



[2020] JMSC Civ 39

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2008HCV03666**

**BETWEEN**

**LORNA HAYLES**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL OF JAMAICA**

**DEFENDANT**

**OPEN COURT**

Cavelle Johnston and Terry-ann Guyah instructed by Townsend Whyte & Porter for the claimant.

Dale Austen instructed by the Director of State Proceedings for the defendant.

March 12 and 26, 2015; April 3, 2020

*Breach of statutory duty – Emergency vehicle regulations – Duties owed by other drivers to drivers of emergency vehicles – Duties of drivers of emergency vehicles – Breach of common law duty to drive with reasonable care – Failure to keep a proper look out – Negligence – Breach of duty of care – Damage foreseeable – Special damages to be both pleaded and strictly proved*

**D. FRASER J**

**BACKGROUND TO THE CLAIM**

[1] This claim arises out of a collision involving two motor vehicles on May 26, 2006 in the Portia Simpson Miller (PSM) Square in St. Andrew. The claimant, a Teacher, was on her way home from work at the Maxfield Park Primary School, as a front seat passenger in Toyota Harrier motor car bearing registration number 0356 EP (Harrier) driven by her son, Richard Sturridge. The Harrier was traveling from Hagley Park Road and heading in the direction of Marcus Garvey Drive.

[2] At the same time a White Ford F350 Ambulance bearing registration number 30 2879 owned by the Ministry of Health being driven by Roxford Lindsay was travelling on Spanish Town road heading to the Kingston Public Hospital (KPH) transporting a patient. Both vehicles collided and the claimant sustained injuries as a consequence of which she was hospitalized.

#### THE CLAIM

[3] The claimant seeks damages for personal injury, loss and damage arising out of the accident. In her particulars of claim filed on July 22, 2008, she contends that at all material times, the **Road Traffic (Emergency Vehicle) Regulations 1961** applied and that the collision was caused by the breach of statutory duty and/ or the negligence of the defendant, its servants and/ or agents.

#### THE DEFENCE

[4] The defendant in its defence filed on October 17, 2008 admitted that on the material day Roxford Lindsay, its servant/ agent was the driver of the ambulance owned by the MOH which was involved in a collision with the Harrier at the PSM Square. It also accepted that the **Road Traffic (Emergency Vehicle) Regulations 1961** applied. The defendant contended however that the collision was wholly caused or contributed to by the negligence of the driver of the Harrier. In the event the defendant is found fully or partially liable the defendant neither admits nor denies the injury loss and damage claimed by the claimant, but puts the claimant to strict proof of them.

#### THE ISSUES

[5] On the question liability, the primary issues which arise for determination are:

- (i) What are the duties in law of the driver of a private vehicle and the driver of an ambulance in their use of the roadway when the private driver is going lawfully about his business and the ambulance is proceeding on an emergency mission with siren blaring and flashing lights?

- (ii) Did either driver meet the standard required of them in law?
- (iii) Was their contributory negligence of either party?
- (iv) What measure of damages, if any, is due to the claimant?

#### THE EVIDENCE

##### ***The evidence for the claimant***

- [6] The evidence of the claimant is that at the time of the accident she was seated in the front left passenger seat of the Harrier wearing her seatbelt. The Harrier was being driven by her son, Mr. Sturridge, along Hagley Park Road at about 5:15 pm and there was heavy traffic heading in the direction of Portmore, it being the rush hour to get home. She however stated that traffic was not heavy in the direction from which the ambulance travelled.
- [7] On reaching the PSM Square, they encountered traffic lights at the intersection of Hagley Park Road and Spanish Town Road. The lights showed green in their favour and Mr. Sturridge proceeded through the traffic lights. It is at this point that she saw flashing lights to her right side and she realized that an ambulance was quickly approaching. She said Mr. Sturridge then pulled the vehicle more to the left of the road and came to a complete stop on the far left hand side of the road in an attempt to clear the way so that the ambulance could pass and avoid an accident. However she said the driver of the ambulance drove through the red lights facing him and collided into the right side of the Harrier. She considers that she must have lost consciousness for about 5 minutes because after the collision, she was unable to remember anything for a period.
- [8] On cross examination she stated that she has suffered some memory loss since the accident which was not evident before the accident. However she said she knew and could speak truthfully to what happened at the scene of the accident. Though she indicated she was aware that vehicles should give way to emergency

vehicles with lights flashing and siren, she was of the view that the accident was not caused by Mr. Sturridge.

- [9] Mr. Sturridge gave similar evidence as the claimant regarding the presence of rush hour traffic. He gave the time of the incident as about 5:40 p.m. In his statement he said the road was dry with a lot of traffic on it in the direction of Portmore. Mr Sturridge indicated that as he drove on the left side of Hagley Park Road approaching Three Miles, the road changed from a dual carriage way to a three lane road. The lane to his extreme left being a filter lane which turns onto Spanish Town Road heading towards Downtown, Kingston; the lane in the middle going straight across heading towards Portmore or Marcus Garvey Drive; and the lane to his extreme right, another filter lane going towards Six Miles.
- [10] He said he was in the middle left lane going towards Portmore as he approached the traffic lights in the middle of the PSM Square. He indicated that he intended to drive straight across the road over onto Marcus Garvey Drive. When he approached the lights they were initially red. There were several other vehicles ahead of him, so he stopped. The lights then changed to green in favour of the vehicles in his lane and the vehicles to his right. The vehicle ahead of him went through the intersection and he proceeded.
- [11] On cross examination, he described 4 lanes at the intersection instead of three and maintained that he stayed in his correct lane, that is, the left lane going straight across. He disagreed that there was not a fourth filter lane and also denied that he was in a filter lane rather than headed towards Portmore. He further denied that he had disobeyed the lawful traffic requirements and drove where he should not be driving. He also stated that at the top of the lane going to Portmore from Hagley Park Road one cannot turn left, as to do so one would have had to have joined the filter lane from National Commercial Bank or Tastee further up.
- [12] On further cross examination, he testified that at least 2 vehicles ahead of him went through the intersection in his lane and about 2 or 3 vehicles went through in the right lane, before he got into the intersection. However, with the lights facing

him still on green, a young lady suddenly ran from the left filter lane over to his right side of the road in front of his vehicle and he stopped and allowed her to pass. This delayed him getting into the intersection for about 2 or 3 seconds. He was however adamant that he was not distracted by her crossing the road.

**[13]** He then looked up at the lights which were still green towards him so he proceeded cautiously across the road towards Marcus Gravey Drive. He testified that he observed the road but he did not see the ambulance. He said it was not true that he was not paying attention and he denied that he overtook a line of vehicles or that he was overtaking to get into the correct lane to go to Portmore. He further stated that as he approached the middle of the intersection, he looked both ways as he usually does whenever he is going through a traffic light and he noticed that an ambulance was approaching very quickly. He said when he first noticed the ambulance it was on his right hand side coming from the direction of Six Miles, going straight across the road and appeared to be headed in the general vicinity of the Downtown Kingston Area.

**[14]** He indicated that as soon as he saw the ambulance, he slowed down from about 10 -15 kph to about 5 kph, almost to a complete stop and tried to swerve to his left, close to the island to allow the ambulance to pass him. He said he slowed down as he did not know if the driver was going on Marcus Garvey Drive or if he was going to swerve right or come straight. As he was attempting to pull over to his left, the driver of the ambulance collided into the right front side of his vehicle. He said the accident happened in front of the island that separates down traffic from up traffic on Spanish Town Road; about in the middle of the intersection. His siblings all suffered minor injuries, however the claimant suffered significant injuries.

**[15]** He admitted that when there is an emergency vehicle with lights flashing one should take caution and give way, but explained that he did not take caution for the ambulance at the time as he did not see it. He agreed that sometimes when you hear sound you are not sure from which direction it is coming but stated that he did not hear the sound of the siren. He said it was not true that he was so

distracted that he did not see the lights and that is why he did not hear the sound. He said he could not recall whether there were any other vehicles in the intersection at the time of the collision but stated that he was in front when he went into the intersection and that no other vehicle collided into the ambulance. He became aware of the ambulance while he was going through the intersection and he saw the ambulance coming from the right, not directly across from the side of his vision.

- [16]** He testified that from the time he first saw the ambulance to the collision would be one or two seconds. He denied that at the time he saw the ambulance he was unable to correctly control his vehicle. He said that it was not true that he tried to 'shot' it across the intersection before the ambulance. He denied that he panicked when he realised how close the ambulance was and that his right fender hit the right front wheel of ambulance. He however agreed that the ambulance would have passed the right filter lane and middle lane before getting to his lane where the collision occurred.
- [17]** He testified that he did stop his vehicle in 1-2 seconds but he did not come to a complete stop; he tried to swerve. He denied that his front fender became entangled with the left wheel of the ambulance; he denied that his vehicle came and hit the ambulance. He said that it was not true that the front of his vehicle hit the left wheel of the ambulance and that onlookers had to remove the front fender of his vehicle that had become entangled in the wheel of the ambulance.
- [18]** He maintained that at the time he saw the ambulance the traffic lights facing him were green and the lights were red towards the vehicles coming from Spanish Town Road, and red against the ambulance. He stated that the ambulance driver should have exercised more care to ensure that the way was clear before proceeding and that it was the ambulance driver who caused the accident. He said there was nothing he could have done to avoid the collision and he did not believe he should be blamed for the accident.

[19] He testified that after the collision he came out of the vehicle and he spoke to the driver of the ambulance. He however denied that he apologised to him or that he admitted that he was at fault. He disagreed that he tried to 'beat' the ambulance into the intersection and that is what caused the accident. He said he was right at the island to the left that separates traffic going to downtown when the impact occurred. Looking at the point of impact he did not agree that he was the one who was negligent.

[20] He indicated that he reported the accident at the police station and that he overheard the driver of the ambulance admitting that the lights facing him were red, that he drove through the red light without checking to see if the road was clear and that he was at fault. He said the driver of the ambulance was warned for prosecution for careless driving. He added that his vehicle was extensively damaged but the ambulance was able to drive off. He said that the Harrier was repaired by the owners and there is a report done by an assessor of the damage done to his vehicle but he did not convey that to his attorneys.

***The evidence for the defendant***

[21] The evidence of the ambulance driver Mr. Lindsay and Mr. Clarke, and Orderly who was also travelling in the ambulance were diametrically opposed to the version of events proffered by the claimant and her witness. Their evidence places the blame squarely at the feet of Mr. Sturridge. Mr. Lindsay testified that on May 26, 2006, he had picked up an unconscious patient from Mandeville who was being transported to the KPH and the patient was being treated as an emergency. He said that time was of the essence to reach with the patient as quickly as possible and that is why he had on flasher lights. The lights he said would assist him as vehicles would move out of his way to allow him to pass; he added that it was customary for vehicles to move out of the way when he has on flasher lights and sirens. He later said that although he was in hurry, that is not what caused the accident as he stopped at the red light.

- [22]** He said though he was not familiar with PSM Square, he drives through there most of the time. He indicated that he knew of 3 lanes from Hagley Park Road and 4 lanes from Spanish Town Road. He could not speak for the rest of the lanes. He said he was familiar with the traffic flow in PSM Square and was not confused at the intersection. He did not agree that the intersection was quite busy with pedestrians at 5:15 p.m. He said that on reaching the PSM Square, he was travelling at approximately 5 miles per hour and he knew he was travelling at this speed because on reaching the intersection he had come to a complete stop as a result of the traffic and he did not have a clear way to travel and the traffic light was red. He said that when travelling through the intersection he was at 5mph as he stopped and had to move off.
- [23]** He maintained that with siren and red flashing light, he saw the traffic light turn green and saw the clearance and he proceeded cautiously. He further testified that most of the time emergency vehicles have to stop at the red light. He further said that even when carrying an unconscious patient, you have to stop as the rule is you have to wait until the light turn green. He stated that he has never broken a stop light, he always wait until the light changed to green. He further gave evidence that he was not really aware of it but he heard that emergency vehicles can break the stop light.
- [24]** Interestingly, he said that at time of accident he had 13 ½ years experience driving for MOH. He later admitted that sometimes he has gone through a red light in an ambulance in an emergency situation, sometimes not. He denied that he ran the red light and said it was not true that that was the cause of the accident, as he stopped at the light and went through the green light. He testified that he was always travelling in the left lane and vehicles were in front of him but they gave him way because he was an emergency vehicle. However, in response to the suggestion that vehicles gave him way to pass so he could proceed through the red light, he said that he still stopped at the red light. He maintained that the siren, the red flashing light and the monkey horn (a power horn) were all on.



- [25]** He said he had almost completed the intersection when he noticed a SUV coming directly in the front part of the ambulance. He applied his brakes and came to a stop. He testified however that when he first saw the SUV it was about 30 ft. away and he shifted the front of the ambulance to the right to try to avoid him but the vehicle still came directly to the ambulance and hit him.
- [26]** He was unable to tell the speed of the SUV as his concentration was to shift the front of the vehicle but it still headed directly to the ambulance. He said he held the brake first and tried to shift the front so if he even came, none of them would get damage. However the ambulance still got damaged. On further cross examination, he testified that he was travelling at 5 mph when he applied the brake, and he came to a complete stop. On re-examination he said that it was about 3 – 4 seconds between when he saw the vehicle and the impact. The vehicle slammed into the front of the ambulance and he noticed damage to the ambulance. The left front of the ambulance, the bumper, the bonnet, the left light and the fender were all damaged. The damage to the claimant's vehicle that he saw was to the right fender. He however agreed that the ambulance was bigger than the claimant's vehicle.
- [27]** He further testified that Mr. Sturridge opened his door and came out of the vehicle with a cellular phone in his hand and said sorry to him. He denied that he did not swerve to avoid the accident and denied that Mr. Sturridge swerved. He accepted that the police told him that he was going to give him a warning letter, but said that he was never prosecuted.
- [28]** Mr. Leon Clarke, a male Orderly stated that he was in the right front seat of the ambulance and that he was focussed on the road and could explain everything that happened as he observed it. He testified that his focus was not on the patient but that he would have assisted the nurse if the patient needed something.
- [29]** He said that the ambulance was in emergency mode, and that Mr. Lindsay had on the flashing lights, siren and monkey horn. He however agreed that it was not in his statement that the ambulance had on flashing lights or siren. He described the

monkey horn as a power horn on the ambulance and said that it is a very loud horn. He stated that flashing lights and siren would be important to show that the ambulance was in an emergency situation. Although he said that he and the driver work together and have a good relationship, he denied the suggestion that he had come to court to assist his friend.

**[30]** He said that leaving Six Miles coming up to Three Miles, the traffic was thick. On reaching near the intersection of Three Miles, the driver of the ambulance pulled over to the left hand side of the road where he got a little clearance so he could see across the intersection. The vehicles coming from Marcus Garvey and Hagley Park Road stopped because the traffic lights were on red. There were three lanes but two lines of traffic coming from Hagley Park Road and the vehicles in both lines of traffic came to a stop. The traffic light in front of the ambulance turned green and so the driver proceeded to cross the intersection. In response to the suggestion that he did not see the ambulance driver enter the intersection when the light was green, he said he observed seeing the light on green even before he reached the intersection. He said he also saw the Harrier before it '*slammed*' into the ambulance, thus he must have seen it when it '*slammed*' into the ambulance.

**[31]** He stated that the ambulance was going about 5 mph at the time of the accident. He saw the other vehicle for the 1<sup>st</sup> time when it was about 10 ft. from the ambulance before it '*slammed*'. He further stated that the driver of the ambulance passed both lines of traffic on Hagley Park Road. On reaching the third lane of Hagley Park Road, which had no traffic, the driver of the Harrier came out of nowhere and '*slammed*' into the front of the ambulance. He said he felt when the Harrier pushed the ambulance to the right. They came out of the ambulance to check on the damage, and Mr. Sturridge also came out of the Harrier.

**[32]** He said eventually he left both drivers speaking to each other. Also on cross examination he maintained that he saw everything that happened before and after the crash and that he came out and observed there was damage to the ambulance but not straight head on; it was side lick this way. He denied the suggestion that it

was the right driver door of the other vehicle that was pushed in because of the collision with the ambulance. He said they went to KPH with the patient and then went back to the Hunts Bay Police Station, where the police officer took a statement from the driver of the ambulance.

#### SUBMISSIONS

[33] The submissions of counsel for the claimant on liability, in summary are as follows:

- i) The duty of care applicable in this case as it relates to respective drivers on the road was noted at para.15, in **Melvin McCurdy v George Campbell & Jin Hee Kim** [2014] JMSC Civ. 5, by Morrison J., as “there is a duty on the driver of a motor car to observe ordinary care of skill towards persons using the highway whom he could reasonably foresee as likely to be affected”.
- ii) In Jamaica, the duties of emergency vehicles, in order to receive special statutory protection, is set out in ss. 3 and 4 of the **Road Traffic (Emergency Vehicles) Regulations**, 1961. In respect of emergency vehicles, there is no absolute rule in favour of traffic crossing through a green light and drivers must proceed with due regard for the safety of other road users. See **Griffin v Mersey Regional Ambulance Service** [1997] Lexis Citation 4355 and the case of **George Gilfillan Pursuer v Alexander Barbour** (2004) S.C.L.R 92 on the issue of the duty of care owed by emergency vehicles, as well as **Dyer v Bannell** (1965) 109 Sol Jo 216 and **Langley v Dray and MT Motor Policies at Lloyds** [1998] PIQR P 314, CA
- iii) It is the claimant’s contention that she has established on a balance of probabilities that Richard Sturridge, the driver of the Harrier, was a honest, unshaken witness, who operated the said motor vehicle in keeping with the duty of care imposed on him in the circumstances.
- iv) It is also her position that the damage to the respective vehicles is consistent with the claimant’s account of being suddenly struck in the right side by the approaching ambulance. Both witnesses proffered by the

defence were steadfast in their account that the ambulance was travelling at no more than 5 miles per hour at the material time. However, the extent of the damage to the Harrier is more consistent with it being struck by a vehicle that was travelling at a greater speed. Whilst the ambulance was able to drive away from the scene, the Harrier sustained such damage that it had to be taken away by a wrecker;

- v) The claimant asserts that the defendant's witnesses have failed to proffer a credible alternative to the account provided by the claimant and her witness. She submits that on a balance of probabilities it is more likely than not that the account offered by the defendant's driver and travelling companion is false. The driver of the ambulance appeared rehearsed and unwilling to answer questions that appeared unfavourable to him;
- vi) It is the claimant's further contention that several of the suggestions of the Defence, were inconsistent with the particulars of claim and evidence given by the defendant's witnesses in the box. Specifically, no evidence was led from the defendant's witnesses to the effect that Richard Sturridge was personally observed trying to "*shot it across the road,*" yet this suggestion was put to him by counsel for the defence. Also it was put to Mr. Sturridge by counsel for the defence, that he "*overtook a line of vehicles*" but no evidence was led to substantiate this contention. The defence was in effect, grasping at straws.
- vii) The claimant asserts that similarly, the defendant's witnesses confounded themselves by shifting their position in respect of whether the light was red or green in their favour at the time of the accident. In their defence, the defendant makes no mention of obtaining a green light before proceeding. Whereas, Roxford Lindsay, in para. 5 of his witness statement, states that "*with siren and red flashing light, I saw the traffic light turn green and saw the clearance and I proceeded cautiously.*" Likewise, Leon Clarke states in para. 5 of his witness statement that "*the traffic light in front of the*

*ambulance turned green and so the driver proceeded to cross the intersection”;*

- viii) On the other hand, the claimant’s witness Richard Sturridge maintained in para. 11 of his witness statement that the light changed to green in favour of the vehicles in his lane when he approached the intersection and so she submits that the two cannot be true; but she has maintained consistency in her position, whilst the defendant’s departure from its very own defence is self-serving and disingenuous. Counsel cited Bingham & Berryman’s Motor Claims cases, 10<sup>th</sup> Ed. and referred to ***Wells v Woodward*** (1956) LGR 142 and as authority for the proposition that where a court finds that traffic lights are showing green one way, the court is entitled to infer, unless the contrary is proved, that they are showing red the other way. Counsel submitted that the evidence of the claimant and her witness was unimpeachable See ***Olga James-Reid v. Stephen Clarke and David Davis*** Claim No. J004 of 2001. (jud. del. October 5, 2007)

[34] The submissions of counsel for the defendant on liability, in summary are as follows:

- i) The circumstances of the present case engage s. 97 of the **Road Traffic Act**, ss. 1-4 of the **Road Traffic (Emergency Vehicles) Regulations, 1961, Schedule (Regulation 2) of the Road Traffic (Emergency Vehicles) Regulations, 1961** and **The Island Traffic Authority Road Code, 1987 (“the Road Code”): Part 2 s. 53- “Emergency Vehicles”;**
- ii) The defendant in reliance on the usual classic cases on negligence, such as ***Donoghue v Stevenson*** [1932] AC 562, asserts that, motorists have a duty of care when using the road. A duty of care arises where it is reasonably foreseeable that, if someone does not exercise due care, another party will be harmed. Indeed, a failure to exercise reasonable care on the road breaches not only a civil duty of care but is also an offence under s. 32(1) of the **Road Traffic Act**;

- iii) It further contends that in exercising such reasonable care, it is the duty of a motorist to keep a proper look-out at all times while using the road as a driver and asserts the principle established in the case of **Springett v. Ball** [1865] 4 F&F 472 that in keeping a proper look-out, a driver must be aware of traffic which is or may be expected to be “...*in front of, behind him or alongside him, especially at cross roads, junctions and bends*”;
- iv) The standards of reasonable care that ought to be exercised by a motorist whilst driving a motor vehicle on the road are generally encapsulated in the **Road Code** and prescribed as the relevant rules of the road. Whilst the failure on the part of any person to observe any provision of the **Road Code** shall not of itself render that person liable to criminal proceedings of any kind, any such failure may in any proceedings (whether civil or criminal and including proceedings of any offence under the **Road Traffic Act**) be relied upon by any party to the proceedings as tending to establish or negate any liability which is in question in those proceedings- see s.95 of the **Road Traffic Act**; Further, as part of the substantive law treating with the rules of the road, the **Road Traffic Act** at s. 32 provides that every driver on the road has a duty to drive with due care and attention and with reasonable consideration for other users of the road, and any failure in respect of this duty is an offence under the statute.
- v) The objective common law standard of care by which drivers are measured vary depending on the situational contexts. At stoplights, the driver with the lights in his favour is not under any obligation to assume that a driver might be entering a cross roads or intersection with the lights against him: see **Joseph Eva, Limited v Reeves** [1938] 2 KB 39, 2 All ER 115, CA; applied in **Knight v Wiper Supplies Ltd** (1965) 109 Sol Jo 358 (Havers J);
- vi) The application of these principles of law to the relevant facts as adduced in evidence compels a finding in favour of the crown. It sees the obvious starting point of the analysis as the respective duty of care that is imposed

by law on the respective drivers. The next and more crucial question is whether one or more of the drivers breached his particular and specific duty of care in the circumstances and failed to comply with the standard of care prescribed by the law;

- vii) In relation to the evidence, it is posited that there is no substantive reliance that could reasonably be placed on the evidence of the claimant who admits in her witness statement and viva voce evidence to deficits in her memory of the event and is therefore not sufficiently reliable;
- viii) The “road” is a dynamic thoroughfare with varying and distinctive features which summons varying and specific types of obligations of road-users that correspond with the distinctive features of the particular road environment being traversed. Thus, at junctions, at stoplights, at intersections, at sharp corners, when one is in the vicinity of an emergency vehicle along the roadway, not only does the general duty of care apply, but also the specific duty of care that is also specific to that context also applies.
- ix) In considering the law, the defendant contends that in the present case, the contrasting duty of care that is cast on the driver of the ambulance and on the driver of the claimant’s vehicle is a function of established law. In respect of Mr. Sturridge, the general and specific duty of care he owed to Mr. Lindsay as the driver of an emergency vehicle is an expansive one that is a function of both statute and common law. In addition to the general duty of care to keep a good lookout for traffic, to avoid excessive speed, to observe the traffic rules and signals, and to make no errors of judgment, he was also required by statute to take very specific actions;
- x) S. 4 of the **Road Traffic (Emergency Vehicles) Regulations, 1961** contains the specific duty of care and the objective standard against which Mr. Sturridge is to be judged in the particular circumstances. It is pellucid on the evidence that Mr. Sturridge failed not only in appropriately

discharging his general duty of care, but even more fundamentally, he failed in discharging his duty of care as encapsulated in the specific steps outlined in the statutory provision above. Therefore Mr. Sturridge's admissions in this regard are tantamount to an admission of negligence in the circumstances;

- xi) Even more crucially, the evidence adduced in the trial proceedings also established on the weight of likely probabilities that Mr. Sturridge absolutely failed in discharging the specific statutory obligations that required him to take specific steps to fulfil his duty of care when confronted with an emergency vehicle. Mr. Lindsay gave uncontroverted and corroborated evidence that he had given audible warning and visible signal of his approach. In the circumstances therefore, the driver of the vehicle the claimant was travelling in owed a general duty to the public including Mr. Lindsay and the passengers of the ambulance to drive with due care and attention and without exposing members of the public to undue danger;
- xii) The driver of the vehicle in which the claimant was a passenger, failed to reach the requisite standard of care called for in the circumstances, and that the weight of the probabilities favour the likelihood that (i) he was driving at a fast rate of speed and so was unable to stop his vehicle in time or at all; and (ii) he also clearly failed to exercise the requisite degree of care and skill proportionate to the speed at which he was driving;
- xiii) The statutory duty on the claimant is cast in obligatory language by the use of the word "shall". Furthermore, the language of the rules clearly imply that content of the rules require road users to "stop" as the most urgent requirement. The rules imply that the road user ought only to proceed to the left side of the kerb if he reacts in time or at all to the signals of an emergency vehicle; but when confronted with a situation of immediacy, the reasonable reaction and the preeminent requirement of the duty imposed



by the statutory rules is to “stop” – which Mr. Sturridge ultimately failed to do;

- xiv) The driver of the vehicle the claimant was travelling in did not apprehend as quickly as he should have that there was an ambulance with visible and audible signals in his immediate vicinity and unlike all the other vehicles which stayed clear of the intersection, he drove out and was guilty of breaching what was a very high standard of care imposed by statute in these types of circumstances involving emergency vehicles. The court is asked to prefer the evidence of Mr. Lindsay and to find that the claimant has failed to meet her burden of proof in the circumstance. Notably in this regard, even though it is the claimant who bears the burden of proving his case, the driver of the vehicle she was travelling in declined to tender into evidence the Assessment report of the damage to his vehicle which would have clearly indicated the specific areas damaged on impact;
- xv) In contrast to the expansive duty of care placed on the driver of the vehicle the claimant was travelling in, Mr. Lindsay’s duty of care in the circumstances was much more circumscribed and limited. There was no lawful obligation on Mr. Lindsay in the circumstances to contemplate that a vehicle would disobey the traffic signals (per the authority of **Joseph Eva, Limited v Reeves *supra*; also Knight v Wiper Supplies Ltd *supra***) and in the circumstances he was neither negligent nor contributorily negligent as he owed no duty to the traffic entering the crossing in disobedience to the lights, beyond a duty, if in fact he saw such traffic, to take all such reasonable steps to avoid a collision. On this authority, it is therefore unnecessary to consider any question of contributory negligence where the facts of the case engage this principle;
- xvi) Mr. Lindsay had no lawful obligation in the circumstances to contemplate that other motorists would disregard the weighty duty owed to the driver of an emergency vehicle, and fail to pull over to the left side of the kerb and

stop in time or at all. Even if, which is denied, Mr. Lindsay was driving at a higher than average rate of speed, he was lawfully entitled to do so in the circumstances; the driver of the vehicle that the claimant was travelling in had no such legal entitlement;

- xvii) Had the driver of the vehicle in which the claimant was travelling exhibited a reasonable standard of care and maintained proper lookout, he would have been alerted to the visible signal and audible warning of the ambulance in his vicinity. The uncontroverted evidence that is admitted even by the driver of the vehicle that the claimant was travelling in was that his vehicle was the only other vehicle to have driven out into the intersection, and that called for a reasonable explanation (a shift in the evidential burden). At trial, such an explanation could not be given that was adequate to negative any inference of his own negligence;
- xviii) The matrix of the circumstances of this case leads to the inexorable conclusion that it was the driver of the vehicle that the claimant was travelling in that was negligent; not Mr. Lindsay. Indeed, in the spur of the moment when a dangerous situation was created by the driver of the vehicle in which the claimant was travelling, Mr. Lindsay nevertheless reacted with admirable care and skill by quickly “shifting” the front of the ambulance away from the oncoming vehicle, and potentially averting a much more serious accident with far more dangerous consequences. Accordingly the claimant has failed to make out a case of negligence against the crown servant Mr. Lindsay.

#### LAW AND ANALYSIS

**Issue I: *What are the duties in law of the driver of a private vehicle and the driver of an ambulance in their use of the roadway when the private driver is going lawfully about his business and the ambulance is proceeding on an emergency mission with siren blaring and flashing lights?***

[35] Several statutory and regulatory provisions are relevant to the legal duties arising in this matter. With respect to the **Road Traffic Act (RTA)** the following sections need to be considered:

S. 32(1)-If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence...

Section 51 (1) (d), (g) (2):

(1) The driver of a motor vehicle shall observe the following rules – a motor vehicle

...

(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;

...

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

(2) Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection.

....

S. 95(1) - The Island Traffic Authority shall prepare a code (in this Act referred to as the "Road Code") comprising such directions as appear to the Authority to be proper for the guidance of persons using roads, and may from time to time revise the Road Code by revoking, varying, amending or adding to the provisions thereof in such manner as the Authority may think fit.

(2) - ...

(3) - The failure on the part of any person to observe any provisions of the Road Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings

(whether civil or criminal and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

...

S. 96(4) - In this part the expression "traffic sign" includes marks on the surface of roads, all signals, whether automatic electric signals or otherwise, warning sign posts, direction posts and signs or other devices for the guidance or direction of persons using roads.

...

97(1) The driver of every vehicle and the rider of every bicycle shall obey-

(a) all red lights and stop signs; and

(b) all other traffic signs which may be lawfully placed, erected or exhibited on or near any road, or so as to be visible from a road, in accordance with the provisions of section 96.

(2) Any person who fails to comply with any such traffic signs shall be guilty of an offence.

**[36] The Road Traffic (Emergency Vehicles) Regulations, 1961 regulations 2 – 4 provide:**

2. In these Regulations –

"emergency vehicle" means a motor vehicle specified in the Schedule;

"vehicle" means any vehicle whatever may be its form or construction.

3. Emergency vehicles giving audible signal by siren horn shall have the prior right of passage along all roads.

4. Upon the approach of any emergency vehicle giving audible signal by siren horn,

a. the driver or operator of every other vehicle being used on a road shall immediately drive the vehicle as near as possible and parallel to the left edge or kerb of the road clear of any intersection and shall

stop and remain stationary until the emergency vehicle has passed;  
and

- b. every pedestrian on the road shall immediately proceed as near as possible to the extreme edge of the road and shall remain there until the emergency vehicle has passed.

**[37] The Road Traffic (Emergency Vehicles) Regulations, 1961 (Schedule)** contains the description of “Emergency Vehicles”:

#### Description of Emergency Vehicles

1. ...

3. Any ambulance attached to a public hospital as defined in the Hospitals (Public) Act, or to the University Hospital, or to any military hospital, carrying hospital attendants or appliances to or from a place where a person has been reported to the hospital to be in immediate need of medical attention.

4. Any ambulance not being an ambulance referred to in paragraph 3 which is approved by the Minister responsible for health as being suitably equipped for the purpose and carrying any medical attendant or appliance to or from a place where a person has been reported to the person operating such ambulance as being in immediate need of medical attention.

**[38] The Island Traffic Authority Road Code, 1987 (“the Road Code”): Part 2** provide at paragraphs 15 – 18 and 53 as indicated below:

#### **Intersection and Road Junction Operation**

15. Approach all intersections with caution, have your vehicle in control at all times;

16. Be prepared to stop, rest foot slightly on brake pedal and proceed through cautiously;

17. Bring your vehicle to a full stop at all ‘stop’ signs and proceed only when it is safe to do so; and

18. At the “Traffic Light Signal controlled junctions”, proceed only on the green signal. Do not enter an intersection on red or amber. If you are already in the intersection when the amber light comes on you may proceed cautiously.

## **Emergency Vehicles**

53. When you hear the siren, bell, Two Tone horn or see the flashing red light of an emergency vehicle (Fire, Ambulance, Police) observe the following rules:

Drive your vehicle as near as possible and parallel to the left edge or kerb of the road, clear of any intersection. Stop and remain stationary until the emergency vehicle shall have passed.

Every pedestrian on the road must immediately proceed to the sidewalk as near as possible to the extreme edge of the road and stop until the emergency vehicle shall have passed.

The driver of a vehicle may not follow closer than 500 feet behind any emergency vehicle.

**[39]** The statutory duty not to engage in careless driving reflected in s. 32 of the **RTA** is applicable to all drivers on the road. Also of significance are the Driving Rules s. 51 (1)(d) and (g) of the **RTA** which require drivers not to obstruct traffic while executing certain manoeuvres and also not to attempt others unless it is clear the road is unobstructed. Critically s. 51(2) of the RTA, imposes a general duty on drivers to take such action as necessary to avoid an accident even where the cause of the impending accident is not their fault.

**[40]** The **RTA** and accompanying regulations, which will be addressed later, are complemented by case law. The tort of negligence requires specific things to be proved by the claimant, on a balance of probabilities, before she can succeed in an action against another road user. In ***Adele Stern v Villa Mora Cottages Ltd and Another*** [2012] JMCA Civ 20, Morrison JA (as he then was) succinctly stated these requirements at paras 49 - 50 as follows:

[49] The requirements of the tort of negligence are, as Mr Batts submitted, four fold, that is, the existence of a duty of care, a breach of the duty, a causal connection between the breach and the damage and foreseeability of the particular type of damage caused (see Clerk & Lindsell on Torts, 19<sup>th</sup> edn, para. 8-04). The test of whether a duty of care exists in a particular case is, as it is formulated by Lord Bridge of Harwich, after a full review of the authorities, in the leading modern case of *Caparo Industries plc v Dickman* [1990] 1 All ER 568, 573-574:

“What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of ‘proximity’ or ‘neighbourhood’ and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other.”

[50] As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof, on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case (see Clerk & Lindsell, op. cit., para. 8-149; see also, Ng Chun Pui v Lee Chuen Tat [1988] RTR 298, per Lord Griffiths at page 300). But the actual proof of carelessness may often be problematic and the question in every case must be “what is a reasonable inference from the known facts?” (Clerk & Lindsell, op. cit., para. 8-150).

[41] Also helpful as it relates to the duty of care imposed on users of the road is the case of **Theron Scott v Huntley Manhertz** [2017] JMSC Civ 148, where the claimant sought damages against the defendant for negligence. He contended that the defendant suddenly and without warning turned right from Old Hope Road in breach of the traffic light into his path causing a collision. The defendant’s contention was that the accident was caused solely by the negligence of the claimant in that, among other things, the claimant disobeyed the stop light and failed to yield to the defendant’s right of way or in the alternative the claimant significantly contributed to the collision.

[42] At paragraphs 46 – 48 Thompson-James, J. stated that:

[46] It is well established that the driver of a motor vehicle has a duty to take reasonable care not to cause injury or damage to other road users. Lord Jamieson in **Hay or Bourhill v James Young** 1941 S.C. 395, 429, a statement which was later approved by the House of Lords ([1943] A.C. 92) explained the duty as follows:

No doubt the duty of a driver is to use proper care not to cause injury to persons on the highway or in the premises adjoining the highway, but it appears to me that his duty is limited to persons so placed that they may reasonably be expected to be injured by the omission to take such care.”

[47] Reasonable care means the care which an ordinarily skilful driver would have exercised under all circumstances, and connotes an

“avoidance of excessive speed, keeping a good look out, observing traffic rules and signals” and so on. What is reasonable depends on the circumstances of each case and is a question of degree (**Bourhill vs Young** [1943] A.C 92). In **Esso Standard Oil S.A. Ltd. & Anor. vs Ivan Tulloch** [1991] 28 J.L.R. 553. It was held that “all users of a road have a duty of care to other road users.

[48] From the foregoing, it is clear that both the Claimant and the Defendant owed a duty of care to operate their vehicles in a manner so as not to cause harm to each other.

- [43] The instant case however does not just include two private drivers. An emergency vehicle was involved in the collision. Counsel for the defendant submitted that as Mr Lindsay was driving an ambulance with its siren horn activated and flashing lights, he was not an ordinary driver going about his business on the roads and consequently the legal analysis had to take that factual matrix into account. Counsel contended that, in contrast to the expansive duty of care placed on the driver of the Harrier, the duty of care of the driver of the ambulance in the circumstances, was a much more circumscribed and limited one, in that he had no lawful obligation to contemplate that a vehicle would disobey the traffic signals. For this submission, he relied on the authorities of **Joseph Eva, Limited v Reeves** and **Knight v Wiper Supplies Ltd.**
- [44] It appears to the court however, that counsel sought to stretch **Joseph Eva, Limited v Reeves** beyond that which it covers. That case dealt with the absence of negligence, contributory or otherwise on the part of a driver who proceeded on a green light and collided with another vehicle which entered a crossing/intersection in disobedience to a red light. Therefore its application is limited to the issue in this case concerning which of the parties broke the red light and would only support the defendant on this point, if in fact the court finds he had the green light. The wider issue of the reciprocal duties owed by the drivers of private and emergency vehicles passing through intersections was addressed in the case of **Griffins v Merseyside Regional Ambulance** in which the scope of **Joseph Eva, Limited v Reeves** was explained.



[45] In ***Griffins v Merseyside Regional Ambulance*** the plaintiff appealed a finding of contributory negligence against him or in the alternative, an apportionment of 60/40 in the defendant's favour. The matter arose out of a collision between the plaintiff's motorcar and the defendant's ambulance at a traffic light controlled junction. There was no dispute that at all material times the lights were showing green in the plaintiff's favour and red against the defendants' driver and that the ambulance was on an emergency call carrying a pregnant patient to the hospital. The evidence in this case revealed that the ambulance had its klaxon blaring and a white box van to the plaintiff's right had stopped to allow the ambulance to cross. The plaintiff said he had not seen nor heard the ambulance.

[46] The English Court of Appeal upheld the trial judge's decision on liability and apportionment. Its decision was premised on the interpretation of the Traffic Signs Regulations and General Directions 1994 applicable in the United Kingdom which imposed particular obligations on drivers upon their being alerted to the approach of an emergency vehicle. Concerning the decision in ***Joseph Eva Ltd v Reeves***, the court stated at pp. 4357- 4358, that:

It is important to note, however, that, that case was concerned not with emergency vehicles crossing against the red light, but rather an emergency vehicle (there a police car) crossing on green, albeit on the wrong side of the road. In my judgment, it provides no authority as to the extent of the duty owed by other drivers in the present circumstances. In short, *Joseph Eva Ltd v Reeves* only purports to deal with the duty owed where vehicles disobey the absolute bar on crossing traffic light controlled junctions, not the duty owed in circumstances where for emergency vehicles the traffic lights become, as Wilkinson makes clear, effectively "Give Way" signs. That consideration apart, 60 years on, as we now are, from the decision in *Joseph Eva Ltd v Reeves*, I doubt there is room for a rule as absolute as was suggested there. Such doubts appear implicit too in the Court of Appeal's decision in *Davis v Hassan* (1967) 117 NLJ 72, which effectively decided that all these cases fall to be decided on their own facts.

[47] The effect of the decision in ***Griffins v Merseyside Regional Ambulance*** therefore is that there is no absolute rule in favour of traffic crossing a junction on a green light. Consequently, even a motorist in whose favour the traffic light shows green still has a duty to exercise reasonable care in accessing an intersection. The

case also noted that the duty on the ambulance driver crossing an intersection against the red light was a heavy one, but that equally there is a duty of care upon the driver of the private motor vehicle, which went beyond merely taking reasonable steps to avoid colliding with the ambulance driver. This reasoning was also evident in the case of **George Gifillian v Alexander Barbour** in which it was noted that whilst both drivers owe a duty of care in these situations, the standard of care may differ and this generally depends on the circumstances particularly as it relates to the emergency vehicle and the purpose of the emergency response, measured against the driving of its driver on the occasion.

- [48] These principles are also consistent with the decision in **Marshall v Osmond** [1983] QB 1074, that the standard of care of the driver of an emergency vehicle is to drive with such care and skill as is reasonable in all the circumstances. Such a driver owes a duty of care to a claimant notwithstanding the fact that he is responding to an emergency. Similarly the case of **MacLeod (a protected party suing by his litigation friend Barbara MacLeod) v Metropolitan Police Commissioner** [2015] All ER (D) 98 established that emergency vehicles on emergency missions owe the same duty of care as all other road users.
- [49] In the Jamaican context, the relevant statutory and regulatory framework outlining the responsibilities of private drivers when alerted to the presence of an emergency vehicle with emergency signals activated, in the form of **The Road Traffic (Emergency Vehicles) Regulations, 1961; Reg. 4(a) and The Island Traffic Authority Road Code, 1987 (“the Road Code”): Part 2: Para 53** have been set out earlier. That framework requires a private driver to pull over to his left as close to the curb as possible and remain stationary until the emergency vehicle passes.
- [50] In **Attorney General v Evelyn Simpson**, SCCA No. 116/ 04, (jud. del. June 22, 2007) the effect of this regulatory framework was assessed. In that case, an ambulance was transporting Mr. Simpson who had earlier suffered injuries in an accident. The ambulance proceeded quickly with sirens blaring and on

approaching a set of traffic lights at the intersection of Bogue main road and Alice Eldemire Drive, a collision occurred between the ambulance and another motor vehicle driven by Mr. Clarke travelling in the opposite direction. The traffic lights were showing green for the ambulance. The ambulance overturned and rolled over three or four times.

[51] Upon a consideration of Mr. Clarke's actions on the approach of the ambulance at the traffic lights, Harris JA at p. 10, stated that:

On observing the advancing ambulance with siren blaring and lights flashing, Mr. Clarke was under a duty to have halted and remained in a stationary position until the ambulance passed. He, nonetheless, continued driving and caused the ambulance to collide with his vehicle. Not only was he in a breach of a duty of care to Mr. Simpson but he was also in breach of an absolute duty imposed on him by the Road Traffic (Emergency Vehicle) Regulations. It is clear that some liability in negligence ought to be imposed on him.

[52] It should be noted that the emergency vehicle regulations in Jamaica do not address the duties of the drivers of emergency vehicles but they specifically outline the circumstances in which the specific duty of other drivers arise in relation to emergency vehicles. This however does not negate the duty of care to other road users owed by the drivers of emergency vehicles in Jamaica, based on the **RTA** and the common law.

[53] In *Damean Wilson v Christopher Dunn and Ors* [2014] JMSC Civ. 257, there was a collision between an ambulance and a motor vehicle driven by the 1<sup>st</sup> defendant, as a consequence of which the claimant sustained injuries. The 3<sup>rd</sup> defendant the driver of the ambulance maintained, amongst other things, that his flashing lights were on. The court however found the 2<sup>nd</sup> and 3<sup>rd</sup> defendants liable for negligence. Batts J stated at para. 25 that:

The issue which arises is whether there is a breach of duty of care by the 1<sup>st</sup> Defendant. I hold that he acted reasonably and as any reasonably prudent driver would. He satisfied himself no vehicle was oncoming. He had earlier satisfied himself no one was behind and that vehicles behind were passing to his left. It was reasonable to assume that any other vehicle

would follow suit. The accident was in my view entirely caused by the negligence of the 3<sup>rd</sup> Defendant who failed to operate his vehicle in a safe manner. A vehicle ahead positioned as if to turn right with indicator on, ought to be passed on its left or not at all. **It is an act of negligence to proceed in the reckless expectation that other vehicles will give way stop or move out of the way, merely because one has a light on.** In fact and as I have found there was no flasher light on the vehicle. Whether or not one was on makes no difference to my decision. This is because a flashing light would not have changed the cause of this accident. The 1<sup>st</sup> Defendant was positioned to turn right with his indicator on. The 3<sup>rd</sup> Defendant ought to have stopped or passed to the left of the 1<sup>st</sup> Defendant. (Emphasis added)

**[54]** This case supports the position that although private motorists have a duty to give way to emergency vehicles operating with signals that indicate they are on an emergency mission, drivers of emergency vehicles also have a duty to assess the circumstances and exercise due care and regard for other road users having regard to those circumstances while proceeding on their emergency mission.

**[55]** In summary therefore, in answer to the question posed by issue 1, Mr. Sturridge was required by law to keep a proper look out and once he was alerted to the approach of the ambulance through its siren, monkey horn or flashing lights, to position his vehicle as near as possible and parallel to the left edge or kerb of the road stop and remain stationary until it had passed. He had this duty even if he had the green light to proceed through the intersection. Mr. Lindsay on the other hand while operating in an emergency with his siren and flashing lights had a duty to proceed with due caution, having regard to all the circumstances even if vehicles had pulled over to give him way, and even if he had the green light to proceed through the intersection.

**Issue II:      *Did either driver meet the standard required of them in law?***

**Issue III:     *Was their contributory negligence of either party?***

**[56]** As will become obvious from the analysis, it will be convenient for issues II and III to be addressed together. Once there is a motor vehicle accident, in all but the most exceptional of circumstances, it is always the case that one or more drivers

is or are liable for the collision. One of the first issues that the court has to resolve is which of the two drivers had the green light to go through the intersection. Though as has been seen, being favoured with a green light does not provide an absolute right to drive through an intersection, a private driver should not be driving through an intersection on a red light, unless there are wholly exceptional circumstances. From his perspective therefore if the court were to find that he drove through a red light, on the face of it that would be evidence that he had been negligent. Before assessing the evidence to make a finding as to which driver was favoured with the green light it is useful to highlight the decision in ***Wells v Woodward***. In that case it was held that where the court has found that traffic lights are showing green one way, the court is entitled to infer, unless the contrary is proven, that they were showing red the other way.

[57] Both parties have said that the traffic lights in their direction showed green in their favour at the time they proceeded into the intersection. Both cannot be correct. Both Ms. Hayles and Mr. Sturridge have consistently maintained that the green light was in their favour at the time Mr. Sturridge was proceeding through the intersection. The defence position has however not been similarly consistent. As counsel for the claimant pointed out, in its Defence the defendant made no mention of obtaining a green light before proceeding. However in their evidence, both Mr. Lindsay and Mr. Clarke stated that the light changed to green before Mr. Lindsay proceeded. In fact, though he said he was in a hurry transporting an unconscious patient, Mr. Lindsay was adamant that he stopped at the red traffic light; and then only moved off when he saw green.

[58] It did not escape the court that initially Mr. Lindsay, an ambulance driver of over 13 ½ years, claimed that he had never broken a stop light and was never really aware, but had only heard that emergency vehicles could break the stop light. Further he stated that even if he was carrying an unconscious patient and other vehicles stopped to let him through a red light, he would still stop at the red light and wait until it turned green. Later however, he modified his evidence and stated

that sometimes he had gone through a red light in an ambulance in an emergency situation and sometimes not.

[59] Having assessed all the witnesses, I accept as true and credible the evidence of Ms. Hayles and Mr Sturridge that they had the green light. I reject the evidence of Mr Lindsay and Mr. Clarke when they state that they had the green light. I do not accept Mr. Lindsay's evidence that even when transporting an unconscious patient, he was required to stop '*as the rule is you have to wait until the light turn green.*' There could be no such rule as that would be incompatible with the emergency vehicle regulations. I also find that the comparative recency of the adoption of the stance that the ambulance had the green light, along with the initial incredulous assertion that as an ambulance driver he had never gone through a red light, was an attempt to mislead the court concerning what really happened. I find that Mr. Lindsay did go through the intersection on the red light.

[60] The fact of Mr. Lindsay going through the red light was however not the sole cause of the accident. The role played by both drivers in the dynamics of the collision has to be further assessed. In ***Rueben Simpson v Sanmerna Paper Products Ltd*** [2018] JMSC Civ 117, Wint-Blair J stated at paragraph 11 that:

It is the duty of the driver or rider of a vehicle to keep a good look out. A driver who fails to notice in time that the actions of another person have created a potential danger is usually held to be negligent. (See ***Foskett v Mistry*** [1984] R.T.R. 1, CA.) He must look out for other traffic which is or may be expected to be on the road, whether in front of him, behind him or alongside him, especially at crossroads, junctions and bends.

[61] The defendant has pleaded that the collision was wholly caused or contributed to by the negligence of the driver of the Harrier. Mr. Lindsay has also given evidence to that effect. The burden of proof is on the defendant to prove contributory negligence of a claimant. According to ***Charlesworth & Percy on Negligence*** by R.A. Percy, 8<sup>th</sup> Ed. at p. 186 para. 3-15:

In order to discharge the burden of proof it is not necessary for the defendant to give evidence about such matters, because contributory negligence can be inferred from the evidence adduced already on the

plaintiff's behalf or from the primary facts, so found by the court, on a balance of probabilities.

- [62]** Turning first to the account of Mr. Lindsay, he stated clearly in evidence that he was in a hurry. Being in a hurry I find that he was travelling at a greater speed than the 5 mph at which he claimed he was travelling. I accept the evidence of Mr. Sturridge that the ambulance came at him quickly. That speed greater than 5 mph,, also explains the extensive damage to the vehicles, and the significant injuries to the claimant. Mr. Lindsay claimed in his witness statement that he had almost completed the intersection when he saw the SUV coming at him. It is my view, that Mr Lindsay, knowing that he had broken the red lights and was travelling quickly, had a duty to be particularly careful given the obvious risk of other motorists entering the intersection as a result of their green light, despite the ambulance having engaged its flashing lights and siren, both of which I accept were on.
- [63]** Mr. Lindsay therefore travelled at too fast a speed through the intersection and also failed to keep a proper lookout for vehicles that it was reasonably foreseeable may not have become aware of the presence of the ambulance, despite the use of its emergency signals. I also find that Mr. Lindsay did at the police station admit in the hearing of Mr. Sturridge that he was at fault and I also accept that arising from the accident he was warned for prosecution by the police.
- [64]** Concerning the manner of driving of Mr. Sturridge, I accept Mr. Sturridge's evidence regarding the presence of 4 lanes, including 2 filter lanes at the intersection. I also accept that he was in the left lane heading directly towards Portmore/ Marcus Gravey Drive. Mr. Sturridge said that as he proceeded into the intersection a pedestrian crossed his path from his left to his right and that even after permitting the pedestrian to pass, which delayed him about 2 - 3 seconds, he had the green light and that he observed the road and he proceeded. He said he was in the intersection when he saw the ambulance coming quickly from his right from the side of his vision. He also agreed in cross-examination that the ambulance passed the right filter lane and the right lane going to Portmore before getting to his lane. Neither he nor his passenger Ms. Hayles saw or heard the ambulance

before the Harrier got into the intersection. Mr. Sturridge said his reaction was to slow down and try to swerve to his left to permit the ambulance to pass, as he was uncertain whether the ambulance was going on Marcus Garvey Drive or if it was going to swerve right or come straight. I have accepted that Mr. Sturridge had the 'green light' but find that he failed to keep a proper look out and hence did not hear or see the approaching ambulance in time. He was therefore not in a position to "give way" until it was at a point where collision was inevitable.

**[65]** In summary, I have considered the duties owed by the respective drivers under the **RTA**, its accompanying regulations and under the common law. I have found that Mr. Lindsay played a part in causing the collision as he proceeded through the red light in a reckless manner at too great a speed, failing to consider that a driver who had the green light might have been unaware of his approach. Specifically he also failed to keep a good look out to ensure that all lanes that had the green light heading from Hagley Park towards Marcus Garvey Drive/Portmore were for him to pass. However, Mr. Sturridge also contributed to the collision by failing to keep a good look out such that he was totally unaware of the approach of the ambulance which I found had its siren on and lights flashing, until he was already in the intersection and it was too late for him to avoid the accident. It follows that in the circumstances both drivers failed to comply with their respective statutory, regulatory and/or common law duties. In the circumstances blame is apportioned equally between each driver.

***Issue IV: What measure of damages is due to the claimant?***

**[66]** Arising from the accident the claimant has said that she suffered pain and injury and sustained loss and damage. Her particulars of injury are:

- (i) Tender swollen deformed left arm;
- (ii) Limited mobility of left arm;
- (iii) Left wrist drop with radial nerve distribution anaesthesia;
- (iv) Comminuted mid shaft left humeral fracture with radial nerve injury;



- (v) Tenderness over the left shoulder with limitation of abduction to ninety degrees;
- (vi) Healed curved six inches incision scar on the antero lateral aspect of the left arm with early keloid formation;
- (vii) Two three quarter inch scars on the left shoulder with slight wasting of the muscles of the left arm;
- (viii) Healed four inches incision scar on the left groin area with tenderness over the scar; and
- (ix) Defect in the left iliac crest being the donor site for bone grafting of the left humerus.

**[67]** She further indicated that after the accident she was taken to the KPH and admitted. Her arm was splinted and she was discharged from the hospital after 4 days. She was prescribed pain killers and antibiotics and was told that she would need to return to the hospital for an operation on her arm. She returned to the KPH on November 9, 2006 and was again admitted for another 5 days. She underwent an operation on her arm under general anaesthesia. The fracture was badly displaced and required the internal fixation of a plate. During the operation, the doctors performed a bone graft on her left hip whereby bone was removed from her hip and transplanted into her arm. Shortly after the operation, she began experiencing severe pain in her left hip and she started walking with a limp.

**[68]** Her pleadings and evidence also reveal that sometime in January 2007, she started feeling pains in her left arm and she began having high temperatures. Consequently, on February 5, 2007 she was readmitted to the KPH for another 7 days. The plate that was inserted in her arm was broken and she had developed an infection in her arm. As such she underwent another operation under general anaesthesia whereupon the plate was removed from her arm and instead pins were inserted. After the accident, she had to employ someone to assist her with her household chores. She continues to require the assistance of this person. Her sleep has been and is affected. She took and continues to take pain killers and antibiotics on a frequent basis. She has been unable to return to her pre-accident job of teaching.

**[69]** It is her claim that she continues to experience severe pains in her left arm and left hip. She is completely unable to use her left arm. She is unable to stretch out her left hand and 3 of the fingers on her left hand are completely lifeless. She is also unable to walk for long distances due to the pains that she continues to feel in her left hip. She continues to walk with a limp. She worries that she may be forced to live on pain killers for the duration of her life. The injuries to her hip and left arm made her unable to pass instructions to her pupils. As such she has been unable to return to her pre-accident job of teaching. She is now deemed disabled and unable to work by the Ministry of Education and the Ministry of Health. She also suffers from memory loss since the injury.

**[70]** She has reached maximum medical recovery and now suffers from a permanent partial disability of 10% of the whole person. Further particulars of the claimant's injuries are set out in the medical reports of:

- (i) Dr. Emran Ali dated October 19, 2007;
- (ii) Dr. Xavier Dowe of the Greater Portmore Medical Group dated June 16, 2007; and
- (iii) Dr. I. Neil of the KPH dated December 5, 2006.

***The medical reports***

**[71]** The medical report done by Dr. I Neil, Consultant at KPH dated October 26, 2006 indicates that the claimant was found to have a tender swollen deformed left arm with limited mobility and a left wrist drop with radial nerve distribution anaesthesia. Radiographs showed a comminuted mid-shaft left humeral fracture with radial nerve injury. Her diagnosis was a left humeral fracture with radial nerve injury; she was admitted, splinted and discharged. She had follow up visits and then she underwent surgical fixation of her left humerus.

**[72]** The medical reports done by Dr. R. Xavier Dowe dated June 16, 2007 and June 30, 2010 contained similar information. His report mirrored the content of Dr. Neil's

report as mentioned above. He added that when she came for review following the surgical fixation, there was minimal improvement and she was referred to a physiotherapist and to return for review in a month. Upon her review, she was found to have limitation of movement and pain in the left arm and wrist- thus she found it difficult to work and more likely will not recover to the point where she can comfortably resume her duties.

**[73]** Dr Emran Ali's report is dated October 19, 2007. Upon examining the claimant, he found that:

- (i) she was tender over the left shoulder with limitation of abduction to ninety degrees.
- (ii) She has a well healed curved six inches incision scar on the antero lateral aspect of the left arm with early keloid formation;
- (iii) Two  $\frac{3}{4}$  inches scars on the left shoulder with slight wasting of the muscles of the left arm;
- (iv) Flexion of the elbow is restricted by about twenty (20) degrees with an extension lag of ten degrees;
- (v) A healed four (4) inches incision scar left groin area with tenderness over the scar and hyper sensitivity over the mid-thigh region. He said this may due to involvement of the lateral cutaneous nerve of the thigh in the scar;
- (vi) X-rays of the left arm showed a healed midshaft fracture of the humerus with a locked intra medullary nail in situ; and
- (vii) X-rays of the pelvis showed a defect in the left iliac crest being the donor site for bone grafting of the left humerus.

In his opinion, she has reached maximum medical recovery and suffers a permanent partial disability (P.P.D.) of ten (10) % of the whole body.

[74] The claimant was 46 years old at the time of the accident. The accident severely impacted her duties as a Teacher and in her view, teaching was 'her only hobby'. Teaching no doubt involved her standing for long periods, she can no longer do so and based on the impact of the injury on her body, one doctor has suggested she take early retirement. She continues to struggle with pain, although they are controlled with pain killers. The doctors agree that she has limited use of her left arm.

[75] Her pleaded special damages were for i) Loss of income: Prior to the accident, the claimant worked as a Teacher at the Maxfield Park Primary School. However, as a result of the accident the claimant has been unable to resume her pre-accident job as a Teacher ii) Transportation Costs; iii) Medical expenses

[76] Submissions of counsel for the claimant on damages:

i) In relation to the subsequent infection, she submits that the measure of damages to be awarded, is relevant to the principle that if reasonable care is taken to employ a competent doctor to treat personal injuries which were wrongfully inflicted, the results of the impairment, even though by error of treatment are aggravated, will be a proper head of damages, though there may be cases where the treatment is so negligent as to constitute in effect a *novus actus interveniens* and to give the patient a remedy against the doctor- see the case of **Robinson v. Post Office**, (1974) 1 WLR 117;

ii) In relation to the quantum of damages, the claimant relies on the following cases:

(a) **Tennessee Samuels (b.n.f Calvin Samuels v. Grace Watt & S. Lewin**, Claim No. 2004 HCV 01180), judgment delivered on the 11<sup>th</sup> day of November, 2005, Volume 6, Recent Personal Injury Awards made in the Supreme Court of Judicature. In that case the claimant suffered:

- a. Pain and swelling of right elbow
- b. Displaced fracture of oleacranon

- c. T-condylar fracture of the distal humerus
- d. 2% whole person disability of the whole body

That claimant was treated with operative reduction and internal fixation of the right elbow and a second operation to remove K wires and improved gradually with a sticking pain. An award in general damages of \$900,000.00 using the current CPI of 223, will today yield \$2,115,000.00

(b) **Marcella Clarke v. Claude Dawkins and Leslie Palmer**, Claim No. 2002 C 047, judgment delivered on the 16<sup>th</sup> day of June 2004, Volume 6, Recent Personal Injury Awards made in the Supreme Court of Judicature. In that case the claimant suffered a fractured left humerus and a fractured shaft of the pelvis. She complained that her hand “hook up” and that she could not stand continuously for long periods. She was found to have a permanent partial disability of 8% of the whole person. An award in general damages of \$1,400,000.00 using the current CPI of 223, will today yield \$4,065,104.00

iii) The claimant argues that aggravating the damages in the instant matter is the fact that her treatment involved four surgeries after the initial splinting: internal fixation and insertion of plate in her right arm, bone grafting from left hip to arm, surgical removal of the said plate post breakage and infection, insertion of pins as replacement. Together, there is a permanent partial disability of 10% of the whole body with the loss of the use of three fingers due to nerve damage, plus difficulty standing for extended periods. Her quality of life was sorely diminished and she was forced to leave the profession in which she made a living all her adult life. Based on these factors she submits that an award in the sum **\$5,000,000.00** for General Damages for pain and suffering and loss of amenities would in the circumstances be appropriate as well as damages in the sum of **\$172,655.32**, as pleaded; plus, interest, costs and attorney’s costs.

[77] The defendant did not make any submissions on damages.

## **SPECIAL DAMAGES**

[78] The claimant claimed special damages for transportation, medical related expenses, domestic help, loss of income and the cost of the police report. No sum will be awarded for costs associated with transportation as although it was pleaded, no figure or evidence in that regard was presented to this court. No evidence was put forward in respect of loss of income. Although some evidence was put forward in respect of domestic help, it was not pursued. As is well established, special damages must be both pleaded and strictly proved.

### ***Medical related expenses***

[79] The claimant has said that she has spent considerable sums of money on her medication and other things which were vital to her recovery. She stated that on September 19, 2007, she paid \$3,000.00 for consultation with the doctor at Oxford Medical Centre and on October 03, 2007, she paid them a further \$2,000.00; finally, on December 12, 2007, she paid \$6,000.00 for her medical report from the Oxford Medical Centre. She spent a further \$57,600.00 at Rehab Plus on January 16, 2007. She had also spent an additional \$67,600.00 at the said Rehab Plus on October 12, 2006. She bought a humeral brace from Manchuant Ltd on the June 16, 2006 for \$8,800.00. She also paid for medication which had been prescribed by the doctors.

[80] Receipts for the above expenses were exhibited and have been proven. Accordingly, the following sum is awarded for prescription drugs, medical reports and medical apparatus, and doctors' visits is therefore **\$172,685.94**.

### ***Police Report***

[81] She averred that the police report cost \$1000.00. This sum is accepted and **\$1000.00** is awarded.

**GENERAL DAMAGES:**

[82] Counsel for the claimant cited the cases of **Tennessee Samuels (b.n.f Calvin Samuels v. Grace Watt & S. Lewin** and **Marcella Clarke v. Claude Dawkins and Leslie Palmer** as useful guides. In addition the court considered the cases of **Billard Graham v Jeremy Wright** [2015] JMSC Civ 69, and **Maurice Whittingham v Cecil Brooks**, reported in Harrisons' Assessment of Damages, 2<sup>nd</sup> Ed. At p. 97. In **Billard Graham v Jeremy Wright** Lindo J. (Ag) (as she then was) stated at paragraph 32 that:

The medical report of Dr Gilbert reveals that the claimant suffered an open fracture of the right humerus, was seen at the SPH and placed in a splint and was transferred to the CRH where he was diagnosed with a non union of the right humerus and underwent surgery for open reduction and internal fixation of the right humerus augmented with bone graft. This non-union of the right humerus was expected to heal within six months and he required physiotherapy to regain the range of motion and strength in the shoulder and elbow.

The learned judge awarded \$1,400,000.00 for pain and suffering and loss of amenities. This figure when upgraded using the current CPI (October 2019) is \$1,680,000.00.

[83] In **Maurice Whittingham v Cecil Brooks**, the claimant sustained severe injuries to his right arm in a motor vehicles accident- hospitalized for approximately 25 days- operation done on arm- damage to brachial plexus- right arm deformed and useless- paralysis and loss of sensation in arm- right handed and cannot write or grip with right hand- permanent disability assessed at 50 % of bodily function- 60% of the whole person. He was awarded \$1,500,000.00 for pain and suffering and loss of amenities. That figure when upgraded using the current CPI is a rounded figure of \$7,000,000.00.

[84] I am of the view that the sum awarded for pain and suffering and loss of amenities in the cases of **Tennessee Samuels** (significantly less PPD) and **Billard Graham** (no PPD) is too low and too high in **Maurice Whittingham v Cecil Brooks**, as his injuries were much more extensive and he had a far greater PPD, than the instant

claimant. The claimant has unfortunately lost use of her left hand. However thankfully she is right handed with full use of that hand. I find the case of ***Marcella Clarke v. Claude Dawkins and Leslie Palmer*** most similar and therefore most useful. I bear in mind that the case at bar is more serious in that the claimant has a PPD of 10%. Consequently, the nature of the injury warrants an award in the sum of \$4,500,000.00 for pain and suffering and loss of amenities.

#### DISPOSITION

**[85]** Accordingly, I make the following awards in keeping with the equal apportionment of liability:

- i) The claimant is awarded special damages in the sum of the sum of (50% of **\$173,685.94**) which is **\$86,842.97** with interest thereon at the rate of 6% from May 26, 2006 to June 21, 2006 and at the rate of 3% from June 22, 2006 to April 3, 2020.
- ii) The claimant is awarded general damages the sum of (50% of \$4.5M) which is \$2.25M for pain and suffering and loss of amenities with interest thereon at the rate of 3% from July 24, 2008 to April 3, 2020.
- iii) The claimant is awarded 50% of her costs to be agreed or taxed.