



[2020] JMSC Civ 42

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013 HCV 01337

BETWEEN	LIVINGSTON LAING	CLAIMANT
AND	CHARMAINE ELESMA FORBES	DEFENDANT

IN OPEN COURT

Mr. Raymond Samuels instructed by Samuels & Samuels for the Claimant.

Jacqueline Cummings instructed by Archer, Cummings for the Defendant.

Heard: 27th, 28th of November 2019, 7th February 2020

Negligence - Motor vehicle accident - Breach of duty of care.

THOMAS, J

INTRODUCTION

[1] This claim is brought by the Claimant Mr. Livingston Laing in negligence for damages and consequential loss arising from a motor vehicle accident which he alleges occurred on the 6th day of January 2011. He alleges that on the aforementioned date, he was a pedestrian on the main road in the town of Baileys Vale in the parish of St. Mary. There was a street demonstration at the particular time and the street was crowded with pedestrians. The defendant forced her way through the crowd and hit him down while he was standing on the soft shoulder of the walk way on the left-hand side of the road, as one faces Port Maria.

[2] He alleges that he was accordingly injured, and he attributes his injuries, loss and damages to the negligence of the Defendant in that the Defendant was:

- i. Driving in a reckless and dangerous manner;
- ii. Driving into a crowd of pedestrians including the Claimant on a busy thoroughfare without any regard for their safety and thereby injuring the Claimant;
- iii. Driving into a crown including the Claimant on a busy thoroughfare without being able to discern the soft shoulder from the driving surface of the road and thereby injuring the Claimant who was standing on the soft shoulder;
- iv. Driving without due consideration for other users of the road including the Claimant and thereby injuring the Claimant;
- v. Failing to slow down, swerve, stop or so to control the motor vehicle as to avoid colliding with the Claimant;
- vi. Failing to keep a proper look out and as a consequence drove on the soft shoulder and on the Claimant's right foot thereby crushing same".

[3] The Defendant Ms. Charmaine Forbes, is resisting the allegations of the Claimant. In her defence she disputes the claim on the following grounds: -

- i. She denies that on the 6th day of January 2011 her mother vehicle was involved in a collision with the Claimant along the Baileys Vale Main Road in the Parish of Saint Mary and denies any negligence on her part.
- ii. If there was any collision it would have been as a result of the negligence of the Claimant, or contributed to by the negligence of the Claimant in that the Claimant was:
 - a. Using the road without due care and attention.

- b. Failing to keep any or any proper lookout or to have any or sufficient regard for traffic that was or might reasonably be expected to be on the said road.
- c. Stopping without any warning on a thoroughfare without ascertaining that it was safe to do.
- d. Blocking a thoroughfare in direct contravention of the command of police officers on duty at the time
- e. Failing in time or at all to observe or heed the presence of the Defendant's motor vehicle along the roadway.
- f. Walking in roadway in a negligent and/or inattentive manner so as to expose himself to risk harm, loss and damage
- g. Failing to clear to the roadway when commanded to do so by the Police".

THE EVIDENCE

[4] Mr. Laing's evidence is that on the 6th day of January 2011 at about 9:30a.m. he was standing on the sidewalk along the main road in the town of Baileys Vale, St. Mary. There was a demonstration going on at the material time about the roads and the street was crowded with persons. A lady driver, driving motor vehicle with registration number 8049 FP and whose name he later found out to be Charmaine Elesma Forbes, the Defendant, was trying to force her way through the crowd and came on to the soft shoulder onto the side walk on the left hand side of the road as one faces Port Maria and ran over his right foot.

[5] After running over his right foot, she came out of the car and said she was sorry. He was in a lot of pain and was holding his right foot. The Defendant was not paying attention and was operating her motor vehicle without regard for anyone. He suffered injuries and as a result, was taken to the Port Maria Hospital, St. Mary.

[6] On cross examination Mr. Laing states that:

He normally opens his shop in mornings about 9 to 10 o'clock. That morning in 2011, January the 6th he opened his shop at about 8.30 to 9 a.m. He drove his Toyota Corolla wagon from Free Hill to Bailey's Vale that morning and "buck up on the road block." He came out of his car and "stop and park diligently in a lady's gateway." He parked because he could not go through the road block. It was a terrible road block, cars, truck and "Berbridge [sic]" were in in the way. "Berbridge" is the tree that they cut down. He was going to the supermarket in the town to do some shopping at the wholesale.

[7] The town he was going to was Port Maria Town. He did not join the demonstration. He agrees that the roads needed to be fixed. He understood why they were blocking the road. He did not stay in his car like the rest of motorist because he was watching the road block patiently to clear. He does not know how the roadblock was cleared. He was standing on the pedestrian walkway. When he got to the roadblock and saw the roadblock there was no traffic line. This was about 9 to 9:30 a.m. No line of traffic built up in his presence. He saw about 5 or 6 cars there at the time. None of these 5 or 6 cars went through the roadblock. He was not there until the roadblock was cleared.

[8] He states that he did not see police come there and clear up the roadblock while he was there. According to him, they only tried. He saw police come to the scene of the roadblock and they tried to move some of the things out of the road. On his account, they got to move some of the things out of the road, but still no car could pass through even after the police moved some of the things as it was still not wide enough for a car to go through. His evidence is that the police never cleared the full road, only a part and maybe one person could pass after the police cleared it. "People had to walk around; it was too terrible." He claims he was standing on the pedestrian walkway from the road, that is where pedestrians would walk. His evidence is that he was in the bush, about 5 feet from the roadblock.

[9] Mr. Laing was shown a photograph of the scene and was asked to indicate where he was standing in relation to the roadblock, which he did. His evidence continued as follows:

He was standing on the right-hand side of the road. If you are going towards Port Maria, he was on the left-hand side of the road. There was a basic school right where the demonstration was taking place. He never counted how many people were out by the roadblock; a couple people were there. It was a crowd of people. Everybody else was near him in the vicinity where the roadblock was taking place. He did not know them. A couple people were standing near to him more than seven (7) people were near to him because it was a demonstration going on.

[10] He remembers saying he was on the other side of the basic school. He then admits that where he showed in the picture was the same side as the basic school. He then says he was standing on the side where the basic school is and that he first saw the green car when he was standing on the pedestrian walkway when the car drove up and ran over his foot. He insists that he did not see the green car parked in the traffic waiting on the roadblock to finish.

[11] He further gives the following responses:

He was there quite a while when he saw the green car; maybe an hour. He did not go back home because he was waiting on the road to clear so he was "waiting diligently, humbly". He couldn't afford to turn back. The shop was locked up. He "couldn't turn because there was a roadblock to and from; tree cut down in the road and all these things". The road was blocked to go back home. He was not a part of the demonstration.

[12] On his evidence no car got through the road block while he was there. He did not see people walking up and down preventing cars from driving. He saw only four (4) to five (5) cars parked. The Defendant sped up and forced through the crowd

and ran the car over his foot. He only saw her car drive up. There was no car before or behind her. Her car alone he saw driving.

[13] She was coming from Port Maria direction towards him. Only her car came from the Port Maria direction, no other car. He saw her car forcing through the crowd. The crowd she forced through was standing a little way from him on the pedestrian walkway. When she was forcing coming, they scattered. He did not get enough time to move.

[14] He agrees that the police were there but they were “a little distance from him”. He admits that he never called the police. He states that “that is the lady’s concern” He “never get no time to bawl out for the police”. When she ran over his foot he “drop down and bawl out ‘help, help”.

[15] He further admits that:

He did not tell anyone to call the police. As a driver he knows the rules of the road. He knows that if he is involved in an accident, he should report it.

[16] He continued that:

He did not call the police because the pain he was going through “was outstanding”. He did not have time to “penetrate the police”. Everybody was minding their own business. The Defendant came out of the car and say ‘sorry me gentleman I never see you, come let me take you to the Port Maria Hospital’. The same lady said “I’m sorry, I never see you Sir”. He does not know if she hit anybody else.

[17] When asked by Counsel why he kept holding his knee while giving his evidence he states, “I was feeling pain so I had to hold my knee”. He denies that he was a part of the demonstration. He further states that the police did not clear the road block in his presence. He did not hold on to Ms. Forbes’ car door while she was driving through the road block. He did not hold on to her car door and run alongside her vehicle. He did not run down her car, not for a moment. He was in a terrible

state of shock from the injury. He would not have asked her to take him to the hospital when he had his car there.

[18] He further states that it was with the Defendant's consent that he went into the front passenger seat of the car and she drove him to the hospital. She turned back and went to the Port Maria Hospital. She went back in the direction she came. That section behind her was not blocked so she reversed and turned the car back to the Port Maria direction.

[19] He asserts that:

She had enough space to turn the car around and head back to Port Maria. She did not come through the road block when the police signalled her to drive through. He did not go to the Baileys Vale High School the very next day to ask Ms. Forbes what she can do for him. It is not true that she said she's not giving him any money and he should go to the police.

[20] He denies having an accident around the same time of this incident of January 2011. He hesitated, then stated "I don't quite remember when but it's not in the same period of time" He agrees that his shop and car "mash up" in that accident.

[21] He further states that:

In that incident he got some minor injuries. He was running from the accident and dropped in the bushes. He does not remember hurting his foot at that time. When he got to the hospital he did not walk out of the car. A wheelchair man was there. The Defendant asked a wheelchair man to assist. He did not walk from the hospital unaided.

[22] He was later asked which of the accidents happened first the one at the road block (which is the subject of this claim) or the one involving his shop. He responded that the accident involving the road block happened last. He further states that the pedestrian walkway was about three (3) or four (4) feet wide.

THE EVIDENCE OF THE DEFENDANT

[23] The evidence of the Defendant Ms. Forbes is that:

On the 16th day of January 2011 she was driving her 2000 green Daewoo Leganza motor vehicle that is registered 8049 FP along the Bailey's Vale Main Road, close to the junction of Grace Street in the parish of St. Mary. On reaching the vicinity of the Joy Eccleston Basic School, she met up on a line of stationary vehicles. Upon reaching the line of vehicles she also brought her vehicle to a stop and saw that there was a crowd ahead of her. She was approximately seven vehicles behind. After waiting for some time, seeing that the line of vehicles was not moving she pulled over to the left and parked.

[24] She states that she exited the vehicle and walked towards the crowd. She saw that there was a road block and police officers on the scene in the process of removing the road block. She waited for approximately half hour for the road block to be removed. She then went back to her vehicle and re-joined the line of vehicles and began to travel towards the school.

[25] As she drove, a crowd was to the side of the roadway, so she drove at a very slow pace as the police officers signalled her and others to proceed. Just as she passed the crowd a man held on to her left front door and was running alongside the vehicle. He was saying "you run over mi foot, you run over mi foot."

[26] She immediately brought the vehicle to a stop and he repeated his utterance. He then asked her to take him to the hospital. At first, she told him no because her vehicle did not run over his foot. However, she agreed to take him to the hospital afterwards because she was to have met a student and the school nurse at the Hospital the same day. The Claimant got into her vehicle and he sat in her passenger seat. When she took him to the hospital, she did not stay with him.

[27] Sometime later that morning she travelled to the Port Maria Police Station and gave a statement to Constable Mattis of the Traffic Department.

[28] She further states that:

The Claimant visited her at school the following day. She noticed that he was wearing a bandage on one of his feet; to be more precise it was only covering the top of his foot. The Claimant accused her of not waiting for him at the hospital. She told him that she had reported the matter to the police. She did not hear nor see him again.

[29] Her evidence is that she did nothing wrong that day as she drove on the directions of the police. She believed the Claimant was the author of his own misfortune as he disobeyed the Police orders and remained in the roadway when the Police had recommended the vehicles to proceed.

[30] On cross examination she states that:

Prior to coming onto the Bailey's Vale road she was coming from Boscobel on her way to work. She was coming from the direction of Port Maria. When she came up on the road block she pulled off the road completely. Where she pulled off is also where pedestrians would walk. She saw the road block. Police officers were present. She stopped about sixteen (16) feet from the road block. She saw persons on the side of the road. Nothing could go through the road block.

[31] She further responds that:

When she went up to where the road block was, she did not see any way through. There were about four (4) or five (5) vehicles in front of her. She went back to her vehicle and sat in her car. When she went into her car and sat in it, she did not decide that she was going to go through, there wasn't any way. Police cleared the road and was calling the traffic along. She was not in a rush to go anywhere.

[32] She also replies that:

It is not true that she decided to drive on the pedestrian walkway to go through the road block. She did not force her way through the crowd and run over Mr. Laing's foot. He held on to the door of her car, that's when she stopped. She was going at a slow pace and he was moving with the pace of the car.

[33] She further states that he was running alongside her vehicle while holding on to the door. Her window was down so he held on to that section. There were vehicles behind her. She stopped her vehicle but not for long. As it stopped, he opened the door and said she needed to take him to the hospital because she ran over his foot. Where she stopped was after leaving the crowd. The police were there trying to clear up the road block. She did not go through the road block as the police had in fact cleared up a side of the road so people could pass. She had passed where the police were clearing the road block.

[34] She agrees that a strange man (the Claimant) jumped into her car and she did nothing at the first time. Prior to him coming into her vehicle she said to him "I did not run over your foot". The police were not calling her at that time because she already left where the police were.

[35] She had to turn around to take him to the hospital. She had to come back through the part of the road block that was cleared. She made a U-turn. The U-turn was all the way to the top at a cross road. She drove through the road block to the cross road. That was close to where Free Hill is. There were about five (5) cars and at the time the cars were moving freely. She had to pass the police again, but said nothing to them.

[36] When the Claimant reached the hospital, he jumped out of the vehicle and she don't know where he went. She denies that she did nothing when he came into her vehicle because she was aware that she ran over his foot. She states that she did not feel guilty because she did nothing wrong. She says that she never saw Mr.

Laing until he held on to her car door. She is not quite sure that there was a pedestrian walkway on the Bailey's Vale road. Where the Claimant held on to her vehicle was on the road because she was on the road driving. When the Claimant held on to her car was after the police had called her. The crowd was a little bit away from where the road block was, that is after she passed the road block. Only a few pedestrians were on the Port Maria side. She denies that that is why she thought she could have gone through on the side and forced her way through.

[37] She further responds that:

It was when her vehicle was passing that Mr. Laing held on to her vehicle. The police officers were by the road block. Where the police were signalling was not in that close proximity to the crowd. They were behind her. She would have already passed them.

[38] Her speed, she states, when the police officers were signalling her was 10 to 15 kilometres. The police were signalling the traffic to move. On re-examination she states that she was not aware that she ran over the Claimant's foot and that she was not aware that she ran over the Claimant's foot and that she did not feel the wheels of the car go over anything. She was not ahead of the line of traffic. The Defendant held on to the passenger's door of her car. Her vehicle is a left-hand drive vehicle.

ISSUES

[39] The issues which arise in this Claim are issues relating to the tort of negligence. These are:

- i. Whether the Defendant owed a duty of care to the Claimant.
- ii. Whether the Defendant breached her duty of care to the Claimant by causing her motor vehicle to run over his foot.
- iii. Whether the Claimant suffered injuries and damage as a result of the Defendant's breach of her duty of care.

- iv. Whether the defendant is solely responsible for the injuries to the Claimant, or did the Claimant fail to take reasonable steps to prevent injuries to himself.

THE LAW

[40] In the case of ***Glenford Anderson v George Welch [2012] JMCA Civ. 43 Harris JA*** at paragraph 26 stated that:

“It is well established by authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to the Claimant by the Defendant, that the Defendant acted in breach of that duty and that the damage sustained by the Claimant was caused by the breach of that duty.....”.

[41] The *locus classicus* on the law of negligence is: ***Donoghue v Stevenson – [1932] A.C. 562***. In that case at page 580 Lord Atkin stated that:

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

[42] In the case ***Esso Standard Oil S.A. Ltd. vs Ivan Tulloch [1991] 28 J.L.R. 553***. The court made the pronouncement that *“all users of a road have a duty of care to other road users.”*

SUBMISSIONS

[43] I must indicate that despite making orders, giving the parties the time to file full submissions. I only have the benefit of the submissions from counsel for the Defendant. The summary of Ms. Cummings' submissions on behalf of the Defendant is as follows:

“The Claimant has sufficiently contradicted himself that the court cannot accept his version of the events. The parties all agree that police were on the scene at the material time. The Defendant had no reason to bring anything to their attention. It is the Claimant that asserts that something happened to him, so the onus was on him to alert the police not her. The Claimant would like this court to believe that despite the terrible road block that he could not pass, that the Defendant drove off the roadway and ran over his foot in an effort to negotiate around the road block. The Claimant gave evidence that the Defendant forced her way through the crowd yet no one else was injured. The police were there yet and no one called this to the attention of the police”.

[44] She also points out contradictions on the Claimant's case stating that these call into question his credibility. In highlighting these contradictions, she poses certain questions. These are:

- i. Which version of the Claimant's evidence is the Court to believe?
The version that he was in the road where he marked in ink.
- ii. The version where he was on the left-hand side of the road as one faces Port Maria? Or
- iii. The version where he was the right-hand side of the road near to a light post completely off the road?
- iv. How was he able to reach up to the Defendant's motor vehicle to alert her or get her attention?

v. Did he run beside her motor vehicle as the Defendant asserts?”

[45] She also submits that:

“The Claimant agrees after being pressed, that earlier he has been in another accident where his shop, car and himself received damages. Yet he has not given clear evidence on what injuries he suffered in that incident. Thus, if his car and shop were damaged prior to this incident, are we to believe that he still had his shop in operation or his car to drive on that date in January? This fact goes to his credibility again. The police report submitted into evidence is of no assistance to the Court as the particulars of that accident describe a different accident with a Toyota Corolla and a Leyland truck.

[46] Her submission continues as follows:

There is little evidence of any negligence on the part of the Defendant. It is not possible from the Claimant’s assertion that she was driving fast, when he repeated several times how terrible the roadblock was and that no one could pass. The court ought to accept the Defendant’s version that the police cleared the road block to allow cars to proceed through and when she was proceeding along the Claimant grabbed onto her car door and ran alongside accusing her of running over his foot. The “Claimant could only have been the author of his own misfortune, if the court accepts he was injured at all that day. He could only have received those injuries when he entered the roadway when the Defendant’s car was being signalled to pass by the Police.

DISCUSSION

[47] There is no dispute on the evidence that both parties in this case were road users. The Claimant at the material time was a pedestrian and the Defendant was a motorist. Therefore, it is an established fact that in the circumstances, the Defendant did owe a duty of a care to the Claimant.

Whether the Defendant Breach that Duty of Care to the Claimant

- [48] On examination of the evidence I find that there are inconsistencies on the accounts of both parties. However, it is in fact trite law that in Civil Proceedings the burden of proof rests on the Claimant to prove his claim on a balance of probability. Therefore, where there are inconsistencies that go to the root of the case of the Claimant that remain unresolved on his case, he would have failed to discharge his burden despite the presence of inconsistencies on the Defendant's case.
- [49] I find that there are some serious concerns with the credibility of the Claimant and the version presented by him. On cross examination he states that he did not see police come there and clear up the road block while he was there. They only tried. He admits that they moved some of the things out of the road but asserts that no car could pass through and they never fully cleared the road, only a part. However, I take this as an acceptance that the police were in fact on the scene at the time of the incident and that the purpose of the police of the scene was to clear the road block. Therefore, it is my view that the aim of police with regards to removing the blockage could not have been for pedestrians to go through. The fact is, on his version of the evidence there would have been no need for the police to clear the road block for pedestrians to pass through, in light of the fact that he testifies that there was a walk way on which he was standing that was approximately 5 feet wide and wide enough for a car (that of the Defendant) to pass through.
- [50] Therefore, in those circumstances it would defy common sense for the police to clear only a part of the road that "one person maybe could pass." In fact, I do not believe that in the language of the ordinary Jamaican he would have accepted that a part of the road was "clear", if in fact only one person could pass through.
- [51] Additionally, his evidence is convoluted and conflicted as to where he was standing when he was impacted with the Defendant's motor vehicle. In his evidence in chief he states that in trying to force her way through the crowd, the Defendant came onto the soft shoulder unto the side walk on the left-hand side on the road as one

faces Port Maria and ran over his right foot. He admits that the Defendant was travelling from Port Maria. Therefore, her correct side of the road would be on her left, that is to his right as one faces Port Maria.

[52] His evidence is that it was the left of the Defendant's vehicle that came into contact with him. Therefore, even if I were to find that she left her correct side of the road and came over to her right and his left, the left of her vehicle would be closer to the road and the right to the soft shoulder. In light of where he indicated that he was standing, close to the light post, "in the bush", I would expect that based on how he described the accident, it is the right side of the Defendant's vehicle that would have impacted him.

[53] Therefore, for him to have been impacted by the left side of the Defendant's vehicle, in light of the fact that he accepted that she was travelling from Port Maria, he would either have had to be in the road on his left or if the Defendant was properly positioned on her correct side of the road, he would have to be in the road on his right, that is her left.

[54] Further, on cross examination he indicates that he knew where the basic school was and that he was standing on the side of the road across from the basic school. Yet later in cross examination he admits that the side he indicated he was standing on in the photograph, is the same side that the basic school is on. In any event I find it rather strange and incredible that a traffic violation resulting in injuries to the Claimant would have been committed virtually in the presence of the police, that is, police being on location, and it was not brought to their attention. The Claimant, admits that the police was right there on location attempting to clear the road block.

[55] He also indicates that the Defendant's motor vehicle was the only vehicle coming from her side. Therefore, in speeding up and driving through the crowd she would have at least passed in the vicinity of the road block where the police were to get to where the Claimant was. That kind of driving in and itself would have been evidence of dangerous driving.

- [56]** In light of the fact that she was the only motorist on the Claimant's account driving in that manner I don't see how that kind of driving could have gone undetected by the police on the scene. Additionally, the fact that he alleges that she had to reverse to the area where she was coming from, essentially passing the vicinity of the road block and the police again, I find it very instructive that there is no evidence from the police on the scene of them being aware of the incident. In fact, as counsel correctly points out in her submissions, the only police report that has been submitted on the Claimant's case is one that is unrelated to the incident but relates to another accident involving a Leyland truck.
- [57]** The Claimant also admits that neither he nor anyone else sought to bring the incident to attention of the police. He, being a motorist, would have known of the requirement to report an accident. Indeed, his words on cross-examination are "I know that if it was an accident I should report it." Therefore, it is my view that the Claimant, if he was not the person at fault, being the person that sustained injuries, would seek to give at least a preliminary report to the police on the scene. It is against this background that I find his version incredulous.
- [58]** Additionally, I find that he has been quite evasive and appears to lack credibility in his demeanour. My first impression of his evidence was that he was able to drive freely from home up to the point of the road block, at which point he was prevented from going to Port Maria. The indication is that he was so precluded by him not being able to pass through the road block. The road block would therefore be in front of him facing Port Maria. In light of his evidence in chief he therefore would have driven freely from his home towards Port Maria until he came upon this road block. However, his evidence has become quite confusing when he says "there was road block to and from home". This therefore raises the unanswered question, "how was he able to pass through the road block from home?"
- [59]** There is no indication as to where this block was, he having driven unencumbered from home until he came upon this block. How then, would he have known that the road that was previously clear was blocked unless when he had passed before the

road was blocked? This affects his credibility, which is really the main issue in this case.

- [60]** His evasiveness becomes especially pronounced. when he asked about another accident in which he is claiming damages for personal injuries and for the complete destruction of his shop and motor car. He is unable to say when this other accident occurred. When asked what happened first, the accident with the shop or the accident at the road block, he says “the road block happened last” but, then says he does not remember.
- [61]** Further, he indicates that he was at the road block for approximately one (1) hour prior to the incident. That would indicate that the road was blocked for at least one (1) hour. I find it quite improbable that only one vehicle, that is, that of the Defendant would have been travelling from the direction of Port Maria within an hour. This in light of the fact that he accepts that there is a basic school and high school in the area. Additionally, it is also his evidence that the road is a main road. It means that it is expected that teachers, parents and students would have been commuting to and from. Therefore, I find it incredible that after one (1) hour of road block, the Defendant’s vehicle would have been the only vehicle in the line of traffic coming from Port Maria.
- [62]** While there seems to be inconsistencies on the Defendant’s version which I will highlight later on, I find that she appears to be more forthright in her evidence and demeanour and her version appears to be more probable. I find her evidence to be more consistent and accords with common sense. That is, based on the fact that both parties agree that there was a road block, and in light of the fact that there is no evidence from the Claimant that she was there at the commencement of the road block, I would expect as she described, that on reaching the area after at least after one (1) hour of blockage, she met up on a line of stationary vehicles.
- [63]** I accept that the police officers were on the scene and were in the process of removing the road block for the movement of vehicular traffic. I find it more

probable that the Defendant drove through the side of the road that was cleared by the police rather than speeding through a crowd on the "pedestrian walkway" in the presence of the police.

- [64]** In those circumstances I find that the Defendant was not speeding but driving slowly. If she was in fact speeding there is no explanation on the Claimant's case as to how he would have been able to get her attention in order for her to stop. I take into consideration that fact that he said he shouted. However, if she was in fact speeding as he describes it, she would have run over his foot and sped past him. However, he placed her in ear shot after the impact, as he was able to shout and got her to stop in the vicinity of the impact and he was able to enter the vehicle unaided in the same vicinity. This suggest to me that that she was not in fact speeding.
- [65]** The evidence of the Defendant is that the Claimant held on to the front passenger door of her vehicle. She also states that her vehicle is a left hand drive vehicle. Therefore, if he held on the left front of her vehicle he would have had to be holding on to the driver's side. This is a noted contradiction on her case. However, I do not believe that this materially alters my view that the version of the Claimant, the party who ultimately bears the burden of proof, appears less credible. In any event he is admitting that he came in contact with the left of the defendant's vehicle. Therefore, even on his version, the interpretation or inference is pointing to him being in the road and in touching distance of the Defendant's motor vehicle when he sustained his injuries.
- [66]** Therefore, I find that it is more probable that the Claimant received his injuries, that is, the Defendant's car running over his foot, by him placing himself in the roadway and holding to and running alongside the Defendant's moving vehicle. In this regard I find that the Claimant is the cause of his own injuries.
- [67]** On the evidence of both parties, when it became apparent that he was in harm's way, the Defendant stopped. In those circumstances the only thing that could have

been expected of her is to keep the vehicle on the road and drive slowly looking out, and trying to avoid coming into contact with the pedestrian traffic.

- [68] It is the evidence of the Claimant that when he shouted out, the Defendant came to a stop and indicated that she did not see him. Her evidence is that when she realized he was holding on to her passenger door and running alongside her vehicle she stopped. The evidence is not that he was to the front of the vehicle when it impacted him. He was to the side. What is reasonable depends on the circumstances of each case and is a question of degree (See the case of ***Bourhill vs Young [1943] A.C. 92***).
- [69] It is my view, that the front of the defendant's vehicle having passed the Claimant and having been properly positioned on the road, it could not have been foreseeable that a road user would hold on to, or put himself in touching distance of a moving vehicle causing injury to himself. I take the view that it could not be reasonably expected of a motorist to monitor all the actions of a pedestrian, especially an adult pedestrian who should be looking out for his own safety.
- [70] Therefore in these circumstances, where it is found that the Defendant was driving slowly, properly positioned on the road and the Claimant put himself in close contact with her vehicle at an angle that she would not have been able to see him until he called out to her, it is my view that no negligence can be ascribed to the Defendant. Therefore, I find that the actions of the Defendant were reasonable in all the circumstances.
- [71] In light of the foregoing, I find that the Claimant has not discharged his burden on a balance of probabilities, that the Defendant is totally or even partially responsible for any injuries he sustained. Consequently, I find that the Defendant is not liable in damages to the Claimant.

ORDERS

[72] Judgment is entered in favour of the Defendant.

Cost to the Defendant to be agreed or taxed.