



**[2025] JMSC Civ.3**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**[DIVISION]**

**CLAIM NO. 2017 HCV 00443**

<b>BETWEEN</b>	<b>PATRICIA BROWN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARJORIE THOMAS</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

**Ms. Shanese Green instructed by Messrs. Kinghorn and Kinghorn Attorneys-at-Law for the Claimant.**

**Mrs. Suezette Campbell instructed by Burton Campbell and Associates for the Defendant.**

**Heard: November 25, 2024, and January 17, 2025**

**Negligence – Duty of care owed to pedestrians.**

**CARR, J**

**Introduction**

**[1]** The Claimant (Ms. Brown) filed a claim in negligence seeking damages for injuries she received after a motor vehicle being driven by the Defendant (Ms. Thomas) collided with her on October 31, 2014.

**Issues**

**[2]** As in all claims in negligence the court is asked to determine the following issues:

- a. Whether the Defendant owed a duty of care to the Claimant.

- b. Whether the Defendant breached that duty.
- c. Whether the Claimant suffered loss or damage because of that breach.

### **Disposition**

- [3] I did not find that Ms. Brown was a credible witness, and I did not accept her evidence outlining the circumstances of the collision. Ms. Thomas's version of the events was accepted, and I did not find that she breached her duty of care to Ms. Brown, as such judgment is entered on behalf of Ms. Thomas on the claim.

### **Discussion**

- [4] The parties were ad idem as to certain factors which assisted me in narrowing the issues for consideration in the claim. There was agreement that Ms. Thomas owed a duty of care to Ms. Brown as a fellow road user. It was also accepted that there was in fact a collision between the vehicle being driven by Ms. Thomas and Ms. Brown which resulted in her being injured.
- [5] The sole factor in dispute was whether Ms. Thomas breached the duty owed to Ms. Brown by manoeuvring her vehicle in a manner that lacked due care and attention in all the circumstances.
- [6] Ms. Brown has the burden of satisfying me on a balance of probabilities that Ms. Thomas was negligent on the day in question. An examination of the evidence as presented by both parties is necessary to make such a determination. The credibility of the witnesses is therefore paramount. The witness statements of Ms. Brown and Ms. Thomas stood as their evidence in chief, and they were cross examined by counsel, there were no other witnesses called on either case.

### **The Evidence**

- [7] In her witness statement dated September 10, 2019, Ms. Brown indicated that she was lawfully crossing Marcus Garvey Drive when she was hit by a motor vehicle driven by Ms. Thomas.

- [8] Prior to the collision she had disembarked a bus at the bus stop in the vicinity of Dr Glass Ltd. on Marcus Garvey Drive. She observed that the traffic light was on red, and the vehicles were stationary, she then proceeded to go across the road which she said consisted of four lanes. She recalled crossing three lanes when she felt an impact to the right side of her body that caused her to fall to the ground. She rolled on the ground until she was under the rear of a motor vehicle that was stationary in one of the lanes.
- [9] She was cross – examined as to the statements made in her particulars of claim as opposed to her witness statement. In the particulars of claim the following was stated, ***“On or about the 31<sup>st</sup> day of October 2014, the Claimant was lawfully walking along Marcus Garvey Drive...”***. She agreed that it did not say that she was crossing but that she was walking along the road.
- [10] She accepted that she would have to cross the road from where she got off at the bus stop to go to her destination which was the Hunt’s Bay Police Station on the opposite side of the road.
- [11] She did not agree that on that side of the road there were three lanes, instead she insisted that there were four lanes at the time. It was also accepted that there was a lane that took you to Spanish Town Road.
- [12] She described the roadway as having vehicles in all the lanes. The lane that was closest to the bus was the left lane. The vehicles were bumper to bumper in every lane.
- [13] She did not agree that she had to walk between the vehicles to get to the other side. It was her evidence that she crossed the road on the pedestrian crossing. This was the first time she was saying that in these proceedings as this was never mentioned in her witness statement. It was suggested to her that there was no pedestrian crossing at that section of the road, and she responded that she did not remember, and she was unsure so she would not say that she made it up.

- [14]** It was asked if she had crossed in front of a big white truck to get to the filter lane towards Spanish Town Road. She said that the truck was in the fourth lane and that it was blue, she also stated that Ms. Thomas was not in any of the designated lanes along the roadway but instead was on the little part where no vehicles were supposed to drive, this was the soft shoulder. She accepted that there was a median in the road, a little wall in the middle is how she phrased it.
- [15]** It was agreed that she did not see the vehicle until it hit her and that she didn't know what happened until her daughter told her of the incident. According to her, she was knocked out at the time.
- [16]** There is a clear discrepancy between the statement in the particulars of claim and her evidence that was never clarified in re-examination. I am therefore left with two conflicting positions. Was Ms. Brown walking along the road or was she crossing at the time of the collision? The contents of the particulars of claim are not evidence, however, Ms. Brown agreed with Counsel Mrs. Campbell that she gave instructions to her attorneys which was subsequently contained in the documents filed on her behalf in court.
- [17]** I consider this to be a major discrepancy as it speaks to where Ms. Brown was at the time of the collision. Further, she indicated in court that she crossed on the pedestrian crossing, this was never mentioned in her witness statement.
- [18]** I do not accept that Ms. Thomas while in bumper-to-bumper traffic was able to overtake an entire line of traffic on the soft shoulder, while speeding, to cut across in front of another vehicle and then hit Ms. Brown.
- [19]** In fact, Ms. Brown's evidence is that she did not see the vehicle until it hit her so how then could she confirm that the vehicle was on the soft shoulder or even speeding. There have been significant changes to that roadway since 2014 and Ms. Brown acknowledged this in answer to me at the close of cross examination. Given the date of the collision (October 2014) I do not expect her to recall all the details of that day in full and it is understood that her memory may fade over time.

- [20] It is also clear from her evidence that she may be confusing the state of the roadway as it is today with what it was in October 2014. The inconsistencies and discrepancies in the evidence of Ms. Brown is sufficient for me to find that she is not a reliable witness, and I have therefore rejected her evidence as to the circumstances of the collision.
- [21] Ms. Thomas in her evidence indicated that she was in the right filter lane at the intersection of Spanish Town Road. The traffic light for the motorists in the other lanes was on red. There was no vehicle in front of her at the time and the lane was clear. Beside her the traffic was bumper to bumper and at a standstill. She was travelling slowly and drove up alongside a large white truck that was in the middle lane. As she was about to pass the truck, she saw a woman step from in front of the truck and into the path of her moving vehicle. She immediately applied her brake; however, the woman collided with the left side of the motor vehicle and fell.
- [22] She stated that there was nothing she could have done to avoid the accident, she could not have seen the woman coming across the road as the truck blocked her and she was coming from between two vehicles. It is her evidence that the woman did not look before stepping from in front of the truck.
- [23] In cross examination she agreed that in approaching a traffic signal even when it is on green that she should ensure that it is safe to do so and that this includes looking out for pedestrians.
- [24] It was also agreed that the truck was at the front of the line to the left of her and that Ms. Brown stepped from in front of that truck which was stationary at the time. She was then asked when it was that Ms. Brown stepped between vehicles to cross the road and when pressed about this she said that traffic was in front of the truck.
- [25] She told the court that she did not see Ms. Brown until she walked in front of the vehicle. She was confronted with her witness statement at paragraph 10 which stated, "***She did not look to ensure the way was clear before stepping from in***

**front the truck into my lane.”** It was suggested to her that she was speculating since she had not seen Ms. Brown until she stepped into the path of her vehicle, this she denied. In re-examination she said that she did not look, and she didn’t see her as she just came out, she therefore could not say why she said that in her statement.

[26] She agreed that she said Ms. Brown collided with her vehicle and that she also said that Ms. Brown walked in front of her vehicle.

[27] I find that Ms. Thomas collided with Ms. Brown as she walked out in front of her vehicle. I do not find that she was able to see her because of the truck.

[28] In analysing the evidence and the view that the court should take of it, I have considered the written submissions filed by Counsel on behalf of both parties. Ms. Green in relying on the authority of **Boss v Litton**<sup>1</sup> submitted that all persons have a right to walk on the road and are entitled to the exercise of reasonable care on the part of persons driving carriages upon it. Reference was also made to the case of **Jowayne Clarke and Anthony Clarke v Daniel Jenkins**<sup>2</sup> where Thompson James, J stated:

*“A driver of a vehicle on the road owes a duty to take proper care and not to cause damage to other road users whom he reasonably foresees is likely to be affected by his driving. In order to satisfy this duty, he should keep a proper look out, avoid excessive speed and observe traffic rules and regulations.”*

[29] Counsel asked the court to accept that Ms. Thomas failed to keep a proper look out and was speeding at the time of the collision. It was her contention that the

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<sup>1</sup> [ 1832] 5 C & P 407

<sup>2</sup> Suit No. C.L 2001/C211, delivered on October 15, 2010

case of **Kemar Bennett v Andrew Porter**<sup>3</sup> was like the facts of this case. The dicta of Palmer Hamilton J was highlighted as follows:

*“I appreciate that a Defendant cannot be found to be negligent for a pedestrian who steps into the path of their motor vehicle from in front of a stationary vehicle. However, the evidence of the Defendant shows that he ought to have had a greater appreciation for the fact that the roadway was busy with pedestrians and that they might have attempted to cross the road at the material time.*

*The Claimant was at the right back ... of the bus when in an attempt to get out of the Defendants way the Claimant jumped forward in such a way that his arms flung in the air and the Defendant’s rear view mirror collided with his right hand. I do believe that for whatever reason, the Defendant did not see the Claimant and was therefore not keeping a proper lookout. The Defendant should have seen the Claimant crossing the street and ought to have exercised due care and attention in operating his motor vehicle.”*

[30] Mrs. Campbell in making her submissions commenced with a recital of **Section 84** of the **Road Traffic Act**. She outlined *“that a pedestrian shall not act in a manner that constitutes or is likely to constitute, a source of danger to himself or to other traffic which is or may be on the road”*. It was argued that pedestrians and motorists owe each other a duty to exercise due care, whether they are in control of vehicles or proceeding on foot as was outlined in the authority of **Nance v British Columbia Electric Railway Co. Ltd**<sup>4</sup>

[31] In demonstrating the principle, the court should adopt Mrs. Campbell cited cases where the factual background was like the present case. In the case of **Chan v Peters**<sup>5</sup>, the court held a seventeen-year-old Claimant responsible for an accident

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<sup>3</sup> [2023] JMSC Civ 67

<sup>4</sup> [1951] AC 601 AT 611

<sup>5</sup>[2021] EWCH 2004

after he leapt from the curb into the path of the Defendant's vehicle being driven within the speed limit. In **Kayser v London Transport Board**<sup>6</sup> it was found that pedestrians who suddenly move into the path of a vehicle with no reasonable opportunity for the driver to avoid them will probably lose their claim, or there will be a high degree of contributory negligence.

[32] Based on the evidence it is reasonable to infer that Ms. Brown thinking all the traffic signals were on red walked across the road without noticing that there was a filter light on green. She stepped out in front of Ms. Thomas's moving vehicle as she had been given the green light. I do not find that there was anything that Ms. Thomas could have done to avoid the collision. There is no evidence that she was speeding, or that she was able to see Ms. Brown in sufficient time to avoid the accident. I cannot therefore find that she was negligent in the operation of her vehicle to give rise to a discussion on the issue of contributory negligence. Instead, I have accepted that Ms. Brown was the sole cause of the accident.

[33] Considering my conclusion, a discussion on damages is unnecessary.

[34] **Orders:**

1. Judgment for the Defendant on the claim.
2. Costs to the Defendant to be agreed or taxed.

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<sup>6</sup> (1950) 1 All ER 231