[2015] JMSC Civ. No. 103

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2011 HCV 07128

BETWEEN	**CARL JACKSON**	**CLAIMANT**
AND	**ANOUSH HARRISON-JACKSON**	**2ND CLAIMANT**
AND	**MILLICENT BAILEY-DENNIS**	**1ST DEFENDANT**
AND	**HARVEY DENNIS**	**2ND DEFENDANT**

Mrs. Crislyn D Beecher-Bravo instructed by Bennett and Beecher-Bravo for the claimants.

Mrs. Stacia Pinnock-Wright for defendants.

HEARD: 11TH & 13TH February, 2015 and 27th May 2015.

***Negligence - Motor Vehicle Collision-liability for collision not in issue - Whether claimants injured as a result of collision-Damages*.**

Coram: Dunbar-Green J(Ag.)

[1] The claimants, Carl Jackson and Anoush Harrison-Jackson have brought a claim in negligence against the defendants Millicent Bailey-Dennis and Harvey Dennis, for injuries allegedly sustained in a motor vehicle collision in the vicinity of 38 Rosseau Road, Kingston 5 on 24th July 2009.

[2] At the time of trial, the court was told that liability for the collision had been conceded and only the following issues were left to be determined:

(i) whether either or both claimants were seated in the second claimant's motor car at the time of the collision;

(ii) if so, what injury, if any, was sustained; and

(iii) the extent of the defendants' liability for such injury.

[3] The first claimant was absent from the jurisdiction of the court and it was agreed that his witness statement, filed 20th November 2014, would stand as his evidence under the hearsay rule and in accordance with rule 29.8(1)(b) of the Civil Procedure Code (CPR). It was also agreed that if the claimants were found to have been in the vehicle at the time of collision, an assessment of damages, in relation to the first claimant, would take place at a later date on his return to the jurisdiction.

[4] The second claimant's witness statement filed 20th November 2014 was ordered to stand as her evidence in chief.

[5] The witness statements of Kevin Harrison, Wayne Green and Dr. Vernon Jones, were also ordered to stand as their evidence in chief, in support of the claimants' case.

The Second Claimant's Evidence

[6] In amplification of her witness statement, the claimant testified that at the time of the collision her car was parked, partially on the sidewalk and roadway, in the vicinity of her parent's home at 38 Rosseau Road.

[7] At the time, her husband, the first claimant, was in the driver's seat and she was seated in the left rear seat, along with her young child who was strapped in a car seat. The claimant had recently given birth and they were about to leave for the University Hospital for her follow-up treatment and the baby's six weeks visit.

[8] The first claimant had started the engine of the car and put on his right indicator when the second claimant felt a huge impact and realized that a vehicle had slammed into the back of their car, which was stationery at the time. The force of the impact was so intense that it pushed the car forward.

[9] On impact, she felt a sharp pain to her back and her child appeared non-responsive. Persons converged on the scene and assisted her from the car.

[10] The first claimant alighted through the driver's door, which was opened from the outside by persons who had come on the scene.

[11] The second defendant alighted from the offending vehicle and "appeared to be dazed and confused". She said that persons who were gathered at the scene were trying to talk to him about what happened but "he appeared to be speechless or uncommunicative."

[12] The second claimant rushed into her parents' home. The second defendant went in as well. He was offered a glass of water and the second claimant's brother, Kevin Harrison, prayed for the second defendant and the baby.

[13] The second claimant then left in a friend's car for the Bustamante Children's Hospital.

[14] A few days after the accident she began to have vaginal bleeding, which lasted for two weeks. Her back pain also became severe. She tried home remedies for two months, but when that failed she visited Dr. Vernon Jones at Apex Medical Centre on 25th September 2009. He prescribed pain killers and referred her for an X-ray.

[15] The pain killers helped but the back pain was felt upon sitting, standing or driving for long hours.

[16] She claims special damages as set out below:

(i)	medical report	$ 7,000.00

(ii)	prescription	1,336.86
(iii)	medical treatment (Apex Health Care Assoc.)	4,800.00
(iv)	X-ray	7,000.00
(v)	Image Plus Consultant	3,500.00

[17] In cross examination, the second claimant denied telling the doctor that at the time of the collision her baby was being nursed. She told the court that she exited the left hand side of the car, by a low wall. The vehicle had not been parked "right up against the wall." She denied exiting from the right and said she believed that was the side which was impacted the most.

[18] It was her evidence that she had remained in the car for about three minutes before exiting. She saw when the second defendant alighted from the vehicle he was driving. She also observed persons speaking with him at the gate, while she was in the yard.

[19] When she saw the defendant's vehicle it was to the right side of her car but she had only felt "the hit in the back of the car."

[20] She did not see the first defendant at the time of the collision or at all.

[21] The second claimant testified that she made her six-week appointment at the University Hospital the week following the accident, at which time she complained about the vaginal bleeding but not about her back pain.

[22] She also admitted to having been involved in two or three prior accidents.

Witness Statement of The First Claimant

[23] The witness statement of the first claimant corroborates the account of the second claimant and her witness, Kevin Harrison, that both claimants and the baby were seated in their car at the time of the collision. He also corroborates the evidence

of the second claimant that persons on the scene assisted her from the car, through the left back door, and assisted him by opening the driver's door from the outside.

[24] He too had concerns about the baby, consequent on the collision, and made arrangements with his friend, Wayne Green, to transport the second claimant and the baby to the Bustamante Hospital.

[25] Immediately after the collision, he felt severe pain in the neck and lower back. As a consequence, he visited doctors Lewis and Davidson who treated him. He also incurred expenses.

[26] He stated that the driver of the first defendant's car appeared to be in a daze and was invited to sit on the verandah of the house at 38 Rosseau Road. They later exchanged documents. He said that the claimants' car had extensive damage to the right rear panel, the brake lights and indicator lights. The right rear wheel was pushed forward and the chassis legs were bent. He also said that the driver's door and running board were badly damaged. The second claimant's car was eventually taken away by a wrecker.

Evidence of Mr. Kevin Harrison

[27] At the time of the collision, this witness was standing in the yard at 38 Rosseau Road. He heard a loud noise and realized that a car had collided with the back and side of the claimants' car.

[28] He said the claimants and their baby were seated in the car, which was parked on the sidewalk outside the premises. A small crowd gathered and with "[our] help" the claimants and their daughter were assisted from the car. He later recanted on cross-examination, that he had any involvement in removing the claimants' from the car.

[29] Mr. Harrison said he observed the second defendant, looking dazed. He also supported the claimants' evidence that she left with the baby for the hospital, shortly after the collision.

[30] In cross-examination, he said that he had not seen the collision occur but that after hearing the noise, he saw the defendants' vehicle behind the claimants'. The second claimant, he said, started to make a lot of noise.

[31] He was aware of the claimants' car being parked on the sidewalk very close to the wall, such that one would have to "squeeze through to exit on the left side of the car."

[32] He disagreed with counsel, that at the time of the collision his sister was in the house. His evidence was that he saw her and the baby coming from inside the car.

[33] After the collision, he said, the second defendant sat on the verandah at 38 Rosseau Road where he was served a glass of water and he, Mr. Harrison, prayed.

[34] He was not able to position all the persons whom he recalled as being present. He attributed this to failing memory, as the collision had occurred six years prior to the trial.

[35] He contradicted the second claimant's evidence when he said that her vehicle was a left hand drive. He also believed that the right side of the car was closer to the wall and that the second claimant had come from the left back door. The second claimant, he said, came out from the driver's side, which was on the left. He had also seen the baby being taken out by the second claimant.

[36] He denied that it was the right side of the second claimant's vehicle which was positioned along the roadway.

Evidence of Mr. Wayne Green

[37] Paragraph 4 of Mr. Green's witness statement was ordered redacted, it being hearsay.

[38] Mr. Green said that in the morning of 24th July 2009 he received a telephone call from the first claimant. As a consequence, he went to 38 Rousseau Road from where he transported the second claimant and her baby to the Bustamante Hospital.

[39] On arrival at the scene, he did not leave his vehicle and had only glanced at the claimants' car. He said there was damage to the back bumper and part of the back fender.

The First Defendant's Evidence

[40] The defendants deny that the claimants were seated in their motorcar at the time of the collision.

[41] The witness statement of the first defendant, Millicent Bailey-Dennis, was ordered to stand as her evidence in chief.

[42] She was a Sergeant of police at the time and owner of the car being driven by the second defendant. She was seated in the left back seat and her son, Ricardo, was seated in the front passenger seat.

[43] After the collision, the second defendant pulled up and stopped beside the claimants' car. She immediately alighted to see whether there was anyone in the claimants' vehicle and saw no-one. The second defendant parked in front of the claimants' vehicle and he also looked inside.

[44] She remained with both vehicles whilst the second defendant entered the yard at 38 Rosseau Road. He returned shortly after along with a man, whom she later came to know as the first claimant. He identified himself as owner of the vehicle. She observed the first claimant open a door, take out a folder and return to the yard accompanied by the second defendant.

[45] Twenty to twenty-five minutes later, she observed a woman, whom she later came to know as the second claimant, exiting the premises by a small gate, with a baby and an elderly woman. A car drove up and the second claimant and baby left in it.

[46] The first defendant said that, at the scene, when the question was asked if anyone had been injured, the first claimant said something to which the second defendant responded: "No one was in the parked vehicle." The first claimant's response was: "You betta shut up yuh mouth before a put all di damage pon you."

[47] The first defendant said she did not respond because some men who had gathered at the scene started to behave boisterously.

[48] She called the police and a report was made to them at the scene after which the claimants' vehicle was taken away by a wrecker.

[49] There was further amplification of her evidence, the contents of which are not material to the issues before this court.

[50] In cross-examination, the first defendant said that although her son was autistic, she had alighted from the vehicle without checking on him because he would have called out had he been hurt. She had also looked at him and knew he was alright. He came from the vehicle while she and the second defendant were examining the claimants' vehicle.

[51] On parking the car, the second defendant immediately proceeded to look into the claimants' car. Both of them looked. The second defendant made his observation known to her by saying, "no one [is] inside the vehicle."

[52] She told the court that she had looked into the claimants' car through the front windscreen as the car glass was darkly tinted. She had also looked through the windows on the right side of the car. Her evidence was: "I went up and looked inside using my hands to take the glare from my eyes."

[53] She denied that the collision created a loud sound. She also denied that persons helped the second claimant through a left door or that the right front door had been damaged.

[54] She did not see the second claimant and the baby in the car nor heard anyone expressing concern about the baby. She also said that the second claimant had not come to the scene of the collision.

[55] The second defendant, she said, was relaxed when he went into the yard.

Evidence of the second defendant

[56] The second defendant participated in the trial via video link from his home, due to ill-health.

[57] The court was satisfied that the arrangements were appropriate for a trial. An Attorney-at-law, Ms. Nicosie Dummett, was present at the location. The second defendant was sworn by the clerk. Both Ms Dummett and the second defendant were in sight of the court throughout, except when the second defendant required a restroom break. There was no objection to the procedures.

[58] The second defendant gave evidence that he observed a minibus, which was proceeding in the opposite direction, about to overtake another vehicle and proceeding into the path of his vehicle. On seeing this, he swerved to his left and accidentally hit into the right rear fender and right rear lights of the claimants' car.

[59] He immediately came to a stop beside the claimants' vehicle. He then parked in front of the vehicle, after which he made physical checks to see whether anyone was inside. He did not see anyone.

[60] He saw some persons on the road and made enquiries about the owner of the parked car and was shown 38 Rosseau Road. He went into the yard where the first claimant was pointed out as the owner of the parked car. He told him what had occurred, after which they both examined the damage to the vehicles and exchanged documents. They then returned to the house, where he was introduced to the second claimant and her mother. The second claimant was seen preparing a baby. She told him that she was taking the baby to the doctor.

[61] The second defendant said that the claimants' car was a "right hand drive" and it was parked about a foot from a fence. He agreed that the impact was to its right side.

[62] He also said that the house was approximately 25 feet from the sidewalk. He had parked his car about 20 feet in front the claimants' vehicle on the same side of the road and there was nothing between the two vehicles. The road in that area was three to four car widths.

[63] He denied that the second claimant had accompanied him into the house or that he had been offered anything to drink and prayed for.

[64] He denied that he had come to a stop beside the claimants' vehicle because he saw them inside and wanted to check that they had not been injured. He also said that there was no loud sound when the collision occurred.

[65] He said that the first defendant was standing by her car when the first claimant opened the right door and took out the documents. According to him, the first defendant said nothing to the first claimant.

[66] The second defendant said that on being introduced to the second claimant in the house, she showed no interest in her damaged car.

[67] He disagreed with the suggestion that people on the scene had to open the driver's door of the claimants' car and that the second claimant and baby were assisted through its left back door. He also disagreed that when he came on the scene, the second claimant had been seated in the back of the car. He said no one was in the car. He denied that he was too dazed or confused to notice or respond. He had also told the first defendant that no-one was in the vehicle at the time of the collision.

[68] On re-examination he said it was the right rear door and fender of the claimants' car that had been damaged.

FINDINGS OF FACT & ANALYSIS

A The Collision

[69] This is a case in which the defendants have accepted liability for the collision. However, the difference between the parties on what transpired is extreme. The case must, therefore, be decided on my assessment of the witnesses and the circumstances.

[70] I will begin with the evidence of Kevin Harrison because he was the only other witness at the scene immediately after the collision. I believe that he was in the yard at the time but he proved not to be a reliable witness.

[71] The parties are in unison that the claimants' car was right hand driven and not impacted on its left side. However, Mr. Harrison insisted that the vehicle was "left hand driven", the right side was parked close to a wall and it was the left side which was exposed to the roadway and had been damaged.

[72] Mr. Harrison was also inconsistent in his evidence as to who assisted the second claimant from the car. In the witness statement he included himself among those who had done so, but was emphatic in cross-examination that he did not assist.

[73] I ascribe to him no bad motive. I did not form the impression that he was deliberately setting out to mislead the court but his recollection was extremely faulty.

[74] As regards the evidence of the first claimant, I have borne in mind that, although not tested, it was materially corroborated by the second claimant's evidence.

[75] The second claimant said she came out of the car through the left back door, as she believed the right side had been impacted. When it was suggested to her that there was no impact to the right, she disagreed.

[76] Her evidence about the right door is believable, when juxtaposed with that of the second defendant. He agreed, in cross examination, that there was damage to the right rear door. He had said, initially, that the right front door had been damaged and then in re-examination said he had meant the right rear door. I accept his recantation in re-examination.

[77] Mr. Green, who arrived on the scene later, said he glanced at the second claimant's vehicle and saw damage to the back bumper and part of the back fender. Mr. Green was an auto-mechanic. It is not unreasonable that he could have made these observations at a glance. However, this case is not dependent on a determination of the type of damage which was done to the vehicle. It is necessary for me only to decide whether the claimants were in the vehicle at the time of the collision and if so, whether the impact, on either version, could have caused the injuries sustained.

[78] The defendants' case is that the claimants were not in the car at the time of the collision. Inherent in the defence is that the collision did not cause the injuries claimed.

[79] There was no credible evidence as to the velocity at which the first defendant's vehicle was travelling. However, the speed was such that when the second defendant saw danger ahead and swerved away from an oncoming vehicle, he did so in a manner which caused the vehicle he was driving to collide with the second claimant's car, which was then damaged and had to be taken away by a wrecker. This is not suggestive of a minor bump and is more consistent with the huge impact that the claimants said they felt and which caused the right rear wheel to be pushed forward, along with other unchallenged evidence of damage to the vehicle.

[80] Based on her evidence, the first defendant would have made great effort to look into the vehicle, through heavily tinted glass. The second defendant also looked in the vehicle, apparently to satisfy himself, after which he confirmed to her that no-one was inside.

[81] Such behaviour, by the defendants, would not have been consistent with a minor collision. If someone were in the car, and the collision were minor, the occupant would naturally have been expected to come out to see the cause of the collision and damage done.

[82] The first defendant also said that men who gathered at the scene behaved boisterously. It is curious as to why they would have done so, if, as the defendants said, no one was in the car, no one was injured, and as was implicit in their evidence, the accident was not major.

[83] I find that persons were gathered at the scene as the claimants said. The collision occurred on a thoroughfare and it would have been strange for it not to have drawn attention. It is also believable that those persons assisted the claimants to get out of the vehicle.

[84] I also find that the second claimant took her baby to the Bustamante Hospital on the day of the collision. She gave unchallenged evidence of this. Mr. Wayne Green also said that he took them to that hospital.

[85] I accept the submission of counsel for the claimants that the reasonable inference to be drawn from this fact is that the baby was in the car when it was impacted and there was the concern that she might have been hurt because she appeared unresponsive. I found that evidence to be compelling. I have found no other reason to explain the taking of the baby to the Bustamante Hospital at the time of the collision, but that she was suspected to have been injured in the accident.

[86] There is in fact evidence that they were about to leave for the University Hospital for the six-week check when the collision occurred. The switch to Bustamante Hospital suggests that something had intervened which necessitated urgent action in relation to the baby. On this evidence alone I believe that the baby was in the car with the claimants.

[87] There was no evidence that the baby had been ill, prior. According to the second defendant, he had entered the house and saw the second claimant preparing the baby and she told him that she was taking the baby to the hospital. He also said she showed no interest in the collision.

[88] I see no reason why the second claimant would have had no interest in her damaged vehicle, but found time to casually engage in conversation about taking her baby to the hospital, with the second defendant, a stranger whose vehicle had just collided with hers. I reject this as unbelievable.

[89] Any disinterest in the collision by the second claimant would have been because her young baby was unresponsive after the collision had occurred. She would have naturally been distracted by the baby's state and not have been expected to be paying attention to much else.

[90] I found no exaggeration on her part. However, when she was being crossed examined on whether she had been involved in accidents prior to 24th July 2009, she

was not forthcoming. In cross examination she told the court that she had two or three "maybe three - not sure" accidents prior to.

[91] This was the exchange early in her cross-examination:

> "Your vehicle was in another accident in June 2009?
>
> I am not aware of that.
>
> You are not aware of accident on 27th June 2009?
>
> I am not sure at this time.
>
> On the date of accident in July was there other damage to the vehicle?
>
> Not from my recollection.
>
> Wasn't there damage to the front right … before the collision in July 2009 (24th)?
>
> There might have been.
>
> I am suggesting there was.
>
> I can't say. I can't recall

[92] The court was not impressed with the quality of her evidence in this instance.

[93] This blot on the second claimant's demeanor, notwithstanding, my overall assessment of her leads me to the view that, on a balance of probabilities, she was telling the truth about the instant collision.

[94] I believe her evidence that she was in the car along with the first claimant and their baby when the first defendant's vehicle collided with it. I also believe her that the impact caused her stationary vehicle to jolt and move forward.

[95] It is not unlikely that the second defendant would have been dazed after the collision. An accident is not an event that one is prepared for. As I am already satisfied that a crowd had gathered on the scene and there was some panic around the baby's

state of consciousness, it is possible, in the circumstances, that the claimants might have been taken from the car without being noticed by the defendants. For these reasons I find, on a balance of probabilities, that the claimants were in the car at the time of the collision.

B. The Injuries

[96] Dr. Vernon Jones, a certified medical practitioner, examined the second claimant on 25th September 2009. She complained of pain in the back. On examination, he found:

(i) moderate tenderness on palpitation of the para spinal muscles in the lumbar region; and

(ii) range of motion of the back markedly limited by spasm of the back muscle.

[97] He concluded that the second claimant had suffered strain of the lumbar para spinal muscles and subsequent spasm of the said muscles causing pain and stiffness. The X-rays revealed no bony injuries. She was treated with cataflam and oral anti-inflammatory analgesic and scutamil-C. A muscle relent-physoly was recommended.

[98] Dr. Jones reviewed the second claimant on 23rd October 2009. She complained of back pain which worsened when sitting or standing for long hours. He gave her medication and recommended physiotherapy. Up to March 2010, she had not fully recovered.

[99] In amplifying his evidence, Dr. Jones testified that he had been practising medicine for over 25 years.

[100] It was his opinion that a woman of child-bearing age could experience vaginal bleeding for two weeks, triggered by strong emotional stress, such as being seated in the back of a car when another motor vehicle slammed into it. Such bleeding would be premature menstruation.

[101] He said vaginal bleeding for two weeks could occur in C-section patients but not necessarily heavy bleeding. Such a patient could experience lochia. Heavy bleeding suggested some strong emotional event to amplify the lochia, or some retention of the products of conception such as remnants of membranes or placenta. This would be abnormal and accompanied by fever and pain.

[102] Dr. Jones was of the opinion that the second claimant's injuries were "quite possible" as a consequence of being seated in the impacted motorcar.

[103] He testified that a plain x-ray would focus essentially on bony structures and was not the best method for investigating muscle and other soft tissue injuries. His diagnosis of the latter was therefore by his clinical acumen only, as the x-ray did not reveal any injury.

[104] He also said that a plain x-ray would not show a spasm unless it was profound, such as twisting of the spine which would be visible. He suggested that spasms could occur from any sudden muscle contraction, as in trying to catch a balance from a fall, coughing or heavy lifting, if done improperly.

[105] Dr. Jones told the court that spasms, associated with a caesarian section, do not usually exceed two to three weeks. He would therefore not associate the claimant's muscle spasms with the surgery. He also said that the pregnancy would not have caused spasms beyond a six-week period, after delivery.

[106] In cross-examination, Dr. Jones said he made no confirmation of vaginal bleeding. He did not examine the vagina of the second claimant.

[107] He said his conclusions were not based entirely on her history, as told to him, but on an examination.

[108] The second claimant's evidence was that although she began feeling severe back pains within hours of the accident, she did not seek medical attention until two months later because she had been trying home remedies.

[109] I do not believe the second claimant fabricated her evidence about the injury. It seems to me that it was not an unlikely outcome in circumstances where the second claimant was sitting in the rear of the car and certainly not prepared and braced for a sudden impact.

[110] I also have no basis on which to find that her spasms were caused by any other factor, particularly her recent surgery or any other collision involving her vehicle, prior to July 2009. The medical evidence was that spasms which could be associated with birth would likely have ceased by the time of the collision. There was also no evidence led as to the nature of any other collision, whether she was directly involved and her role.

[111] Therefore, I find that as a consequence of the collision on 24th July 2009, the second claimant sustained injuries as outlined by Dr. Jones.

[112] I also find that it was not unreasonable, having suffered no broken bones and cuts, that the claimant might have imagined that with home treatment the pain would wear itself away. Many are wont to underestimate non-visible injury. The fact that she waited for two months before seeing a doctor goes more to judgment as to the degree of severity of the spasms and her threshold for pain.

[113] I am not in a position to make a finding that the vaginal bleeding complained about was caused by the collision. The second claimant said she had visited the University Hospital the week following the accident, at which time she complained about the bleeding. However, there is no supporting evidence of this. Dr. Jones' examination was six weeks after the bleeding would have ended. His observations in relation to vaginal bleeding were therefore speculative. In the circumstances, I find that on a balance of probabilities the claimant has failed to prove that any vaginal bleeding was as a consequence of the collision.

[114] Having made these findings, I am satisfied that the second claimant has met the burden that is cast on her to prove, on a balance of probabilities, that she was an occupant of the impacted vehicle at the time of the collision and that she suffered injury as a result. The relevant principle was enunciated by Harris, JA in ***Glenford Anderson v. George Welch*** [2012] JMSC Civ. 43 at paragraph 26, inter-alia:

…It is also well settled that where a claimant alleges that he or she has suffered damage resulting from an object or thing under the defendant's care or control, a burden of proof is cast on him or her to prove his case on the balance of probabilities.

[115] On the evidence led, I am also satisfied, on a balance of probabilities, that the first claimant was an occupant of the car at the time of the collision. However, it is for him to prove at an assessment of damages that he was injured, as claimed.

Assessment of Damages in relation to second claimant

[116] Counsel for the claimant relied on the cases of ***Marcia Leslie v Danesh Chandra Panoe et al*** Khan Recent Personal Injury Awards, vol. 5, 150 and ***Schaasa Grant v Salva Dalwood et al*** Khan, vol. 6, 200).

[117] In ***Marcia Leslie***, the plaintiff was hit by a car on the sidewalk and suffered the following injuries:

(i) loss of consciousness for a few minutes;

(ii) bruises to left knee; and

(iii) severe back ache;

[118] She was treated at hospital and sent home. Despite use of analgesic she experienced severe backache which was aggravated by bending forward and by lifting objects.

[119] She was examined again some three months after the accident, at which time she was found to have:

(i) hyper-pigmental post-inflammatory spots on the lateral aspect of left knee;

(ii) tenderness over the lower lumbar spine and left para vertebral muscles; and;

(iii) limitation of straight leg raising to about 60 degrees on the left due to back pain;

[120] She was treated with analgesics and muscle relaxants. Five months later her condition improved and X-ray of the lumbar spine was normal. However, her back pain persisted and she had difficulty washing, shopping, and bending and lifting objects.

[121] Close to the 4 years after the accident she was examined again by the doctor and found to have tenderness of the para vertebral muscles on both sides of the lumbar spine. She was referred to Dr. Ali, Orthopaedic Consultant. Physiotherapy was also recommended. She did not maintain the visits and a year later still showed tenderness in the lumbar spine.

[122] It was the opinion of her general practitioner that she had suffered a **severe whiplash injury to the spine**, **severe back pains for about six months** and thereafter **intermittent back pains** of decreasing severity but causing some degree of **partial disability**. She was likely to suffer **intermittent back pains for several years** and remain **unable to undertake strenuous activity**. Her recovery had been delayed on account of her inability to maintain adequate treatment.

[123] An award of $400,000.00 was made for pain and suffering on 17th July 1997.

[124] I do not accept that the injuries sustained by Miss Leslie are similar to the second claimant's. The second claimant suffered no unconsciousness nor bruising. There was also no evidence that she had suffered a whiplash injury to the spine. The severity of back pain also appears to be far worse than the second claimant's. The claimant in **Leslie** also had follow-up treatment for four to five years after the accident. She also suffered partial disability. In the instant case there was no follow-up treatment beyond eight months of the collision and there was no medical diagnosis of any disability.

[125] In ***Schaasa Grant*** the claimant was flung from a seat when a bus driver braked suddenly. She suffered:

(i) severe back pains; and

(ii) marked swellings, spasms and tenderness to the para vertebral muscles bilaterally.

[126] The Orthopaedic Surgeon assessed her as having **mechanical thoraco-lumbar back pain secondary to severe injury to thoraco-lumbar spine**. She was referred for pain management and to a neurologist. She also had physiotherapy.

[127] She was referred to a second Orthopaedic Surgeon and assessed as having:

(i) right sided lumbar radiculopathy secondary to prolapsed intervertebral disc;

(ii) severe mechanical low back pain and mid-back pain; and

(iii) muscular spasms in her right shoulder and neck.

[128] She received further pain management and was diagnosed as having:

(i) chronic cervicothoracic pain with subjective cervical radiculopathy;

(ii) chronic mechanical low back pains with subjective lumbar radiculopathy; and

(iii) **permanent partial disability assessed as 10%** of the whole person.

[129] An award of $300,000,000.00 was made for pain and suffering on 16th June 2008.

[130] I find that the injuries in ***Schaasa Grant*** were more severe, evidenced by permanent partial disability at 10% of the whole person.

[131] The defendants relied on the cases of ***George Wint v Vincent Goloub*** C.L. 1993 W110 (reported in Khan's vol. 4, 211) and ***Jennifer Anderson v Clipper Transport Ltd and Leslie Eastwood*** C.L. 1994/A179 S.C. (Khan's vol. 4, 170).

[132] In ***George Wint*** the plaintiff was injured in a motor vehicle accident. He suffered moderate to severe tenderness over lower back with pain on bending. He was treated with analgesics. Three months after, he was much better, though still experiencing pain. An award of $30,000.00 was made for pain and suffering on 4th December, 1995. CPI then was 36.17. This award when updated using December 2014 CPI of 224.1 amounts to $185,872.26.

[133] I accept that this case is more helpful than those cited by the claimants. However, I find the injuries of the second claimant to be more severe and longer lasting.

[134] In ***Jennifer Anderson***, the plaintiff was a passenger in a motor bus and was injured in a collision. Her injuries and treatment were as follows:

(i) severe lumbar muscular spasm;

(ii) treated with analgesics and muscle relaxants;

(iii) total loss of lordotic curve; and

(iii) recurrent intermittent pain.

[135] She was awarded general damages in the amount of $95,000.00 at 27th June 1997. CPI then was 43.42. This award when updated using December 2014 CPI of 224.1 amounts to $490,315.52.

[136] This case was also helpful. However, in the synopsis to which I was referred, although the plaintiff suffered a total loss of lordotic curve and recurrent pain, there was no evidence of the extent of debilitation caused by the injuries. But in the instant case, Dr. Jones testified that the second claimant's symptoms persisted until March 2010, eight months after the collision. At the time of her witness statement in November 2014, the second claimant said she was still experiencing back pains when she sat, stood or drove for long periods, albeit there was no medical evidence to support this.

[137] Having considered the nature of her injuries and the period over which she suffered pain, as supported by Dr. Jones, I am of the view that an award of $1,000,000.00 would be reasonable.

[138] By way of special damages I award the sum of $22,300 as proved by exhibits 1-5.

Orders

[139] Accordingly, I make the following orders:

1. General Damages awarded to the second claimant in the sum of $1,000,000 with interest at a rate of 3% per annum from the date of service of the claim to the date of judgment.
2. Special Damages awarded to the second claimant in the sum of $22,300 with interest at a rate of 3% per annum from the 27th July 2009 to the date of judgment.
3. Costs to the claimants against the defendants to be taxed if not agreed.
4. Assessment of damages in relation to the first claimant adjourned to a date to be fixed by the Registrar.