



[2013] JMSC CIV. 24

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

**CLAIM NO. 2008 HCV 01928**

<b>BETWEEN</b>	<b>ICOLYN LAWES</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>JAMAICA URBAN TRANSIT COMPANY LIMITED</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>A N D</b>	<b>METROPLITAN MANAGEMENT TRANSPORT HOLDINGS LIMITED</b>	<b>2<sup>nd</sup> DEFENDANT</b>

**Danielle Archer instructed by Messrs. Kinghorn & Kinghorn for Claimant**

**Marcelle Donaldson instructed by Messrs. Lightbourne & Hamilton for  
Defendant**

**Heard: January 23, 2013**

**Negligence- passengers on bus – whether duty to allow  
passenger to mount step before proceeding – whether duty to  
await conductors signal.**

**CORAM: JUSTICE DAVID BATTS**

[1] This matter was heard on the 23<sup>rd</sup> January 2013, at which time I delivered an oral judgment. I asked counsel for the parties to submit a note of the oral judgment to me. This is my corrected version of that note.

[2] Prior to the commencement of this matter counsel for the Defendants indicated they were ready to proceed. Counsel for the Claimant stated that she anticipated that objection would be taken to the sole medical report but in spite of her best efforts she was unable to have the doctor here today. I therefore enquired whether the Defendants would be taking an objection with the medical report and the other documents in the Notice of Intention dated 8. October 2012.

Counsel for the Defence indicated they would be taking no objection to the documents which would be agreed.

[3] The Claimant's counsel in a brief opening indicated that there were 2 issues to be resolved; (a) Whether the Claimant was a passenger and (b) how were her injuries sustained.

[4] The Claimant Icolyn Lawes then gave evidence. Her witness statement stood as her evidence in chief. In it she said she lived in Top Hill Hamshire and at the date of statement she was 64 years old. She describes herself as a farmer. She recalls that on 6<sup>th</sup> of January 2006 she took a JUTC bus along Molyne's Road at about 4:30pm. There were other passengers getting on the bus heading to Spanish Town.

[5] She stated she was on the step of the bus whilst the other persons paid their fares. *"just as I was about to go up the steps further to where I would pay the conductor the bus drove off"*. She stated that the bus drove off so suddenly she could not hold on to anything to balance herself and was flung from the step to the door that had closed behind her.

[6] The bus kept driving as she tried to catch her balance. The conductor looked at her did nothing but a nurse assisted her to get up at the other bus stop. It was only then that she was able to pay her fare.

[7] She stated that on reaching Spanish town she mentioned the incident to the driver who apologized and said the conductor should have told him to stop the bus.

[8] Counsel was granted permission to lead evidence regarding the ticket mentioned at paragraphs 7 and 12 of the Claimant's Statement. A document was shown to the witness and she positively identified it as the ticket she received that day. She stated she was on a number 21 bus. Defence Counsel objected to the admission on the grounds that it was unsigned. I overruled the objection and admitted the ticket as Exhibit 1. The witness admitted that the

handwriting on the ticket was not hers but when she went to the Depot someone there wrote the license number of the bus to which the ticket related.

[9] Her statement gives no date of the visit to JUTC. Exhibit 2 was a medical report dated 28 February 07 and exhibits 3 -8 were the receipts. Exhibits 2 - 8 were admitted by consent.

[10] When cross examined the Claimant vividly described what she experienced. It was consistent with her witness statement except she added that she had a bag in her hand which was a new year's gift. She said she didn't speak with the conductor as she was angry that he did not help her when she fell. She admitted being hypertensive but not diabetic. She admitted visiting the Linstead Hospital.

[11] She explained the circumstance of her visit to the University Hospital of the West Indies. In answer to the Court she explained she didn't get up until it went to the next bus stop where with the assistance of a nurse she could get up and buy the ticket. That in essence was the case for the Claimant.

[12] The Defendant opened by refuting and denying that the incident occurred on 6 January 2006. The Defendant's first witness was Geovannie Dyer. He was sworn and his witness statement allowed to stand as his evidence in chief. In that statement he says he was employed since 2001 and was now an acting inspector. On 6 January 2006 he was assigned as Conductor (Customer Service Assistant) on PA 00025 a number 21 bus which plies the Half Way Tree to Spanish Town route. He stated his working hours and said he was located at the rear of the bus and when passengers entered from the last door of the rear they would come and turn to where he was and pay the fare. He said railings were provided throughout bus and on entering there is one beside the passenger. He denies seeing anyone fall and no one came and told him they had fallen. During cross examination he admitted he could not remember the details of 6 January 2006 nor how many persons were on the bus that day. He could not say if it was full nor could he identify any passengers on the bus. He stated that he was asked to do an incident report pertaining to the alleged incident but that there

was nothing to report. He said the bus was fitted with mirrors internal and external which allowed the driver to see the rear when the bus was not full. He considered his duty to be collection of fees, issuing of tickets and be polite. He said there were rails at the side on the steps he identified Exhibit 1 as a JUTC ticket but pointed out it was faded. In answer to the Court he said there was a button on which he could signal that it was safe to proceed but the driver was not obliged to await that signal before driving off.

[13] The Defendant's next witness was Christopher Johnson – he was a driver employed to the JUTC and drove a bus on Route 21. He describes it as a 60 feet, white double decker bus. His evidence was much the same as that of the previous witness. However from his cross examination the following noteworthy points emerged:

- a. He knew and could recognize  $\frac{3}{4}$  of passengers on his route which he has driven for many years
- b. He could not recognize the Claimant;
- c. The bus had inside mirrors which allowed him to see anyone – he could see them as soon as they stepped on the 2<sup>nd</sup> step if they were 5 feet tall;
- d. He would not be able to see them on the bottom step
- e. The conductor has a button which is used to signal when the bus can move off. However he is allowed to drive off without getting that signal
- f. He identified exhibit 1 as a JUTC ticket and saw the license plate for his bus written on it;
- g. He was not surprised that the printed details on the ticket were faded as the incident was alleged to occur in 2006;

[14] At the close of the Defendant's Evidence, Counsel for the Claimant applied to amend the Particulars of Claim, there was understandably no objection to the application nor were there any consequential amendments. Both were commendably brief in their addresses to Court

[15] The Defence relied on the case of **Fletcher v United Counties Omnibus Co. Ltd** P.I. Q R. P 154 C. In the interest of keeping this oral judgment within a reasonable length I will not repeat the submissions. However counsel can rest assured that I considered each point. The Claimant has the legal burden of proving her case on a balance of probability in that regard I accept she had done so for the following reasons:

- (a) I observed her demeanor and accept she fell on the bus and in the manner stated;
- (b) She purchased a ticket which is clearly of some vintage and the license number noted on it is consistent with her account. Clearly someone at JUTC could read it and determine the identity of the bus;
- (c) The injuries noted in the medical report are consistent with the fall she describes.

[16] The Defendant's Counsel made much of the fact that the medical report gave a different date and was dated prior to the date of the accident. Unfortunately, this aspect was never put to the witness nor indeed was the doctor challenged. It is indeed unfair in those circumstances to expect that without more the Court will reject a witness' evidence on that account only. Furthermore the medical report is after all compiled from the hospital's records or what the doctor writing the report deciphered from those records. There are margins for error. In any event the date of the incident is not so important as what happened on the date. Regrettably, the ticket which would have had a date on it has faded with time and this is, as the Defendant's 2<sup>nd</sup> witness says, only to be expected.

[17] In the result however I accept the Claimant's evidence as to the date, time and manner of the incident. The next question is what flows from the facts. It is my opinion that the driver and conductor were negligent as pleaded in driving off and allowing the vehicle to drive off respectively. They failed to ensure the passengers were safely secured or failed to conduct the passengers safely on their journey. This finding I think flows almost inevitably from the admission of the Defendant's witnesses that although there existed the signal button for the

conductor to indicate when it was safe for the driver to resume the journey, it was the practice of the driver not to wait on such a signal but to rely on his rear view mirrors. Surely, if as the Claimant says, and as I have found, she entered the bus with a bag in one hand and that before being able to mount the 2<sup>nd</sup> step the bus moved off, then the driver would have been negligent.

[19] More so on a 60 ft articulated vehicle, I find on a balance of probabilities that the conductor gave no signal to the driver who moved off before the Claimant could safely board the bus and whilst she was mounting the steps. As regards the authority of *Fletcher v United Counties Omnibus Co Ltd*. P.I.Q.R P 154C that case is distinguishable as it concerns a 22 year Claimant who having boarded the bus was moving down the aisle to sit with her friend. The bus moved off safely but was forced to make a sudden halt. The question was whether the driver had a duty to wait until she was seated before moving off. It was not the moving off which led to the injury it was the sudden and unexpected stop. The Court decided that the driver was not duty bound to wait until everyone was seated. The Court was careful to note that different consideration might apply having regard to the age of the Claimant and whether she was carrying luggage - both being distinguishable features in this case. Furthermore the Claimant was in the process of mounting steps when the driver shut the door and moved off. It was the sudden movement forward from a stationary position which precipitated the Claimant's fall. I therefore find the 1<sup>st</sup> Defendant negligent by virtue of the actions of its servant/agent. Had it been necessary I would also consider the 1<sup>st</sup> Defendant's system which allowed the Driver to move forward without it being safe. This was not an issue on the pleadings before me and I make no such findings.

## **DAMAGES**

[20] On the question of damages – the medical report speaks to soft tissue injury but a hard collar was provided. This suggests a whiplash type injury. In her Witness Statement she details suffering for a long period of time. The receipts suggest she attended for treatment over a considerable period from 7 January 2006 and at 25 September 2007 and visited Pauline Williams Green MD

from 3 June 2006 – 26 June 2008. I found the judgment of Roy Anderson J in **Claim No 02876 HCV 2002 Trevor Benjamin v Henry Ford et al** which was cited by the Claimant as most useful. It was decided in March 2010 the injuries were quite similar with no fracture but residual pain. In 2010 the sum awarded was \$700,000.00 which updates to \$851,979.00.

[21] Counsel for the Defendant relied on **Suit No. CL 1993 W 110 George Wint v Vincent Goloub** delivered 4<sup>th</sup> December 1995 which is of some vintage decided as it was in 1995 and concerned a 49 year old who had moderate to severe tenderness over back on bending.

[22] On the other hand the case of **Claim No. 2006 HCV 01324 Marion LLandell v Judah Campbell** involved more serious injuries including soft tissue swelling on the forehead with severe headache and dizziness, inflammation of left leg. That award was \$950,000.00.

[23] In this respect I make an award for damages as follows:

- For Pain and Suffering **\$900,000.00**
- For Special Damages **\$39,000.00** in keeping with the amendments granted and supported by receipts;
- Interest on Special Damages at 6% per annum from 6 January 2006 to 23 January 2013 and at 3% on General Damages from 14 May 2008 to 23 January 2013 ;
- Costs to Claimant to be taxed if not agreed.

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**Justice David Batts**  
**Puisne Judge**