



[2026] JMSC Civ.43

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01835

BETWEEN	KISHANE HALL	CLAIMANT
A N D	KEMWELL TAPPLE	1ST DEFENDANT
A N D	KENARDO NICHOLAS	2ND DEFENDANT

IN OPEN COURT

Ms. Christine Mae Hudson with Mrs. Antoinette Wynter-Mignott instructed by K. Churchill Neita & Co. for the Claimant

Ms. Faith Gordon instructed by Samuda & Johnson for the 1st Defendant

HEARD: March 18, 2026 and April 17, 2026

Tort – Negligence – Motor Vehicle Collision – Whether Defendant Breached his Duty of Care to the Claimant and Caused Loss and Damage.

Tort – Negligence – Contributory Negligence – Motor Vehicle Collision – Whether Claimant Contributed in Whole or in Part to his Losses.

Assessment of Damages – Quantum of Damages to be Awarded – Whether a Medical Report is Necessary before the Court can find that a Claimant is Injured – Whether Claimant Has Proved His Injuries Despite Absence of Medical Report.

Legislation – Road Traffic Act 1938 – s. 51.

Legislation – Law Reform (Contributory Negligence) Act 1951.

DALE STAPLE J

BACKGROUND

- [1] In the mid to late afternoon of the 9th July 2021, along Lyndhurst Road in the parish of St. Andrew, there was a collision between the Claimant, a motor cyclist and the 1st Defendant's servant and/or agent, the 2nd Defendant who was driving the 1st Defendant's motor vehicle.
- [2] The versions of the collision by the Claimant and the 2nd Defendant are diametrically opposed to each other and the only things agreed between them are the fact of a collision and the road on which the collision took place.
- [3] Both sides have asserted that the other side is entirely to blame for the collision and the Claimant has filed the instant claim to recover Damages for Negligence whilst the Defendant has stoutly resisted the claim and included in his defence a claim for contributory negligence on the part of the Claimant.
- [4] To this end, the Court is tasked with resolving this dispute between the parties. I have received submissions in writing from the parties and I am grateful for them. They have been duly considered and taken into account for this judgment.
- [5] It is important to note that the 2nd Defendant was never served with these pleadings. He did, however, give evidence on behalf of the 1st Defendant. The question of vicarious liability of the 1st Defendant for any potential negligence of the 2nd Defendant was raised in the 1st Defendant's defence. However, no submissions were made by either side in respect of this issue.

THE LAW ON NEGLIGENCE

- [6] I remind myself that it is the Claimant who must satisfy me that it was more likely than not that the 1st Defendant (vicariously as owner) owed him a duty of care and that the collision and consequent injury was the consequence of the 1st Defendant's breach of that duty to him.

[7] Lord Griffiths in the case of ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat et al***¹ reminds us of the burden and standard of proof in a negligence matter. He stated at pages 3 and 4 of his judgment that:

“The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred..... it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established.”

[8] Negligence is proven by establishing that the 1st Defendant owed the Claimant a duty of care; that the 1st Defendant breached that duty; and that the breach led to loss, injury or damage to the Claimant that was foreseeable².

[9] In establishing this duty of care, the damage to the Claimant caused by the Defendant’s negligent act must have been foreseeable and there must exist a sufficient proximate relationship between the Claimant and the Defendant to make it just to impose this duty of care on the Defendant to the Claimant.

[10] In Jamaica, the legislation governing driving on the road at the time of this collision was the **Road Traffic Act (1938)**. Specifically, section 51. Section 51(2) provided essentially that all drivers have a duty to take such action as is necessary to avoid an accident. In the context of this case, the Claimant is also considered a driver.

[11] Relevant as well is s. 51(1)(d). I will set it out below:

¹ [198] UK PC 7

² See the case of *Glenford Anderson v George Welch* [2012] JMCA Civ 43 at para 26.

“51(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 doing so it obstructs any traffic.

[12] Concerning the question of vicarious liability, it is for the Claimant to prove that the 1st Defendant, as owner, is vicariously liable for the actions of the driver of his vehicle. The decision ***Rasheed Wilks v Donovan Williams***³ makes this point.

[13] The owner of a vehicle, when confronted with an allegation in the pleadings that the driver of his vehicle was acting as his servant and/or agent, must properly put before the Court adequate pleadings to address the allegation that the driver was his servant and/or agent.

[14] If he fails so to do, then, the Court will consider that he has not rebutted vicarious liability. It cannot contain a bare denial of the allegation without supporting facts. This runs afoul of rule 10.5 of the Civil Procedure Rules⁴.

THE EVIDENCE AND FINDINGS OF FACT

How Did the Collision Occur?

The Claimant's Version

[15] The Claimant's evidence is that he was riding his motorcycle in the left lane along Lyndhurst Road on the afternoon of the 9th July 2021 at or around 2:00 pm. He was heading in the direction of Cross Roads from Maxfield Avenue. He said he was able to see clearly along the roadway and no vehicles were ahead of him. Up ahead, on his left, was an intersection with a road he identified as Grove Road.

³ [2023] JMCA Civ 15

⁴ See the discussions from paragraphs 30-40 of the *Rasheed Wilks* case above at n3 supra.

- [16]** There were vehicles in the lane of traffic to his right heading in the direction of Maxfield Avenue from Cross-Roads. He described the traffic as being bumper to bumper for as far as his eye could see. He said he saw vehicles coming out of the line, overtaking the line and making, what would be for those vehicles, a right turn onto the Grove Road. According to him, on seeing this, he reduced his speed and started tooting his horn.
- [17]** To his left, near to the Grove Road intersection, was a wholesale and a layby. The layby was in front of the wholesale. In the layby was a van/truck with its two left wheels on the sidewalk and the right wheels in the layby. However, it was not blocking his lane.
- [18]** As he continued along Lyndhurst Road, he saw a vehicle, which turned out to be the 1st Defendant's vehicle, emerge from the line of traffic heading towards Maxfield Avenue and coming in his direction in his lane at what he said was a fast rate of speed. Upon seeing this, he tried to take evasive action by swerving, but he could not swerve left due to the truck, so he swerved right, but there was a collision between his motorcycle and the 1st Defendant's car.
- [19]** He insists, in his witness statement, that he was always in his correct riding lane and that it was the driver of the car that came out of the opposite lane, into his lane and collided with him.
- [20]** In cross-examination, in answer to the tribunal, he said he was travelling between 15-20 miles per hour at the time of the collision.
- [21]** He accepted that there was a Unipet Gas Station on his left hand as one is going towards Cross-Roads. Crucially, he said one reaches to the Grove Road intersection, before one reaches to the wholesale with the layby of which he spoke in his evidence in chief. This means, and I so find, that he must have passed the Grove Road intersection, on his case, when he was hit by the 1st Defendant's vehicle.

[22] He estimated the distance from the Grove Road intersection to the Unipet Gas Station to be about 49.5 feet using the Court Room length as a guide. According to him, he saw no vehicles exiting the gas station as he rode along.

[23] He denied that there was traffic ahead of him in the lane heading to Cross-Roads. He also denied that he attempted to pass traffic in the Cross-Roads bound lane in the vicinity of the Unipet Gas Station.

[24] There followed this exchange (question numbering changed for convenience):

- 1 Where were you when you saw the first vehicle overtaking the line of traffic and head to Grove Road?
When I was near a plaza further up the road from Grove Road on the same side of the road. I don't remember the name of the Plaza.
- 2 Can you say how far this Plaza was from Grove Road?
About half of this Court room.
- 3 So from the Plaza you start to slow down and toot your horn?
Yes.
- 4 When you got to Grove Road, how many vehicles you saw overtake and go onto Grove Road?
It was more than one.
- 5 What did you do when you got to Grove Road and saw the vehicles overtaking?
When I got to Grove Road and saw the vheicles, I reduced my speed.
- 6 You further reduced your speed?
Yes.
- 7 When you reduced your speed, how fast were you going?
20-15 mph.

[25] This suggests then, on the Claimant's case, that he was taking care to observe the vehicles coming and overtaking their line of traffic to make it onto Grove Road. He was challenged by counsel for the 1st Defendant that he did not position himself to

stop when he saw these vehicles. His rejoinder was that was why he reduced his speed.

[26] There was then this exchange:

- 1 When you first saw the Toyota pull out of the line of traffic where were you?
I was in the lane heading to Cross-Roads. I was a little bit before you pass Grove Road. So I actually saw the vehicle swing out of the line of traffic when I was in front of the yellow wholesale.
- 2 From the yellow wholesale, can you estimate the distance of the Toyota when you saw it swing out?
I was from here (witness box) to the door. (Estimated using a tape measure at 14 feet).
- 3 About how many vehicles did it overtake?
I suddenly saw the vehicle. So I am not sure.
- 4 You cannot say how fast the 2nd Defendant was going?
No.
- 5 You did not swerve left correct?
No.
- 6 You swerved to the right lane?
Yes. But I was still in my lane.
- 7 The car caught you by surprise?
Yes.

[27] The Claimant's response in cross-examination, that he was a little before the Grove Road Intersection and actually saw the vehicle when he was in front of the wholesale, is consistent with his earlier answer in cross-examination when he indicated that you get to the intersection before the wholesale.

[28] He denied the suggestions put to him by counsel as to the fact that it was he that had overtaken the line of traffic in his lane and collided into the 1st Defendant's vehicle as it was merging into the line of traffic heading to Half-Way-Tree having exited the Unipet Gas Station.

The First Defendant's Version

- [29]** It must be stated that the certification in the Witness Statement for the 1st Defendant's witness was not done in compliance with Part 29 of the Civil Procedure rules. However, no objection to same was taken by counsel for the Claimant. The 1st Defendant's version of the collision comes from his witness, the 2nd Defendant. For ease, he will be referred to by his name as Mr. Malcolm.
- [30]** Mr. Malcolm said that on the day in question he was driving the 1st Defendant's car and he had just exited the Unipet Gas Station with the intention of proceeding into the Half-Way-Tree bound lane on Lyndhurst Road. He puts the time of day at around 4:00 pm. This already presents a 2 hour disparity between himself and the Claimant in terms of the time of the collision. But it is not material.
- [31]** He said that due to the high volume of traffic along Lyndhurst Road, vehicles exiting the gas station had to wait until they were given space to enter the roadway by a motorist on Lyndhurst Road. According to him, after a brief wait, a motorist heading to Cross-Roads stopped and signalled him to proceed and he did. After entering the Cross-Roads bound lane, he stopped to await a motorist in the Half-Way-Tree bound lane to signal him to enter.
- [32]** A motorist in the Half-Way-Tree bound lane stopped and signalled him to merge. As he was gradually merging with his lane, he saw a man on a motorcycle travelling at a fast rate of speed overtaking the stationary line of traffic in the Cross-Roads bound lane. Instead of stopping, according to him, the bike rider swerved across the front of the car in an attempt to pass it on its left side. Seeing this, he immediately applied his brakes to avoid a collision. But he said the rider lost control over the motor cycle and collided with the left side of the car.

[33] In cross-examination, he agreed that the traffic going to Half-Way-Tree along Lyndhurst Road at 4:00 pm would be bumper to bumper. However, he did not agree that the traffic coming in the opposite direction would be free-flowing.

[34] When exiting the gas station, he said he came out about 3 feet away from the main road. He was less than a vehicle's length from the car that had stopped to allow him to come into the road from the gas station. He had stopped for about a minute and a half before entering the main road. He said he stopped as he entered main from the gas station. He was there for about a minute before a vehicle heading to Half-Way-Tree stopped and signalled him to enter that lane.

[35] He said he saw the Claimant approaching and when he first saw him, the Claimant was 25 feet away. He said he saw the Claimant, "By me a go enter the other lane." His vehicle, at the time, was not positioned in a straight manner. Using some cars he demonstrated the positioning of the vehicles. I wrote down his demonstration as follows:

[demonstration: The Claimant was about 3-4 vehicles away from where I was positioned. The Claimant was in the middle of the road when I saw him first. My vehicle was at an angle. The back of my vehicle did not clear the lane going to Cross Road]

[36] There was then this exchange:

- 1 Before you start to go across, did you see the Claimant's motor cycle?
Yes.
- 2 Where was he now?
He was almost on the car bumper already.
- 3 Show me?
[demonstrates with toy cars the bike front wheel almost at the middle of the car's front]

[37] Now, according to him, when the Claimant's motorcycle was almost touching his vehicle (as demonstrated), he said he was stationary.

[38] Mr. Malcolm testified that the Claimant eventually hit his vehicle. He had the following exchange:

1 Did he hit into your vehicle?

Yes maam.

2 Where exactly did he hit when he first made contact?

The front left of the vehicle. [pointed to left front bumper in vicinity of left head lamp on the toy car].

3 You agree that it was the right of your car that was more exposed to this oncoming vehicle?

Yes maam.

[39] Mr. Malcolm said that when he was hit, he was stationary. But he denied that the collision occurred in the side of the road heading to Cross-Roads. He said the Claimant was coming at a speed of between 70-80 miles per hour. According to him the Claimant fell to his [Mr. Malcolm's] left in front of the vehicle that stopped to allow him to come across. He denied that the Claimant fell on the sidewalk. When asked what he meant by the Claimant losing control in paragraph 9 of his witness statement, Mr. Malcolm said as follows:

What you mean the Claimant lost control?

When him come down and realise that my back was in the road still, him don't stop, him see me meck a full stop, him just swing over to go over on my left side because the space was there.

[40] That was essentially the end of the cross-examination as counsel put her case to the witness and he made denials.

Analysis

[41] I must say that I was more impressed with the Claimant as a witness than Mr. Malcolm. The Claimant retained his composure more and did not seem terribly shaken in cross-examination. On the other hand, I did not find Mr. Malcom to be a convincing witness. Nor did I find his account convincing. I preferred the account of the Claimant. The Claimant's account, I found, was the more likely of the two

accounts. It was internally consistent, more logical and therefore, in my view, more likely. Mr. Malcolm's account was neither consistent nor logical.

- [42] At paragraph 7 of his Witness Statement, Mr. Malcolm said that the motorist from Half-Way-Tree stopped and signalled for him to proceed. He then said that **as he was gradually merging** (emphasis mine) into that lane, he saw the Claimant coming. I can infer from this that his vehicle was in motion and continued moving.
- [43] He went on to say that the Claimant did not stop, but swerved across the front of his car in an attempt to pass it on the left side. It was at this point, that Mr. Malcolm said he applied his brakes to avoid the collision.
- [44] The narrative shifted under cross-examination as pointed out by the Claimant in his submissions. Under cross-examination he said that he was stationary just as the Claimant was about to touch his vehicle. This suggests he had come to a stop before. This is different from what was said in his chief and represents an inconsistency that I find to be material.
- [45] Even in his description of what he meant by "lost control" Mr. Malcolm presented a curious case. He said, "When him come down and realise that my back was in the road still, him don't stop, him see me meck a full stop, him just swing over to go over on my left side because the space was there."
- [46] In Mr. Malcolm's cross-examination, the Claimant had been travelling at what can be called breakneck speed of between 70-80 miles per hour in heavy traffic. He said when he first saw the Claimant, he was 25 feet away or 3-4 cars away. Mr. Malcolm was still trying to merge into the lane going to Half-Way-Tree despite seeing the Claimant coming at such a speed from just 3-4 cars away. It is my finding that on this evidence, at least a part of his car was protruding into the middle of the road.

- [47]** I do not find it likely that a rider could have been travelling at such a fast rate of speed along that road with bumper to bumper traffic in both directions. I therefore reject this account.
- [48]** Mr. Malcolm testified that the vehicle that had stopped to allow him to come across into the Half-Way-Tree side was 3 feet away from his vehicle. This leaves, in my finding, a very narrow gap for a vehicle to navigate, especially at 70-80 miles per hour. According to him, the Claimant did not stop at all. He just tried to navigate this narrow path. Yet, there was no evidence of any damage to the car that had stopped nor any major damage to the 1st Defendant's car other than, according to Mr. Malcolm's evidence, a minor scratch to the left bumper and a small crack to the windshield near the left wing mirror. He also saw no significant damage to the motorcycle. In fact, so minimal was the damage, that he decided not to report the matter to the police. Such minor damage is hardly likely after a collision with a vehicle at full tilt of 70-80 miles per hour. Using some simple calculations, this puts the speed at 112-128 km/h at the time of collision.
- [49]** On the other hand, the Claimant's case is much more believable. Despite submissions from counsel Ms. Gordon, I do not find the fact that the Claimant could not remember how many vehicles had been overtaken by Mr. Malcolm before the collision to be of any great moment.
- [50]** Ms. Gordon further submitted that the Claimant's case relating to the reason he had to go right instead of swerving left when seeing the was undermined by the fact that the truck in the layby was not protruding into the lane. However, the submission ignores the fact that, and I so find, there was the sidewalk, then the layby before the road. The truck's 2 left wheels were on the sidewalk and the two right wheels were in the layby. This is why the Claimant said there was no space to go over. This seems credible to me and I accepted it as such. There were no other issues of serious challenge to the credibility or reliability of the Claimant.

[51] So these are my findings of fact having assessed the witnesses for myself:

- a) The Claimant was riding his motor cycle in his correct lane along Lyndhurst Road in the direction of Cross-Roads from Maxfield Avenue;
- b) The 1st Defendant's vehicle was being driven by Mr. Malcolm at the material time.
- c) It is my finding that the 1st Defendant has failed to properly plead that the 2nd Defendant was not his servant and/or agent and, in any event, has failed to place any evidence before the Court to rebut the presumption of agency that has arisen by virtue of the fact that Mr. Malcolm was driving his vehicle.
- d) Mr. Malcolm was driving along Lyndhurst Road in the opposite direction of the Claimant.
- e) There was an intersection between Grove Road and Lyndhurst Road;
- f) After the intersection, on the left side of the road as one is heading in the direction of Cross-Roads, there is a wholesale with a layby.
- g) On the day in question a truck was partially occupying the sidewalk and the layby.
- h) The Claimant was travelling between 15-20 miles per hour;
- i) As he approached the intersection, Mr. Malcolm's vehicle emerged from the line of traffic and headed in the direction of the Claimant at a fast rate of speed.
- j) The Claimant tried to swerve left, but could not as the truck was present to his left in the layby, so he swerved right, but Mr. Malcolm's car still collided into him.
- k) The Claimant suffered serious injuries and losses as a consequence of the collision between the vehicles.

Who Is Liable on these Facts?

[52] There was no dispute between the parties that a duty of care was owed by the motorists to each other on these facts. They were both motorists using the same road in close proximity to each other. A duty naturally arises both at common law and under the Road Traffic Act 1938.

[53] On these facts as I have found them, I find that the collision was caused by the actions of Mr. Malcolm who overtook his line of traffic, came into the path of the Claimant who was lawfully travelling in his lane and created the obstruction. In my view Mr. Malcolm breached his duty owed to the Claimant to take all reasonable steps to avoid a collision and failed in his duty to drive his car in such a manner that it does not cross a road and cause an obstruction.

[54] It is also my finding, on the evidence that as the Claimant suffered injuries as a consequence of Mr. Malcolm's actions, the Claimant has made out his case in negligence against the driver.

[55] As the 1st Defendant has failed to rebut the presumption of vicarious liability, he is liable for the breach of duty by Mr. Malcolm owed to the Claimant and the consequential loss and damage suffered by the Claimant.

DAMAGES

General Damages

[56] There was no medical evidence produced in this matter as Ms. Gordon objected to the medical report from the hospital going into evidence and the Claimant was unable to secure the attendance of either the doctor who prepared the report or someone from the hospital to speak to the report.

[57] However, that is not the end of the matter. According to the case of ***Strachan v Albany Resort Operator Limited***⁵ the Court can accept the evidence of a Claimant or a witness about the injuries a person received and rely on it as proof of the injury even if there is no medical report. In the case itself, the Board held that expert medical evidence was only required to establish a causal connection between the Claimant's slip and fall and the specific medical diagnoses of cervical laminectomy and lumbar decompression. They went on to say, however, that the Plaintiff's own evidence that because he had slipped and fallen he had acute pain in his neck and back, was hospitalized for 6 days and had to undergo physiotherapy had sufficiently established that he had sustained, at the very least, significant soft tissue injuries to his neck and back. The Board held that the trial judge and the Court of Appeal, ought not to have dismissed the negligence claim on the basis that the Plaintiff had not established damage as the result of slipping and falling.

⁵ [2026] UKPC 5 at paragraph 23.

[58] In this case, the Claimant has suffered the following injuries based on his evidence which I accept and which was uncontradicted nor challenged:

- (i) Loss of consciousness;
- (ii) Extreme pain.
- (iii) Swollen right shoulder and left hand without being able to move them;
- (iv) Torn off skin from right shoulder;
- (v) Open wounds on fingers;
- (vi) Top of left foot swollen and inability to move toes;
- (vii) Bleeding from shoulder, finger and left foot.

[59] Whilst at the hospital, the Claimant said his left hand/wrist was placed in a splint and a cast from his arm to his fingers. His right shoulder was wrapped in a bandage from his shoulder to his elbow and both his hands were placed in slings.

[60] He would get injections for pain daily. He said he had to keep his arms in one position in the slings as any slight movement would cause severe pain. He could not put any weight on his left foot and moving his toes was very painful.

[61] The by the end of July he was discharged. Therefore he spent approximately 10 days in the hospital. He continued to receive follow-up care from the hospital and attended an outpatient orthopaedic clinic for three months. Eventually the bandages and other such items were removed and he started the process of exercises to get his movement back.

[62] He says he still experiences problems with his left hand/wrist, right shoulder, and left foot. He still has scars on his fingers and the skin on his right shoulder is rough to the touch and very dark. He says he is no longer able to lift objects over 10 pounds with just one hand. He has difficulty doing household tasks such as washing his clothes and cleaning due to the pain in bending and flexing his wrists.

[63] As I indicated, these are quite serious injuries. From the fact of a cast being applied, I can infer and find that he would have suffered a very serious traumatic injury to the shoulder extending down to the hands. This was the major injury. I find that all

of the injuries and consequences experienced were the direct result of the driving of the 1st Defendant's driver.

[64] The case of *Victor Cornilliac v Griffith St. Louis*⁶ sets out the matters to be considered by a Court in assessing damages for personal injury. They are as follows: (a) The nature and extent of the injuries sustained; (b) the nature and gravity of the resulting physical disability; (c) the pain and suffering endured; (d) the loss of amenities suffered; and (e) the extent to which, consequentially, the plaintiff's pecuniary prospects have been materially affected.

[65] I examined the authority of *Jotham Treasure v Thomas Bonnick et al*⁷. In *Jotham Treasure* the Claimant sustained a fracture to the right clavicle resulting in pain to the shoulder. However, he had an extensive period of suffering post incident (almost 9 years up to the time of the assessment of damages). He was awarded \$650,000.00 on March 28, 2008. The updated award is to the sum of approximately \$2m today after indexation.

[66] Whilst the period of recovery was much longer, the instant claimant had far more extensive injuries than the Claimant in *Treasure*. I would therefore slightly discount this award given the fact that the nature of the Claimant's injury isn't known (whether it was a fracture or not) and the period of recovery was much shorter.

[67] In my view, therefore, an award of \$1,800,000.00 is appropriate.

Special Damages

[68] I was not minded to award the Claimant the sum of \$600,000.00 for loss of earnings. The Claimant said he was a mechanic and that he earned \$30,000.00 per week. There was no evidence from the Claimant as to whether he had his own garage or was employed (formally or informally); what sort of mechanical work he

⁶ (1965) 7 WIR 491

⁷ Unreported, Supreme Court Jamaica, CL 2001/T026, March 28, 2008

did (as in what sorts of vehicles he worked on; was he a body-man, general mechanic etc); how many cars he worked on per week; what his overheads (if any) were etc.

[69] This is not a street side vendor situation. Mechanic shops in Jamaica are generally properly run establishments and the mechanics who run them, in my experience, usually issue receipts for work done. There were no receipts produced and no attempt was made to get any evidence from even one customer to substantiate this claim. I therefore do not find his claim for loss of earnings proven to the required standard.

[70] Concerning transportation expenses for travel to the hospital and back home, I find that this claim was proven and I award the sum of \$10,000.00 as claimed on the evidence.

[71] No documents were put into evidence and so none of the other items claimed were allowed as they were not proven.

CONTRIBUTORY NEGLIGENCE

[72] Contributory negligence was properly pleaded by the 1st Defendant. However, I do not find that the Claimant contributed to the collision or his injury on the evidence presented.

[73] As explained above, I find that it was the driving of the 1st Defendant's driver, that was the true cause of the collision. I did not see what more the Claimant could have done in the circumstances.

[74] I do not accept that he was not keeping a proper look out. He clearly saw Mr. Malcolm approaching, and considered his options, but simply could not evade the vehicle in the circumstances.

DISPOSITION

- 1 Judgment for the Claimant against the 1st Defendant.
- 2 Damages to the Claimant assessed as follows:
 - a. General Damages for pain and suffering and loss of amenities in the sum of \$1,800,000.00 with interest thereon at 3% from the 8th November 2023 to the 17th April 2026;
 - b. Special Damages in the sum of \$10,000.00 with interest thereon at 3% from the 9th July 2021 to the 17th April 2026.
- 3 Costs to the Claimant to be taxed if not agreed.

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Dale Staple
Puisne Judge