



[2025] JMSC Civ 18

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

**CIVIL DIVISION**

**CLAIM NO. 2015HCV04746**

<b>BETWEEN</b>	<b>MARK GAYLE</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JAMAICA URBAN TRANSIT COMPANY LIMITED</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>BATHANEL LEBERT WALKER</b>	<b>SECOND DEFENDANT</b>

**IN OPEN COURT**

**Ms Janelle Gordon instructed by Bignall Law for the Claimant**

**Ms Allison-Gaye Bryan and Mr Javaine Campbell for the First Defendant**

**Heard: May 13, 2025 & February 19, 2026**

**NEGLIGENCE – MOTOR CAR COLLIDES WITH BUS MAKING TURN**

**WINT-BLAIR J**

**Background**

[1] On or about August 31, 2015, the claimant was travelling along Hope Road in the parish of Saint Andrew. He was driving a Nissan Sunny motor car registered 8951 FV. The second defendant was the driver of a Volvo motor truck, registered PF 2396, owned by the first defendant and its servant and/or agent.

- [2] The claimant alleges that the second defendant so negligently drove, managed or controlled the said Volvo motor truck that it collided with his vehicle. As a consequence, he claims to have suffered injury, loss, damage and to have incurred expenses. He relies on the medical reports of Dr Peter Glegg, dated September 16, 2015 and January 23, 2017, diagnosing whiplash injury and lumbar strain with soft tissue injury to lumbar region.

### **The Defence**

- [3] For the defendants, agency is admitted while liability is disputed. The first defendant avers that the accident occurred along Hagley Park Road in the vicinity of Eastwood Park Road, and not on Molynees Road as alleged.
- [4] Additionally, the collision was largely caused or significantly contributed to by the claimant's own negligence, as he was negligently driving, managing, or controlling the Nissan Sunny in a manner that led to colliding with the right rear of the Volvo Motor Truck while it was stopped at a red light. This occurred as the claimant tried to overtake the bus while navigating a bend along the road.

### **The Evidence**

*Mark Gayle*

- [5] Mr Gayle gave evidence that on or about August 31, 2015, between 10 a.m. and 11 a.m., he was driving a "greenish" Nissan Sunny motor vehicle along Hope Road in the vicinity of the intersection with Maxfield Avenue and Hagley Park Road. He was returning home to Spanish Town from the Chest Hospital, where he had taken his neighbour, who was ill.
- [6] It was a sunny mid-morning with good visibility and light traffic. He had just stopped at the traffic light at the intersection of Hope Road and Eastwood Park Road. Positioned at the front of the queue, he waited for his turn to proceed from Hope Road onto Eastwood Park Road. He was in the far left lane, next to the lane leading

into the stoplight that controls the intersection of Hope Road and Hagley Park Road. He was waiting for the red light to turn green so he could make the turn.

**[7]** As the traffic light turned green, he started moving his vehicle forward when a large yellow bus owned by the Jamaica Urban Transit Company ('JUTC'), which he had noticed just seconds earlier, speeding toward him, suddenly swerved from the lane leading into the crossing from Hope Road to Hagley Park Road into his lane. The bus was attempting to overtake his vehicle when it struck the front-left side of his car. During the collision, a part of the bus caught onto his bumper and dragged his vehicle further into the road.

**[8]** He was immediately thrown sideways, then forward. His body was violently jerked back by the seatbelt he was wearing, and he hit his head on the back of the seat. Immediately after the collision, he felt dizzy and disoriented and was in shock. It took him about three (3) minutes or more to gather himself, after which he was assisted from his vehicle by onlookers at the scene.

**[9]** When he got out of his vehicle, he saw that the bus had struck the front left side, causing severe damage to the entire front left side. The front end and bumper were torn off, and the left front light was damaged beyond repair.

**[10]** After the accident, he noted the bus's registration number, the scrapes on its body, and other details, then he called the police. Officers from the Half Way Tree Police Station came to the scene of the accident, and he waited for them to complete their investigations. He went to the Half-Way Tree Police Station to make a report about the accident, the bus driver did not accompany him at that time.

**[11]** Immediately following the accident, he began to experience chest pain where the seatbelt restraint had been, and pain in his head, neck, chest, and lower back. After leaving the police station, he attempted to continue home as his car was able to be driven despite the damage caused by the collision. During the journey, the pain became excruciating, and he had to stop at the Oasis Medical Centre, where he was seen and examined by a doctor whose name he does not recall. He was

referred for an X-ray and ultrasound, which he underwent on September 1, 2015. He was also prescribed medication for the pain, which he filled and began to take that same day.

- [12]** About two days after the accident, he returned to the doctor because his pain persisted despite taking the prescribed painkillers. As the medication wore off, the pain intensified, becoming a constant, unbearable ache.
- [13]** On September 1, 2015, Dr Peter Glegg examined him to assess the injuries from the accident. He had follow-up visits on February 22, 2016, and a review on January 11, 2017. Additionally, he was referred to physiotherapy and completed between five and ten sessions.
- [14]** A year after the accident, he visited Spanish Town Hospital because of pain from his injury. He still experiences residual discomfort, mainly neck stiffness at night and lower back pain after sitting for extended periods, which troubles him. Additionally, he experiences pain during daily activities involving bending, lifting, and similar movements and chest pain when it gets cold at night.
- [15]** He had to make approximately ten (10) trips for doctor's visits, for X-rays and for physiotherapy. Each trip by chartered taxi cost him approximately Five Thousand Dollars (\$5,000.00), totalling Fifty Thousand Dollars (\$50,000.00). No receipts were provided.
- [16]** He is a taxi operator who was unable to work as a driver for about five months due to injuries. Ongoing neck and head pain made it difficult for him to function normally, and he relied heavily on prescribed pain medication, which occasionally affected his reflexes required for driving.
- [17]** As a taxi operator, he would make on average between twelve thousand and fifteen thousand dollars (\$12,000.00 - \$15,000.00) per week. He was unable to work for a period of approximately five (5) months and unable to generate any income for that period, losing approximately Three Hundred Thousand Dollars

(\$300,000.00) in earnings. He sustained himself through loans from friends and help from family members.

**[18]** In cross-examination, he said that the road had two lanes at the time and denied the presence of a median or island, explaining that the area was not yet developed. He agreed that the lanes to his left headed to Hagley Park Road and that he was in the left filter lane heading onto Eastwood Park Road.

**[19]** He agreed that he would be able to see the JUTC bus from a distance, visibility was good, and traffic was light. No one was in front of him, and he had a clear view of the intersection. As the light turned green, he was about to move, and that's when the bus suddenly hit the left side of the vehicle, rubbing the car with the big iron on the wheel and "flashing it". He said that the bus would have been visible if it had approached him from behind.

**[20]** In his witness statement, he had said that he was in his left lane, filtering to Eastwood Park, when the bus overtook him and swerved into his lane. While in cross-examination, he said that the bus "undertook" him. When asked which account was true, he said he described it this way: "Because there was no lane for the bus to drive in."

**[21]** The damage to his car was on the front left side, and there were visible scrapes on the bus. He agreed that scratches do not necessarily suggest minor damage and that the impact was significant. After reviewing the assessor's report, he agreed that the assessor disallowed the charge for the right bumper, since it could be repaired, as well as charges for the left and right fender liners, as there was no evidence of damage. There is a large iron bar behind the bumper that protects it, and when the bus struck the vehicle, that iron bar broke. Despite this, he was able to drive his car afterwards.

**[22]** At the time of the accident, he was stationary, about to move, but had to stop because of the red light. It was suggested that the accident happened earlier, around 8:45, not 10 am, to which he replied, "somewhere there about," and further

that there was no heavy traffic at the time. He was returning home from Chest Hospital. He mentioned that he could not have been in a hurry as he was stopped at the light, and there was no reason to believe he was speeding.

- [23]** He has not sustained any major injuries such as cuts or broken bones, but he experienced a lot of “jerking up.” In his witness statement, he mentioned ongoing symptoms, though no medical reports were presented to the court after 2017. He agreed with counsel that he did not include dizziness as a symptom in his report, even though he did feel dizzy. While he used the word “disoriented” in his witness statement, he did not understand what it meant. He denied exaggerating his injuries as he was in significant pain. He mentioned undergoing physiotherapy as advised by Dr Glegg, but agreed he had provided no reports to the court.
- [24]** The witness agreed that, although his stated occupation is a taxi driver, at the material time he was not operating a taxi, and the vehicle's licence plate was not a PPV licence plate. Despite his evidence that the vehicle was used for charters, there were no documents before the court indicating that he was a taxi operator, nor any proof of earnings. There was nothing to show that he could not work or drive. Dr Glegg did not say he could not drive because of the pain; he was told to rest for a couple of days.
- [25]** The claimant maintained that he was unable to work for a few days within those five months because the pain prevented him from driving constantly. He emphasised that he was truthful, citing his children as the reason he pushed through the discomfort. He continued seeking medical attention. As a self-employed individual. The vehicle was insured at the time of the accident. The owner was responsible for collecting the cover note during that period.
- [26]** In re-examination, he clarified that he did not own the vehicle involved in the accident and was not seeking compensation for the damage. He also stated that he did not pay for the damages listed in the report, nor did he use any personal funds to repair the vehicle.

*Dr Peter Glegg*

- [27]** Dr. Peter Glegg, a medical doctor specializing in general surgery and trauma care, provided evidence indicating that he typically sees trauma patients. He treated Mark Gayle on September 1, 2015, and prepared both an interim medical report on September 16, 2015, and a final report dated January 23, 2017. Both reports accurately detail the claimant's injuries. When asked about the length of his initial consultation with the claimant, Dr. Glegg explained that he generally does not record it but follows a S.O.A.P. method during consultations. This method involves: 'S' for subjective (the patient's description of their symptoms), 'O' for objective (findings from the examination), 'A' for assessment (the diagnosis), and 'P' for plan. Such consultations typically last about 25 minutes.
- [28]** He stated that the time for a soft tissue injury to resolve depends on the injury and that, in the claimant's case, of a whiplash injury or a spinal injury, since the spine is held together by vertebrae, it most often results in no fracture but micro-tears to the ligaments, which take a while to heal because the head constantly moves. This means the injured area keeps getting hurt, which takes a very long time to heal. He anticipated that the claimant's injuries would last 3-6 months.
- [29]** Dr Glegg had no record of seeing the claimant after 2017. Regarding the soft-tissue injury, no visible injuries were noted on inspection. No whole-person disability or permanent partial disability was assigned in the final report, as the impairment rating is based on the American Medical Association Guidelines, which he could not calculate.
- [30]** The absence of a whole-person disability or PPD does not mean the injuries are relatively minor and not long-lasting. Injuries to the spine are notorious for prolonged recovery, whether sitting or standing, and there are no AMA guidelines for PPD in whiplash. In his training, he was taught to be conservative in injuries of this nature. Pain persisting despite no PPD rating did not mean the patient needed

hospitalisation or a brace; it may mean the patient needs over-the-counter analgesics and rest to heal.

- [31] Dr Glegg explained that, initially, analgesics and physiotherapy were tried, as some injuries resolve, and that a neck brace was later ordered to restrict movement during healing. He did not see the patient's X-Rays and believed a CT scan, which involves high radiation, would not have helped. The decision depended on a risk-benefit assessment.
- [32] He added that he recommended three physiotherapy sessions. No physiotherapy report was done. Most of the exercises would be done by the patient at home. Typically, the patient would tend to have pain sitting up for a long time. Any activity that involves sitting for long periods can cause pain. As a driver, it would have been difficult. He did not recall telling the patient not to work, but he told him to rest.
- [33] He stated that the pain scale from 1- 10 is an American phenomenon. It is not an accurate scale because it is subjective. It is not something he used in his S.O.A.P. assessment, rather he would ask for mild, moderate, or severe when assessing pain. When he saw the claimant, he would say the claimant was in mild to moderate pain at the initial assessment. The final assessment revealed that the claimant was experiencing mild pain.

*Bathanel Lebert Walker*

- [34] Mr Walker, the second defendant, stated he was a driver employed by the first defendant for more than two (2) years, as a single bus operator based at the Rockfort Depot. On August 31, 2015, he was dispatched for duty and assigned to operate the JUTC unit bearing fleet number 1ON1702 registered PF2396. He was travelling along Hope Road at the intersection with Eastwood Park Road when he stopped at the red traffic light.
- [35] There are two turning lanes for motorists turning right onto Eastwood Park Road, and he was in the left lane. He was stationary in the said left lane when he felt an

impact to the right rear section of the unit. He looked through the rear-view mirrors and saw that a motor car was stuck to the right rear wheel of the unit. He reported the matter to the Rockfort Depot and noted that no one reported any injury at the time of the accident. He said that he is not working at the moment because he suffered a stroke. In amplification, he said that at the time of the accident, he had been employed by the JUTC for fifteen years.

- [36]** In cross-examination, he said the route where the accident occurred is the one he usually takes, as that was the route he was dispatched on. At the time of the accident, there were no cars in front of him. He did not see any vehicles on the right-hand side of the bus until he heard a scratching sound. It was early morning traffic at 8:45 am. There were no vehicles adjacent to him or right beside him and he was stationary.
- [37]** Given his location, he had to focus on what was in front of him. He did not see a green Nissan until he heard the sound, which he described as a rubbing rather than an impact. When he got the green light and was going onto Eastwood Park Road, he heard the sound and checked his vehicle. He agrees that his bus was moving when he heard the rubbing sound. There was no line of traffic, and no overtaking by him, as you just cannot overtake at that intersection. The JUTC bus is large and requires careful attention when handling it. "You have to have certain judgment, especially when you're negotiating a corner." He added that you cannot speed in the area where the accident happened. He denied speeding through the light. He was in front of the traffic, so he had "all the clearance to go ahead."
- [38]** After he got the light, he proceeded along Eastwood Park Road when he discovered the car was hitched to the right-rear wheel of the bus. He came to an immediate stop and asked the driver what he was doing there. He reported the accident to his supervisor the same day, but his statement would not have been taken the same day, as he would have had to make an appointment. When you want to make a statement, you have to go to an interview. Normally, they go and

make a report to the supervisor of the accident department stating what transpired when he writes the statement.

- [39]** He added that he was not to be blamed for the accident and was emphatic that he could not speed there, in a space of 5-15 yards. He said that the vehicle is a heavy-duty unit and his duty is to check the mirrors, which he did as he pulled off. When he did, he did not see anything to his left or right. This is the reason he asked the driver of the car what he was doing there.

*Leroy Pryce*

- [40]** Mr Leroy Pryce gave evidence that he has been employed by the JUTC as an Accident Investigator for the past twenty-five (25) years. He is trained to examine physical evidence, such as skid marks, debris, and vehicle parts, at an accident scene to determine what occurred. He interviews witnesses to gather insights into the incident, including events immediately before and after. He checks for mechanical defects in the involved vehicles to see whether they contributed to or caused the accident. He determines whether any laws or regulations were broken during the investigation and suggests appropriate actions. He reviews records, such as police and accident reports, to help establish liability. He prepares comprehensive reports detailing the accident, findings, conclusions, and recommendations to prevent similar incidents. He takes photographs of the scene and testifies in court by describing the scene and the investigation methods.
- [41]** On August 31, 2015, he received a call from a JUTC driver who identified himself as Bathanel Lebert Walker, informing him about an accident on Hagley Park Road near Eastwood Park Road. The incident involved a vehicle with fleet number 10N1702 and a Nissan car registered as 8951 FV. The Nissan collided with the rear side of the bus while it was stopped at a traffic light, preparing to turn onto Eastwood Park Road. The damage to the motorcar was confined to the left front corner of the front bumper.

- [42]** After concluding the call with the JUTC bus driver, he immediately began investigating the incident by visiting the scene of the accident with Mr Walker. The witness said he thoroughly inspected the bus and found no damage to the front end. He then looked at the right rear wheel and the right section of the bus, and found abrasions and dents on the bus panel near the right rear wheel. He took pictures of the area where the collision occurred. The bus was brought into the Accident Department, and he took pictures of the bus and the points of impact.
- [43]** It is normal for a third party involved in an accident with a JUTC bus to report the accident to their insurance company, which would then make a demand on the JUTC through the company's broker, Marathon Insurance Brokers. A search of the company's records indicates that on or about November 23, 2015, the JUTC Claims Department received a letter of demand regarding the vehicle driven by the claimant in connection with this accident.
- [44]** The letter of demand enclosed a Loss Adjusters Report from Orion Loss Adjusters dated September 21, 2015, with pictures of the damage to the car and the repair cost. As part of his investigation file and records, the Claims Department sent that report to his office for his review and information. The damage to the vehicle driven by the claimant, as indicated in the report, was consistent with that described by the claimant and with the damage he observed on the vehicle after the collision.
- [45]** The report included photographs of the claimant's car showing damage to the left side of the front bumper cover. After reviewing the report, he found no contradictions between it and his own findings and opinions. Based on the nature of the damage to the bus, the size of the bus, the point of impact and the layout of the roadway, he formed the opinion that the claimant caused his car to collide with the bus while negotiating the turn, resulting in the abrasions to the bus. The damage to the car was consistent with the accident described by the driver of the JUTC bus.

- [46]** Based on his experience as an Accident Investigator and his assessment of the accident after taking the damage done to both vehicles into account, it is his opinion that the bus was ahead of the claimant's car when the collision occurred. Because the bus was ahead of the car, there was no opportunity for the bus to have made contact with the claimant's car, especially given the damage to the bus compared with that on the car and the dynamics of how a bus behaves while making a right turn. The damage to the claimant's vehicle was minor and occurred at low speed, based on the nature of the damage to both vehicles involved.
- [47]** In cross-examination, he said that he only conducted investigations for the JUTC. His role as an investigator was not to protect JUTC's interests. Over the years, he would have prepared several reports in accidents involving JUTC buses. Mr Walker came in and made a report to Mr Pryce's office. He did not speak to any independent witness before visiting the accident site. He visited the location not long after the accident and tried to find out what happened, but people were tight-lipped. He inspected the unit the same day of the accident, but did not assess what could have caused the scratches he observed. It was Mr Walker who said that a car collided with the bus.
- [48]** Ten days later, he concluded that the scratches on the bus could not have been caused by overtaking. The scrapes on the bus were minor. The collision with the claimant's car could not have been caused by the bus swerving into the claimant's lane.
- [49]** He not only relied on the report prepared by Orion Adjusters Limited but also on his own investigation. He did not see the damage to the claimant's vehicle and disagreed that if he had sought further evidence, his conclusion would have been different. The scratches on the bus could not have been caused by the operation of the bus by Mr Walker. Further, his findings did not prove that Mr Walker was driving, speeding, or swerving at the time of the accident. He always made extensive checks to see whether that was the case, as that is what he was employed to do.

*Submissions*

- [50] Counsel for the claimant submits that the defendants owed him a duty of care, particularly to maintain proper control of their vehicle, observe road markings and conditions, and avoid foreseeable harm. The second defendant failed in this regard by driving carelessly, without proper lookout, and by swerving unexpectedly in a congested traffic area, resulting in the collision.
- [51] The claimant's account is supported by contemporaneous injuries and vehicle damage. The lack of rear damage, along with the nature of the impact involving the dragging of the bumper supports, indicates a lateral collision. This contrasts with the defendants' assertion that the bus was stationary and subsequently struck by the claimant. The claimant's prompt police report, consistent and timely medical treatment, and credible narrative of the accident all reinforce his reliability as a witness. In civil cases, the evidence needs only to tip the balance of probabilities, which the claimant has done. There is no credible evidence from the defendants that refutes the negligent lane change by the second defendant, and any efforts to discredit the claimant's injuries are undermined by the medical evidence.
- [52] It was submitted that the defendants' argument, which relies on the location of the damage, is speculative and overlooks that minor misjudgements when driving or aggressive lane changes can cause unequal damage, especially from a larger vehicle such as a bus.
- [53] Counsel relied on **Bernice Smith v Alphanso Parchment & Ors**,<sup>1</sup> **Matthew Wallace v Mark Kettle**,<sup>2</sup> **Lascelles Allen v Ameco Caribbean**,<sup>3</sup> **Anderson v O'Meally**,<sup>4</sup> and **Peter Marshall v Carlton Cole and Alvin Thorpe**<sup>5</sup> to submit that

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<sup>1</sup> Claim No 2005HCV02632 unreported

<sup>2</sup> [2016] JMSC Civ. 28

<sup>3</sup> Claim No. 2009HCV03883 unreported delivered on January 7, 2011 by Lawrence-Beswick, J

<sup>4</sup> 2005HCV01255, unreported, delivered April 2008

<sup>5</sup> Claim No. 2006HCV1006 unreported delivered on October 17, 2006 by McIntosh, J

an award of \$2,500,000.00 for general damages, plus \$600,000.00 in special damages, totalling \$3,100,000.00 is fair and appropriate in all the circumstances. Counsel also relied on **Perkins v AG**<sup>6</sup> to support the application of *res ipsa loquitur* in that where a large commercial vehicle collides with a properly positioned motorist, especially when the defendant fails to adequately explain the mechanism of impact. This reinforces both liability and the magnitude of damages claimed.

[54] Counsel for the first defendant submits that the claimant has failed to discharge the burden of proving, on a balance of probabilities, that the second defendant was negligent or that any actionable loss arose from the alleged incident. The evidence presented by the claimant was riddled with inconsistencies, unsupported by documentation, and contradicted by both physical and expert evidence.

[55] His witness statement alleged the bus swerved into his lane from the right, yet under cross-examination, he claimed it “undertook” him on the left during a merge. He initially declared that the bus "came from behind." A witness who cannot consistently describe the direction from which a large bus approached his vehicle in a matter where liability turns on relative positioning and movement is plainly not credible. Further, he asserted there was no median dividing the lanes on Half-Way-Tree Road, a matter of judicial notice.

[56] He was unfamiliar with the content of his witness statement, describing himself as "*disoriented*" after the accident but claiming he did not understand that word, which was in his own witness statement. Although he alleged that he experienced dizziness after the accident in his witness statement, when directly asked if he had experienced dizziness, his answer was "*I don't know.*" This uncertainty about a supposedly debilitating symptom not only undermined his credibility but also strongly suggests that this complaint was fabricated for the purposes of litigation.

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<sup>6</sup> [2020] JMSC Civ 51

- [57] When asked whether scrapes to the JUTC bus would indicate that the impact was minor, he evasively answered, "*not necessarily.*" According to the assessor's report, while the motor car's front bumper sustained minor damage, the internal liner remained intact, further confirming that the collision was of minimal force and unlikely to have caused any serious injury. The accident was at most a low-impact collision.
- [58] He claims to have visited the Oasis Medical Centre right after the accident, but cannot remember the doctor's name, nor has he provided any medical evidence to verify his visit. He insists he received physiotherapy as advised, but cannot present any documentation or reports to confirm this treatment.
- [59] This pattern of selective memory, vague responses, and a lack of documentary evidence undermines the claimant's entire account, indicating an intentional effort to exaggerate the severity of the accident and his injuries. The claimant's version of events lacks plausibility, corroboration, and credibility. He failed to produce a PPV licence, failed to prove his alleged earnings or economic loss, and failed to substantiate his alleged injuries with any compelling medical evidence. Even his own medical witness, Dr Peter Glegg, confirmed that there were no objective signs of injury and no reason for prolonged medical leave or treatment. This weakens both the damage claim and the overall credibility of the claimant's account.
- [60] Counsel submitted that the court should consider the conditions under which the accident occurred, specifically, the high volume of traffic present at the intersection during morning rush hour between the hours of 8 a.m. and 9 a.m. on a weekday morning.
- [61] The testimony of the second defendant was calm, credible, and firmly grounded in his experience of operating a large commercial vehicle such as a JUTC bus. His explanation of the events leading up to the collision was consistent with the mechanical limitations and turning dynamics of the JUTC bus. His responses

under cross-examination were measured and practical, and they clearly demonstrated that he was a truthful witness.

**[62]** Further strengthening the first defendant's case was the independent, professionally grounded evidence provided by Mr Leroy Pryce, a seasoned Accident Investigator with over 25 years of experience. Mr Pryce conducted a same-day investigation, documented the damage, and supplied photographic evidence that directly contradicted the claimant's assertion of a severe impact to the claimant's vehicle. He dismissed the idea that the JUTC bus swerved into the claimant's vehicle, and his findings were corroborated by the presence of minor scratches on the rear right-side wheel panel, far from the damage typical of a serious side-impact collision. His composure and technical skill remained unshaken in cross-examination.

**[63]** In totality, the first defendant's case is not merely more probable; it is demonstrably so. The evidence of Mr Walker, Mr Pryce, and Dr Glegg bolsters the defendants' case. There is no credible evidence to support the claim that the defendants were negligent, and further, no credible claim for loss or injury has been proven.

**[64]** The law requires that special damages must be specifically pleaded and strictly proven. Despite reference to special damages in the Particulars of Claim filed on October 7, 2015, no supporting documentation has been disclosed. Regarding the extra help claimed by the claimant, no evidence has been provided to identify who offered assistance, the nature of the tasks involved, or why such help was needed, or whether the claimant's injuries were severe enough to require outside help. The claim for help should be rejected. Additionally, no details have been provided regarding the claimed transportation expenses. Without such specifics, the claim cannot be verified.

**[65]** There is also no evidence that the claimant ever underwent physiotherapy, despite references to it in the medical notes. The mere mention of prospective treatment is insufficient to ground a claim for future medical expenses. Such a claim must be

supported by current, credible, and independent medical evidence establishing the necessity for ongoing care. Accordingly, in the absence of recent documentation confirming the likelihood and necessity of future treatment, this head of claim is speculative and unsupported. Therefore, if the claimant is successful, he is only entitled only to claim general damages in the sum of \$600,000.00.

### **Issues**

1. Whether a duty of care was owed.
2. Whether that duty was breached.
3. Whether the claimant contributed to the collision.
4. Quantum

### **Duty of Care**

**[66]** As road users, each driver owed a duty of care to the other. Section 51(2) of the (now repealed) Road Traffic Act reinforces that a driver must take such action as may be necessary to avoid a collision and that a breach by one does not exonerate another.

**[67]** The existence of the duty of care from the defendants to the claimant is not in issue. The burden rests on the claimant to prove his case on a balance of probabilities. The claimant must establish not merely that a collision occurred, but that it occurred because of a negligent act or omission of the second defendant.

### **The Approach to Fact-Finding**

**[68]** This case hinges on credibility, the relative positions of the vehicles during the collision, and evidence of any objective assessment of damage. Where accounts conflict, the court must analyse the totality of the evidence and determine which version accords with logic, common sense and the physical evidence.

### **Undisputed Facts**

**[69]** The following matters are not in dispute:

- a. The collision occurred on August 31, 2015, as both vehicles were turning from Hope Road onto Eastwood Park Road.
- b. There are two right-turn filter lanes.
- c. Both vehicles began to move when the traffic light turned green.
- d. The bus was not stationary at the time of impact.
- e. The damage to the bus was on the right rear wheel panel area.
- f. The damage to the claimant's vehicle was to the left front section.

**[70]** These objective factors form the foundation of the court's analysis.

### **Assessment of the Evidence**

**[71]** The claimant's case is that as he began to move off, the bus swerved into his lane while attempting to overtake him and struck the front left side of his vehicle. In cross-examination, he stated that the bus "undertook" him. When asked to reconcile that description with his witness statement, he explained that he described it differently because there was no lane available for the bus to drive in. That explanation fails to address the inconsistency and instead adds more vagueness to his account.

**[72]** The bus could not logically have been both overtaking from the right and 'undertaking', as it is known in local parlance, from the left. This inconsistency is significant as it goes directly to positioning, which is central to liability.

**[73]** Further, the claimant said that visibility was good and traffic at that time was light. It is reasonable to infer that he would have been able to see the bus. No independent witness was called, although he testified in chief that his neighbour was in the vehicle.

- [74] There are two filter lanes for turning onto Eastwood Park Road. Both vehicles were heading right onto Eastwood Park Road. Both parties have said that his vehicle occupied the leftmost lane of the two turning lanes and that both vehicles began to move onto Eastwood Park Road when the light turned green. Neither vehicle was stationary at the point of impact.
- [75] I accept that the claimant was to the right of the second defendant, and the second defendant was to the left of the claimant. Both drivers were at the head of the line of traffic in that section and stopped at the intersection.
- [76] The claimant gave evidence as to how the accident occurred; the second defendant was not able to say how the accident occurred, as his evidence is that he did not see the claimant's vehicle until after the impact. The second defendant admits he did not see any vehicles beside him and then proceeded to drive. After hearing the impact, he noticed the car being driven by the claimant.
- [77] The defendants' investigator, on his own evidence, stated that he could not prove whether the bus swerved, stopped or was driving. The report of Mr Pryce was not exhibited.
- [78] There are submissions about a high volume of traffic; this is not evidence for either side. The court is being asked to take judicial notice of traffic patterns in the area on the material date.
- [79] The claimant contends in cross-examination that he was waiting at the traffic light at the Hope Road to Hagley Park Road crossing, when the second defendant overtook him. He admits he did not mention this in his witness statement. In his witness statement, he said that as the lights turned green, he started to move forward, the bus suddenly swerved from the lane, entering the crossing from Hope Road into his lane, attempting to overtake his vehicle, and then collided with the front left side of his car. When asked which version was accurate, he explained that he described it differently because there was no lane available for the bus to

drive in. There is no explanation for this statement, "because there was no lane available for the bus to drive in," on his evidence.

**[80]** There is a difference in the meaning of the words "undertake" and "overtake"; as they signify different positions of a passing vehicle. It is clear from the claimant's evidence that he is saying the bus approached him from the left, the bus was overtaking means the bus approached from the right. This is a contradiction.

**[81]** The second defendant's evidence is that he was in the leftmost of the two right-turn lanes and stopped at the red light. When the light turned green, he proceeded and heard a rubbing sound. He then observed the claimant's vehicle had collided with the right rear wheel panel of the bus. He maintained that he did not see any vehicle beside him before proceeding and that he had checked his mirrors. He denied speeding and stated that in that confined turning space of 5-15 yards, one could not speed.

#### **The Damage to each vehicle**

**[82]** The point of impact is decisive. The damage to the bus was on its right rear wheel panel. The damage to the claimant's vehicle was on its left front section.

**[83]** For the claimant's version to be correct, the bus would have had to move laterally into his vehicle, causing contact between the front left of the car and the right rear of the bus. That evidence naturally conflicts with the angles of both vehicles as each made a right turn from the adjacent lane.

**[84]** Conversely, if the bus was ahead and making the turn, and the claimant's vehicle was positioned slightly to its rear right, contact with the right-rear wheel panel during the turn can be explained, as the front of the bus requires a wider turning arc than the rear. The court does not speculate on the precise angles; rather, it relies on the undisputed location of the damage and the movements of both vehicles, as given in evidence.

- [85] Mr Leroy Pryce, an accident investigator employed by the first defendant, who inspected the bus on the same day and observed abrasions and dents near the right rear wheel panel.
- [86] He formed the opinion that the bus was ahead of the claimant's vehicle when the collision occurred and that the damage was consistent with the claimant's vehicle contacting the bus while negotiating the turn.
- [87] He accepted that he did not personally inspect the claimant's vehicle but reviewed the assessor's report and photographs of the damage. No material inconsistency between those materials and his findings was demonstrated on the evidence of the claimant. The court does not treat his opinion as determinative of the issues joined. His evidence is considered alongside the evidence of the location of the damage to each vehicle and the reliability of the evidence given by each witness.

### **Findings of Fact**

- [88] The court makes the following findings of fact:
1. Both vehicles moved forward when the light turned green. The bus was ahead in the turning manoeuvre at the point of impact. The claimant's vehicle came into contact with the right rear wheel panel of the bus while both were negotiating the turn. The claimant failed to yield to the larger vehicle and did not keep a proper lookout. The physical evidence aligns more consistently with the claimant's vehicle being positioned too close to the bus during the turn.
  2. The claimant's account as to whether the bus overtook or undertook him is materially inconsistent. He is not a witness of truth, his account of the collision is found to be unreliable.
  3. From those findings, the court draws the following inferences that the claimant has failed to establish that the second defendant swerved into his lane or otherwise drove without due care and attention.

**Contributory Negligence**

[89] Given the foregoing findings, apportionment does not arise.

**No Award as to Damages**

[90] The medical evidence establishes soft tissue injury viz, a whiplash and lumbar strain. No fracture was identified. No whole person disability or permanent partial disability was assigned. Dr Glegg anticipated recovery within three to six months. There is no medical evidence beyond 2017. The injuries were significantly unsupported by evidence. Special damages must be specifically pleaded and strictly proved. No documentary proof of physiotherapy, earnings or taxi operation was produced. Even if liability had been established, special damages were not proved as required by law.

**Disposition**

[91] The claimant, therefore, fails to discharge the burden of proving a breach of the duty of care on a balance of probabilities, as the evidence supports the conclusion that the claimant failed to maintain sufficient clearance while negotiating the turn.

[92] **Orders:**

1. Judgment is entered for the Defendants.
2. Costs to the Defendants to be agreed or taxed.

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Wint- Blair, J