has also denied negligence. On August 15, 2006, he filed an Amended Defence and Counterclaim in which he averred that the collision was caused and or materially contributed to by the negligence and want of due care on the part of the driver of motor vehicle CE4887, who drove in a careless and reckless manner causing the collision between the motor vehicles 5956BS and 9312FK. He claims that he has suffered loss and damage and put to expense and claimed special damages in the sum of \$203,647.00.

The claimant's case

- [6] The claimant's evidence in chief as contained in his witness statement filed on June 20, 2016 is that he was travelling in the left lane going towards Santa Cruz, arrived at the T junction of the Gutters main road, was at a halt, waiting on a van making a right turn and as he was about to move off through the junction, he saw

a grey pick up “travelling at high speed heading straight towards my car. The pick-up was driving in my lane and it was overtaking a line of traffic travelling in the lane opposite to mine.”

- [7] He indicates that he could do nothing to avoid the collision and the pick-up slammed head on into his car and on impact he was knocked unconscious and thereafter found he had no sensation in his right arm and felt pain to his neck, back and face, particularly his mouth, and noted that he was bleeding from his mouth. He states further that he saw the pick-up stationary, and in front of his vehicle and observed that both vehicles had extensive damage to their front.
- [8] He adds that he attended the Mandeville Hospital and was examined by doctors and sent to do x-rays and on the following day he went to Dr. Dane Levy. He also states he incurred expenses for transportation, to attend the doctor, to do “about 40 sessions” of physiotherapy, as well as costs for MRI.
- [9] Mr Bodden further states that he continued to feel pain to his right shoulder and on February 3, 2015 he visited Dr Ameerally “for a medical consultation”. He also states that he has been unable to drive due to the shoulder injury as he is right hand dominant, he is unable to lift objects with his right hand has had to discontinue playing cricket and he also enjoyed swimming, but it is very difficult to “complete the swimming action”.
- [10] He admitted, under cross examination by Ms Dummett, that the accident occurred on the Spur Tree Main Road in the vicinity of the Texaco Gas station and that the road has a gentle descent and the lane in which he was driving as well as the lane to Mandeville could not accommodate two vehicles, side by side. He said there were soft shoulders on both sides, but there was more on the opposite side. He said, “you could see straight down to the tyre shop on the left side going to Santa Cruz”. He indicated that along the road there is a solid unbroken white line which stretches beyond the gas station. He also indicated that traffic was heavy in both directions, admitted to stopping to allow the van to

come out of the slip road and indicated that at that time the Isuzu was on the opposite side. He said when he saw the van it was at a complete stop and that it had cleared his lane before he moved off and it did not collide into any vehicle. He stated that when he saw the Isuzu it was coming towards him fast and he was in his lane. He did he did not see it swerve and that it was in his lane coming up and after the collision his vehicle was still in his correct lane and the Isuzu was also in his lane. He agreed that it was a head on collision and said it was a “direct hit, straight on”. He said after he regained consciousness, he observed the damage to the entire front section of his car.

[11] When it was suggested to him that it was the 2nd defendant who was the only cause of the accident, he disagreed and when it was suggested to him that it was because the 2nd defendant was travelling at an excessive speed, did not brake in time, or at all, did not swerve and failed to maintain proper control of his vehicle which is the cause of the accident, he said that he agreed. He also said he agreed that the driver of the Isuzu drove without any due consideration for road users and failed to have a proper lookout which caused the accident. He also stated that there was no vehicle ahead of him when he stopped to allow the vehicle to come out.

[12] In cross examination by Mrs Radlein, he admitted that the area is one which he passes when going to Santa Cruz and that he was familiar with the area. He said the road was “pretty wide” but was unable to state the width of each lane. He said there was bumper to bumper traffic on his side but the other side was free flowing. He could not recall seeing any pedestrians.

[13] He indicated that he came to a stop to allow the van which he saw at the intersection to come out and that to his left was an embankment, “concrete thing” which he could not drive over. He also stated that there was no traffic ahead of him as they had already gone. He said he had just moved off before the collision and that there was a delay of “a few minutes” after the van drove out

and he felt the impact. He said when he first saw the Isuzu there were other vehicles travelling in the right lane.

- [14] When pressed, he stated that the first time he saw the Isuzu was after the van passed and that he had braked up to allow it to pass because the van was at the exit. He said the van drove out and passed him and cleared the right lane as well. He denied that the van came across the road suddenly into the path of Mr Rowtham causing him to swerve and collide in his vehicle.

1st Defendant's/Ancillary Claimant's Case

- [15] Everton Chambers, Operations Manager of the First defendant/ancillary claimant gave evidence that he was the Regional Manager of the defendant and his duties entailed "responsibility for all the defendant's assets in the region". He states that the 1st defendant's business is divided into "Armoured" and "Protection" and that the Protection vehicle would leave the base at 6:30 am to go to Alpart, then to Port Kaiser, a mile and a half away, and return to Alpart, and would get back to Mandeville base by 8:45 – 9am.

- [16] He indicates that the 1st defendant was owner of a red and white Toyota Hiace minibus registered CE4887 which was assigned to Mr Neville Daniels and Mr Fitzroy Williams to drive. He said that Mr Daniels was scheduled for day duties and Mr Williams for night duties. He indicates that the red and white Hiace would go to Alpart twice daily "around 6:30 am and ...around 6:15 p.m". He adds that the motor vehicle is used for transporting staff and that he was never informed that it was involved in an accident in 2009 along the Gutters main road as it sustained no physical damage. He indicates that Mr Williams has migrated and that checks have been made but he is unable to locate the log book as so much time has passed since the accident. He adds that during that time they had just moved to the location and records from that period have not been easy to locate.

- [17] When cross examined by Miss Facey, he admitted that he could not say he saw when the vehicle CE4887 left base that morning, and he had no log book to show

that it left at 6:30 am. He said there was no physical damage to the vehicle and there was no information as to any damage. He also indicated that he was informed three years after the incident. When pressed, he stated that the first time he became aware of the accident was in 2012, so he could not say anything about it, or whether the vehicle was damaged.

[18] In response to Mrs Radlein, he indicated that there was no tracking system to indicate where the vehicles drive and that he could not say definitively that the motor vehicle followed the particular route. He also said it was impossible for the vehicle to be along the Gutters main road at or around 7 to 7:30 or 8 am, as he would have received a call from Alpart to say they are late.

2nd Defendant's Case

[19] Mr Rowtham's evidence is that he owns 1994 Isuzu pick up which is a left hand drive vehicle and he was driving it at about 40 mph on July 9, 2009 and on approaching the intersection of the Gutters main road and the Nain main road, a Toyota Hiace van suddenly drove out from the Nain main road into his path and in order to avoid colliding in it, he swerved to his right and collided with the vehicle driven by the claimant, which was travelling in the opposite direction. He states that he was less than 10 feet away from the intersection when the van drove out and that the entire front section of his vehicle was damaged. He said he was taken to the Mandeville Hospital and his vehicle removed by a wrecker and he paid \$10,000.00 for this and had the damage assessed and paid \$15,000.00 for the assessors report. He states further that he was charged with the offence of careless driving and was discharged. He denies driving at an excessive speed or that he failed to keep a proper look out or was careless or reckless. He indicates that he could not swerve left as pedestrians were on the road and that the van drove out suddenly and he did not have enough time to stop.

- [20]** Under cross examination by Miss Facey, he maintained that he believed the driver of the van registered CE4887 is the cause of the accident. He admitted that the Atlas vehicle did not collide with his vehicle and that he collided with the claimant in the claimant's lane. He said no vehicle was in front of him until the Atlas vehicle came out suddenly in front of him. He said he did not see the Atlas vehicle when it was on the Nain road but saw when it came out in front of him and he swerved to his right and in so doing moved out of his lane into the driving lane of the claimant.
- [21]** He indicated that he first applied his brakes when he almost hit Mr Bodden and "cleared the back of Atlas van" and stated that the van initially obstructed his view as his vehicle is a left hand drive vehicle. He also stated that in swerving, he moved out of his lane onto Mr Bodden's lane and that at impact he was at the right rear side of the Atlas vehicle.
- [22]** He denied the claimant's allegations of speeding, failing to keep a proper look out, failing to maintain sufficient control of his vehicle and said he first applied his brakes when he almost hit Mr Bodden. He admitted that the area has a wide soft shoulder near to the service station. When it was suggested to him that the speed limit in that area is 50 kmph he disagreed. He indicated that it is 80kph and that it is not a built up area.
- [23]** Mr Phyllip Webb gave evidence on behalf of the 2nd defendant. He states that at about 7 am on July 9, 2009 he was standing along the Gutters main road on the opposite side of the Texaco gas station looking in the direction of Santa Cruz when he saw a Toyota Hiace van drive out from the roadway that leads to Nain and went onto the Gutters main road. He states that it made a right turn towards Mandeville and the Isuzu pick- up collided with a Nissan Sunny car which was travelling towards Santa Cruz. He further states that the Hiace van stopped but eventually drove off and he rushed towards the vehicles, tried to get the drivers out and recognized Mr Rowtham as the driver of the Isuzu "as I have seen him before". He states that he did not know the driver of the Nissan car.

- [24]** Upon cross examination by Ms Dummett, he indicated that he was familiar with the section of the Spur Tree Road and that he was standing opposite the gas station facing it. He indicated that there were homes and buildings near to the gas station and the road was fairly busy. He admitted that there were soft shoulders on both sides of the road and agreed that on the section where there is the gas station the soft shoulder could accommodate two cars side by side. He said he was not on the main road but was on the right hand side of the road which comes out of Alpart, the slip road side and was about 20 feet into that road.
- [25]** When it was suggested to him that it was not true that he did not know any of the persons in the accident he said, 'no', and when asked if he had ever seen any of them before or knew any of them he said 'no'.
- [26]** He agreed that he would describe the accident as a head on collision and that the Spur Tree main road by the gas station has a slight slope, down, but that there was no curve. He agreed that there was traffic from both ends of the road but it was not slow moving nor 'bumper to bumper' and then said he could not recall there being a lot of vehicles on the road .
- [27]** He said he could not see Mr Rowtham's vehicle before the collision and when asked if it was safe to say he did not see the Nissan before the collision either, he said "no". He was emphatic that he knew what caused the accident and said he did not see the Nissan stop to allow the Hiace to exit and that no vehicle stopped. He indicated that he did not hear Mr Rowtham brake up immediately before the collision, was unable to say at what speed Mr Rowtham was travelling before the collision and indicated that the Nissan was not stationary at the time of the collision but that he could not say if it was going fast. When it was suggested to him that he could not say because all he saw was the collision itself, he agreed. He however disagreed that Mr Rowtham was driving on the wrong side of the road and that he failed to stop before the accident and when it was

suggested to him that Mr Rowtham failed to 'brake' so as to avoid the accident he said "that I can't say".

[28] Under cross examined by Mr Edwards, he said based on where he was standing, he could not see the Nissan better than the Isuzu, and he agreed that the van was closer than the truck, but he was not able to observe the speed of the Nissan.

[29] He said the van made a right turn in front of both the Nissan and the Isuzu and that he was looking towards the gas station so he could see 'all action'. He said he saw the van before the collision, said he was unable to say how long it had to wait before making the turn, and when pressed, he said that it was less than a minute. When asked if the Nissan could have taken any action to avoid the accident he said 'I can't say'.

The issues

[30] The court has to determine whether the van which drove out of the Nain main road was the 1st defendant's vehicle, whether in exiting the Nain main road it caused the 2nd defendant to collide into the claimant's vehicle, whether the claimant has proved on a balance of probabilities that the negligence of the defendants or either of them caused his injuries and loss as claimed and whether the 2nd defendant has made out a case of contributory negligence against the 1st defendant.

The Submissions

[31] Counsel for the parties have provided the court with submissions on liability as well as quantum of damages. I am grateful to Counsel for these submissions which I find quite helpful. I have however not restated them in this judgment.

The Law and Analysis

[32] Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent or reasonable man would not do:

Blyth v Birmingham Waterworks Co. [1843-60] All ER Rep 478

[33] It is settled law that in order to succeed in a claim for negligence a claimant must prove on a balance of probabilities that the defendant owed him a duty of care which was breached and damage resulted from that breach.

[34] In relation to motor vehicle accidents, the case of **Bourhill v Young** [1943] AC 92 indicates that reasonable care is the care which an ordinary, skilful driver would have exercised under all the circumstances and that it includes avoiding excessive speed and keeping a proper lookout.

[35] The Road Traffic Act, (RTA) places duties on users of the road. Section 51(1) (d), (e) and (g), which I find relevant to the case at bar, state:

“The driver of a motor vehicle shall observe the following rules - a motor vehicle –

(a)

(b)

(c)

(d) *shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic;*

(e) *proceeding from one road to another shall not be driven so as to obstruct any traffic in such other road;*

(f)

(g) *.shall not be driven so as to overtake other traffic unless the driver has a clear and unobstructed view of the road ahead;*

[36] Additionally, Section 51(2) of the RTA imposes a duty on motorists to take such action as may be necessary to avoid an accident.

[37] The above makes it clear that there is a common law duty as well as a statutory duty for all users of the road to exercise reasonable care when using the roadway, and this includes operators of motor vehicles.

The issue of liability

[38] In this case the claimant is blaming the 2nd defendant for driving onto his driving side and causing a head on collision. The claimant is contending that the accident occurred because of the 2nd defendant's act of overtaking a line of traffic and entering into his driving lane. On the other hand, the 2nd defendant is saying that the 1st defendant's vehicle drove out of the Nain Road into his path and in order to avoid colliding into it, he swerved to his right and collided with the claimant's vehicle. The 1st defendant's witness is saying they have no information about any involvement in an accident in 2009 as the vehicle sustained no damage.

[39] The issue of liability therefore has to be resolved based on the courts assessment of the credibility of the witnesses, having had the opportunity of seeing and hearing them as they gave evidence and were cross-examined, having assessed their demeanour, as well as on the physical evidence presented in the form of the Assessor's report.

[40] The claimant's evidence remained consistent throughout and was uncontradicted save and except where he said the 2nd defendant was overtaking a line of traffic, as the 2nd defendant is disputing this.

[41] I find the claimant to be an honest and truthful witness. I accept his account of the accident and find it more credible than that of the 2nd defendant whose account I reject, notwithstanding that he too appeared for the most part to be frank with the court although he contradicted himself when he spoke to whether he swerved and pressed his brake at the time of the collision. .

- [42]** The 1st defendant's witness, Mr Everton Chambers was not of any assistance to the court as he was not present at the time of the accident and has stated it was impossible for the 2nd defendant's vehicle to be at the scene and that he only became aware of the matter when the claim was filed.
- [43]** The 2nd defendant's witness, Mr Webb, although he remained consistent for the most part, I did not find to be a witness of truth. It does not appear from the evidence that he witnessed anything as it relates to the movement of any of the vehicles prior to the collision so I have not had much regard to his evidence.
- [44]** On the issue of whether the 1st defendant's vehicle was at the scene and involved in the collision, I note that in the claim as originally filed, the 1st defendant was the defendant named and it has admitted that it was the owner of the motor vehicle CE4887 and that a collision occurred on the day in question but that its authorized driver was not involved in the collision and was not the cause of the collision.
- [45]** I reject the evidence of Mr Chambers that it was impossible for the vehicle to be on the scene based on the fact that it is a security company and guards have to be at certain locations at specified times. I find that the accident happened between 7 and 8 am and that it is likely that the Atlas van was on the scene that morning. Further, even on the evidence of Mr Chambers, a route taken by the 1st defendant's vehicle in returning to Mandeville after dropping off guards at Alpart would be to travel on the Nain main road and turn right onto the Gutters Road. I therefore find that it is more likely than not that the van was at the scene that morning.
- [46]** I accept the claimant's account that he stopped to allow the 1st defendant's vehicle to exit the Nain main road and that the 2nd defendant drove onto his lane causing a head on collision.

- [47] The position of the 1st defendant from the outset was that it was not involved in a collision and quite rightly so. The fact that there was no collision between the 1st defendant's vehicle and the 2nd defendant's vehicle or any other vehicle for that matter, supports the claimant's version that he had stopped to allow the 1st defendant's vehicle to exit and it completed its turn.
- [48] However, the manner in which the 1st defendant's vehicle exited the Nain road, the minor road and the closeness to the 2nd defendant's vehicle may have been enough to cause the 2nd defendant to apprehend danger and cause him to react in the manner he did. The court therefore has to determine whether that manoeuvre posed any danger to the 2nd defendant and precipitated the chain of events leading to the collision and although it was not involved in the actual collision, whether it can be held responsible for causing it and whether the action of the 2nd defendant was reasonable in the circumstances.
- [49] This court accepts that the witness Phyllip Webb was present in close proximity to and witnessed the aftermath of the accident but does not accept that he witnessed some or any aspects of the driving of the respective vehicles, immediately prior to the occurrence of the accident and neither does the court accept that the Atlas "shot out..." in front of Mr Rowtham.
- [50] The evidence which I accept as true, is that the Nissan braked up, stopped and allowed the Hiace to exit, and on moving off, the 2nd defendant who was speeding and overtaking a line of vehicles, drove into his path and collided head on into his Nissan motor car.
- [51] The Hiace was not involved in the collision and did not collide with any of the oncoming traffic which suggests that it made a successful manoeuvre. The fact that there was no collision between the claimant and the 1st defendant's van, or the 2nd defendant and the 1st defendant's van, in my view, suggests that the van had completed its turn and that it did not pose any danger to Mr Rowtham.

- [52]** I have taken into account the fact that the accident took place on a morning and I accept that there were vehicles travelling in both directions and that the road was straight for approximately 200 metres with a slight slope down towards Santa Cruz. This main road leading from Mandeville to Santa Cruz where it passes through the area known as Gutters, has been called, interchangeably, the Gutters Main road and the Spur Tree road. The road leading to Alpart which branches off from this main road has been called the Alpart road by some and the Nain main road by others.
- [53]** I find that Mr Rowtham, the 2nd defendant was overtaking a line of traffic on approaching the junction. He did not ensure that there was sufficient time to pass the vehicles he was overtaking and return to his left lane before he came upon the unbroken white line and before meeting any vehicle coming from the opposite direction. A duty of care was on him, being the party overtaking, to ensure that he could have returned to his correct position without incident.
- [54]** For Mr Rowtham to have collided into Mr Bodden who was in the lane of the oncoming traffic suggests that he was negligent. Had he been travelling at a reasonable speed he should have been able to stop, but he did not. The collision would have been avoided if Mr. Rowtham had acted with more care. Even the fact that he was driving a left hand drive motor vehicle should have made him exercise more care, as it would be more difficult to see the oncoming traffic and he should therefore have anticipated that in overtaking a line of vehicles, vehicles in the oncoming lane would be at risk.
- [55]** It therefore follows that I do not accept the view that it was the movement of the 1st defendant's van that had created the accident scenario. Mr Rowtham was driving too fast in the circumstances. He admits to driving at 40mph which in my view amounts to speeding, as it was in an area which I find is a "built up" area. I find that Mr Rowtham did not keep a proper look out as a reasonable prudent driver of ordinary skill would have done in the circumstances. His unskilful and negligent driving caused him to go onto the claimant's correct driving side

thereby colliding head on with him. Even if the van had come out in his path, which I do not find as a fact, and he swerved right, that in itself would be a negligent act. He should have been keeping a proper look out and should have been driving at a speed which would have allowed him to brake up and stop. He should have considered that overtaking at a junction would put motorists in the oncoming lane at risk and I think that prudence would dictate a manoeuvre to his left, away from the path of oncoming vehicles, if the need arose.

[56] It is also clear on the evidence that the Mr Rowtham did not apply his brakes and, on the evidence of the Claimant, which is preferred, he had stopped to allow the van to exit, so it would not have come out onto the main road suddenly.

[57] I am mindful that the driver of the 1st defendant's van also had a duty to keep a proper lookout and to proceed with caution onto the main road. I find on a balance of probabilities that it had completed its turn successfully and did not incommode Mr Rowtham.

[58] Additionally, I find it hardly likely that, with traffic moving on the Gutters main road as described by the claimant, and which I accept to be true, the 1st defendant's vehicle could have exited the Nain road suddenly and as such this court cannot impute blame on the driver of the 1st defendant's vehicle.

[59] The Assessor's Report, which was agreed and tendered in evidence, reveals that the point of impact was to the front of both vehicles and that both vehicles were extensively damaged. From this I infer that the force of impact must have been great. It follows that the speed of Mr Rowtham's vehicle must have had a bearing on the impact, as I accept the claimant's testimony that he had just moved off, having stopped to allow the Atlas van to exit. The damage shown on the vehicles is also consistent with the claimant's evidence that it was a head on collision.

[60] I find as a fact that Mr. Rowtham was speeding and overtaking at a time and place where it was manifestly unsafe so to do and is therefore negligent.

- [61] On the ancillary claims by Mr Rowtham against Atlas, and Atlas against Mr Rowtham, the issue of contributory negligence arises.
- [62] .In assessing whether the 1st defendant is contributorily negligent, I find as a fact that this was not a case where the 2nd defendant found himself in a dilemma because of the action of the driver of the 1st defendant's vehicle. Although the 1st defendant's vehicle was the vehicle changing direction, and, on established authorities, would have a greater duty of care, based on my findings of fact, there is no basis for finding that he had such a duty which was breached.
- [63] The 2nd defendant has therefore failed to prove on a balance of probabilities that the collision and the expenses he claimed to have incurred were as a result of contributory negligence on the part of the 1st defendant's driver.
- [64] In view of the court's findings on how the accident occurred, I find that Mr Rowtham is solely to blame. There will therefore be judgment for the claimant against the 2nd defendant and judgment for the 1st defendant on the ancillary claim. The 2nd defendant's ancillary claim wholly fails.

Damages

General

- [65] The claimant testified that he attended the Mandeville hospital where he was treated but he has provided no documentary proof of this. He also gave evidence that he attended on Dr Levy on the day after the accident. The medical report of Dr Levy indicates that he was diagnosed with whiplash injury, traumatic costochondritis, torn rotator cuff ligaments, strained right shoulder, multiple lacerations and soft tissue injuries and partially dislodged teeth in his lower jaw.
- [66] He was also seen by Dr Ameerally on February 3, 2015 and the medical report reveals that there was tenderness over the rotator cuff tendon, wasting of the

deltoid muscle and reduced range of motion of the right shoulder. He was assessed as having 5% whole person impairment.

[67] The claimant indicated that he did x-ray, ultra-sound and MRI and that he also did sessions of physiotherapy.

[68] On July 21, 2016 he was seen by Dr Konrad Lawson at the request of the 2nd defendant and was diagnosed as having a documented history of full-thickness rotator cuff injury of the right shoulder with some residual loss, but was functional. Dr Lawson notes that the neck symptoms have resolved and he assigned 3% whole person impairment in relation to his shoulder injury.

[69] After careful examination of the medical reports, I agree with Counsel for the 2nd defendant that the report of Dr Douglas is to be preferred as his report is later in time and it provides up to date information on the claimant's injury.

[70] I have considered all the cases provided by Counsel to assist in determining the quantum of damages to be awarded to the claimant. I find that the injuries he suffered are closest in comparison with the case of **Janet Barclay v Metropolitan Management Transport Holdings**, Claim No. 2007 HCV 05184, unreported, delivered April 15, 2008 (Khan, Vol. 6 page 86). I note however, that Ms Barclay also suffered injury to the back and had a combined disability rating of 7% whole person, while the claimant in this case had multiple lacerations, soft tissue injuries and was assigned 3% whole person impairment in relation to his shoulder injury . Ms Barclay awarded \$1,500,000.00 in April 2008. When updated, this amounts to \$2,852,163.46.

[71] I have taken into account the principles applicable to an award of general damages and bearing in mind the injuries sustained by the claimant and the effect they have had on him, including the fact that he is no longer able to drive, swim or play cricket, I believe an award of \$2,575,000.00 would be reasonable compensation as general damages for pain and suffering and loss of amenities.

Special Damages

- [72] The claimant has pleaded a total of \$822,017.27 for special damages. He has provided documentary evidence to support his claim in respect of \$110,700.00. In relation to his claim of \$40,000.00 for expenses for transportation, Mr Bodden has given evidence that he attended University Hospital of the West Indies to do MRI and sessions of physiotherapy and he has also shown on his evidence that he made several visits to the doctors.
- [73] He has provided no concrete proof to substantiate his claim for transportation expenses and neither has he offered any explanation for his failure to do so. However, I find him to be a witness of truth and find that it was reasonably necessary to incur transportation expenses as a result of the accident. I will therefore make an award of \$10,000.00, which I believe is a reasonable sum.
- [74] He has also claimed \$160,000.00 for extra help, being for 40 weeks at \$4,000.00 per week, but has not provided any evidence to show that he has incurred this expense so this will not be allowed.

Disposition:

- [75] Judgment for the claimant against the 2nd defendant.
- [76] Judgment for the 1st defendant/ancillary claimant against the 2nd defendant /ancillary defendant.
- [77] The 1st defendant/ancillary claimant is entitled to its costs which are to be taxed if not agreed and are to be paid by the 2nd defendant.
- [78] The 2nd defendant's counter claim against the 1st Defendant fails.

Damages assessed and awarded as follows:

1. General damages for pain and suffering and loss of amenities awarded to the claimant in the sum of \$2,575,000.00 with interest at 3% p.a. from May 17, 2013 to today
2. Special damages in the sum of \$120,700.00 with interest at 3% p.a from July 9, 2009 to today
3. Costs to the claimant to be agreed or taxed.