In The Supreme Court of Judicature of Jamaica

In Civil Division

Claim No. 2011HCV01239

Between	**Trudi – Ann Hylton**	**Claimant**
And	**Wizzard Washington**	**1st Defendant**
	Patrick DaCosta	**2nd Defendant**

Consolidated with

Claim NO. 2011HCV04014

Between	**Shaun Hylton**	**Claimant**
And	**Wizzard Washington**	**1st Defendant**
	Patrick DaCosta	**2nd Defendant**

Heard: **25th September 2014 & 3rd October 2014**

Negligence- Motor Vehicle Accident – U-Turn on major thoroughfare – Whether Passing Vehicle at Fault – Damages – Muscular ligament – Splinters in Eyes – abdominal pain.

Danielle Archer for Claimant instructed by Kinghorn & Kinghorn

Dorothy Lightbourne for Defendants instructed by Lightbourne & Hamilton

Batts J.

1. I delivered this judgment orally on the 3rd day of October 2014. It is only now being reduced to a permanent form because of resource constraints.

2. This matter commenced with agreement between the parties insofar as the quantification of Special Damages was concerned. $25,348.84 in respect of Trudi-Ann Hylton (whom I will call the 1st Claimant) and $43,348.84 for Shawn Hylton (the 2nd Claimant). The three medical reports were admitted by consent as Exhibits 1, 2 and 3. The issues concerned liability, general damages and transportation.

3. The Claimants case is that the 1st Defendant was negligent in the way he operated the 2nd Defendants motor vehicle on the day in question. The usual particulars of negligence are alleged. These are traversed by the Defendants who allege that the 1st Defendant was positioned to turn and go in the opposite direction (a U Turn). That two motor vehicles approaching from the opposite direction stopped to allow him to do so. The Defendants allege while the 1st Defendant was in the process of effecting the manoeuvre the Claimant's motor vehicle overtook the 2 stationary vehicles and collided in the vehicle driven by the First Defendant.

4. The evidence in Chief (witness statement dated 25th September, 2014, led by the Defendants counsel, was consistent with their pleaded Defence. The Claimants' account of the accident is discernable from their witness statements which were allowed to stand as their evidence-in-chief. Shaun Hylton (the 2nd Claimant), who was driving the Claimants' vehicle stated that –

> 2. "I remember I was driving in the left lane and there was a Toyota Corolla motor car in the right lane. The Toyota motor car stopped suddenly.
> 3. I was observing to see what caused him to brake suddenly and I noticed that the vehicle on the opposite side of the road made a U turn at the median (island). Upon seeing this vehicle I honk my horn but the driver was on his cell phone so it appears that he did not hear my horn and the next thing I knew he collided with the right side of my vehicle."

The first Claimant, his wife and passenger put it this way,

> "On reaching a section of the road which is separated by a median the vehicle on the opposite side of the road made a U-turn at the median and collided with the right side of the vehicle I was travelling in."

5. It is therefore clear that all parties are agreed that the Defendants' vehicle was in the process of making a U Turn. The road it is agreed was the Brunswick Avenue Road. The accident occurred not far from where the Brunswick Avenue merges with the Spanish Town bypass. It is a major road. The Defendants' vehicle was a bus.

6. When cross examined the 2nd Claimant stoutly denied overtaking two motor vehicles. He admitted there was a vehicle to his right which had passed him. He said, and I accept, that two lanes were formed by vehicles at that section of the road although it is a single lane road. This is because it is shortly before the roads merge and becomes a dual carriageway. It was his intention to go left into Spanish Town and not to continue onto the Spanish Town Bypass Road. The 1st Claimant recalled a vehicle ahead of theirs and denied that they had passed any vehicle. The 2nd Claimant however recalls that the vehicle to his right braked suddenly because of the Defendant's manoeuvre. Having seen and heard the witnesses I accept that the Claimant's are witnesses of truth. They each gave evidence as they recalled it. It is not surprising that the 1st Claimant, a passenger was unaware of or did not observe the vehicle which had braked. It was not directly in front but to the right. It is quite likely her first intimation of something amiss was the sight of the bus making the U turn. The 2nd Claimant was candid about his speed b eing45 – 50 m.p.h.

7. Defence counsel urged this court to find that the 2nd Claimant ought not to have passed the car or cars. She alleges it was this manoeuvre which caused the accident. I do not however accept the 1st Defendant's account. Mr. Hubert Wizzard did not impress me. He stated that the first time he saw the Claimants' vehicle was when it hit the bus. He however admitted that the road at that point is relatively straight and there is a clear view for some distance. However when

asked how is it he never saw the Claimant's vehicle approaching his response was, because of the speed at which it was travelling. One would have thought that had the accident occurred in the manner he described he might have said, "I saw the vehicle but thought it would stop behind the other two vehicles, I never expected he would so dangerously overtake the 2 vehicles that had stopped to allow me passage." That was not his response.

8. I find, that there were no vehicles stationary allowing the 1st Defendant to turn. Indeed had he looked carefully before turning the 1st Defendant would have seen oncoming traffic, no matter the speed of their approach. I find that he attempted the manoeuvre at a time and in a manner that was dangerous. He tried to effect the manoeuvre ahead of the approaching traffic. The vehicle to the Claimants' right was able to stop in time, however the Claimant was unsighted by that vehicle and hence never recognised the danger in time.

9. Queen's Counsel, for the Defence, astutely suggested that the 2nd Claimant was negligent by not braking. It was she said not enough to blow his horn. When challenged in cross-examination, he explained his actions thus,

> "When I honked horn I was looking. Either I speed up or stop. No further area to swerve."

The scenario described, and the one I accept as true, was that in the dilemma that faced him, the Claimants' driver had to take a decision. Either attempt to stop and risk being hit in the side or keep going and try to avoid an impact. He elected the latter and hence the impact between the vehicles. It seems only minor damage to left indicator light of the bus and its left bumper. I do not find that the 2nd Claimant acted negligently in the dilemma which faced him. That dilemma was caused by the dangerous manoeuvre of a U turn by a bus along a major roadway.

10. **On the matter of damages-**

The First Claimant:

Exhibit 1 (medical report of Doctor O.K. Francis), described her injuries as muscular – ligament damage to neck, ligament damage to right hip, muscular ligament damage to right forearm. The report described her complaint of persistent pain. He treated her with muscle relaxants and anti-inflammatory medication to manage her discomfort. She was given 10 days dispensation from work. He reviewed her once and assessed her recovery rate as average. Neck pain continued and her neck appeared shifted. Her range of movement was much improved. Physiotherapy was not required and further improvement expected in 8 – 10 weeks. The Doctor saw her 3 days after the accident.

11. The 1st Claimant stated that after the accident she had a terrible pain in the hip. During, the day she noticed pain in the neck and back. She said she visited the family doctor the same day. She was unable to work for 10 days. She still (in June 2014) had pain and when she feels it she lies down and sometimes takes pain killers. She does not say that Dr. O K Francis is her family doctor.

12. There was no report from the doctor who she says she visited on the day of the accident. This is unfortunate. I however accept the 1st Claimant as truthful. She describes the injury to her forearm as being caused when the right rear view mirror became detached and flew through the window shattering it. It flew into the car and struck her on her right hand. The splinter from the shattered window also covered her baby that was on the back seat of the car. The splinters also sprinkled her husband. The 1st Claimant is a teacher and I accept that given the nature of her job 10 days sick leave was warranted given the pain she was feeling.

13. Claimants' Counsel relied upon

Goldson v Nestle –updated $1.2 million
Trevor Benjamin - updated $989,000

Walford updated $804,000
She submitted that $1.3 to $1.5 million was an appropriate award.

14. Ms. Dorothy Lightbourne QC relied upon -
Harvey v Rigabie CL049/2001
2nd December 2003 (Jones J. Updated $700,000) and
Wolleston v Charlie - the latter was not a reported decision, nor one in which I had the benefit of a written judgment. I declined to pay any regard to it because I cannot know what aspect of the evidence the court may or may not have had regard to. The ***Harvey v Rigabie*** decision was particularly useful. In that case the expert did recommend physiotherapy. As in this case also there is residual discomfort. In all the circumstances I award $850,000 for the Pain Suffering and Loss of Amenities of the 1st Claimant.

15. **The 2nd Claimant.**

He relied on 2 medical reports, the first Exhibit 2 by Dr. OK Francis. This doctor saw the 2nd Claimant 3 days after the accident. The injuries as reported were: muscle spasm affecting back, pain to abdomen, muscle spasm affecting groin and splinter injury to left eye. He described the pain and discomfort outlined to him by the patient. The doctor determined that the abdominal pain was related to muscle spasms. He observed that the 2nd Claimant's left eye appeared red and swollen. He referred him to an ophthalmologist.

16. Treatment consisted of analgesics and muscle relaxants 2-3 weeks were expected to elapse before there was marked improvement. He was prescribed antibiotic eye drops. On review the 2nd Claimant reported that pain and tenderness had ebbed after 1½ weeks. There was a low dull pain in the back and the ophthalmologist had removed a splinter.

17. Dr. C P Hamilton, an ophthalmologist, gave a report dated 3rd March 2011 (Exhibit 3). He first saw the 2nd Claimant on the 2nd July 2010. Examination revealed that with his glasses he saw 20/30 right and 20/25 left and 20/20 in each eye with a pinhole correction; small glass foreign body at 10 o'clock mid zone superficially on the cornea; intraocular pressure of 13 mm Hg in each eye

was normal as was the rest of eye examination. The doctor said the 2nd Claimant defaulted on several appointments. He was not seen again until the 16 September, 2010 when he was back to normal with 20/20 vision in each eye. Interestingly, the doctor does not say that he removed the foreign body. I am however prepared to infer that he did.

18. The 2nd Claimant described himself as a Customer Service Representative. The description does not assist me to form a view as to the extent of physical activity required on his job. The doctor he refers to as visiting is Dr. Francis and he does not say when that first visit occurred. His evidence is not suggesting of pain that was particularly intense. He described the situation with his eyes and states that the ophthalmologist performed a minor procedure to take out the splinters.

19. I find that the 2nd Claimant's injuries were less severe than those of his wife. The splinter to the eye caused discomfort but did not severely impact him. Claimants 'Counsel relied upon the same authorities used in respect of the injuries to the 1st Claimant. Defence Counsel relied upon -

Avril Johnson v Ricketts Khan Vol 5 updated award $1.1. million

Peter Marshall v Cole *Khans Vol*. 6 updated $756,000

The 2nd Claimant's injuries are far less imposing than those in the Avril Johnson case. Peter Marshall's injury was described as a moderate whiplash with some 16 medical care weeks. His injuries were more serious. I remind myself that in assessing compensation one is not compensating for what might have been. So that although the splinter in the eye was potentially damaging, and may have been cause for concern, it was neither painful nor disabling ultimately. I therefore assess compensation to the 2nd Claimant at $500,000.

20. There was no evidence led to support any other claim. There was no claim for damage to motor vehicles. I pause to observe also that there was no in depth objective evidence as to the area of damage to either vehicle. There was no evidence from the police although witnesses stated that the police attended the

scene of the accident. No diagram with measurements of the locus was provided for the assistance of the court. Also, as noted earlier, no evidence from the doctor whom the 1st Claimant stated she visited on the day of the accident. A court at trial may, I suggest, have been assisted by evidence of this nature. I cannot however decide a case based on evidence not lead; I must do my best on the evidence presented and on a balance of probabilities.

21. In the result there is judgment for the 1st and 2nd Claimants against the Defendants as follows:

1st Claimant General	
Pain suffering and Loss of Amenities	$850,000.00
Special Damages	$ 25,348.84
2nd Claimant General Damages (PS& A)	$500,000.00
Special Damages	$43,503.98

22. Interest I will run on General Damages at 3% per annum from the 23rd June 2010 and on Special Damages from the 30th July, 2011.

David Batts
Puisne Judge