



[2025] JMSC Civ 06

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2023CV00887**

<b>BETWEEN</b>	<b>JACQUELINE PALMER</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MEDFORD SINCLAIR</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Ashford Meikle, Attorney-at-law for the Claimant

Monique T. Rowe and Ayisha Robinson instructed by Michelle Shand Forbes, Attorney-at-law for the Defendant

**Heard: 19<sup>th</sup> November 2024, 5<sup>th</sup> December 2024 and 27<sup>th</sup> January 2025**

**Negligence - Liability for motor vehicle collision involving motorist and pedestrian  
- Contributory negligence - Assessment of damages.**

**C. BARNABY, J**

**BACKGROUND**

- [1] This claim arises out of a motor vehicle collision along Manchester Road, Mandeville, on or about 16<sup>th</sup> March 2021 near the vicinity of Top Loaf Bakery (the Bakery). It involves a motor vehicle owned and driven by Mr. Sinclair and Ms. Palmer, a pedestrian.
- [2] It is Ms. Palmer's claim that while she was walking along Manchester Road Mr. Sinclair negligently operated his motor vehicle causing it to hit her from behind and run over her right foot, in consequence of which she suffered injury, loss, damage

and incurred expenses. She claims special damages in the amount of **Five Hundred and Twenty-two Thousand Five Hundred and Ninety-one dollars (\$522,591.00)**, general damages, interest and costs. It is alleged that Mr. Sinclair:

- (a) failed to keep any or any proper lookout or to have any sufficient regard for Ms. Palmer in operating his vehicle;
- (b) failed to manage and/or control or exercise any proper and effective control of the vehicle;
- (c) drove at an excessive and/or improper speed;
- (d) drove the vehicle *"in a reckless and dangerous manner"*;
- (e) operated his vehicle in a *"negligent and/or inattentive manner"* and exposed Ms. Palmer to the risk of harm, loss, and damage;
- (f) failed to apply brakes within sufficient time or at all to avoid hitting down Ms. Palmer;
- (g) failed to stop, slow down, swerve, turn aside or otherwise operate the vehicle to avoid hitting down Ms. Palmer;
- (h) failed to heed Ms. Palmer while she was walking along the road; and
- (i) caused or permitted the vehicle to hit down Ms. Palmer from behind.

**[3]** It is Mr. Sinclair's case that he was slowly proceeding along Manchester Road which was busy with vehicular and pedestrian traffic when the collision occurred. It is his position that Ms. Palmer attempted to walk around a parked van which was protruding out into the road and stepped into the path of his motor vehicle, causing the collision. He also contends that he does not know how the incident could have happened as he blew the vehicles horn repeatedly and had stopped to allow pedestrians to cross the road in the vicinity of the Bakery before moving off. He denies that he was negligent as alleged or at all and contends that the collision was caused by or materially contributed to by Ms. Palmer's own negligence. It is alleged that the latter:

- (a) Failed to keep any or any proper lookout;
- (b) failed to adequately or at all heed the presence and path of the vehicle;
- (c) stepped into the path of the vehicle and caused the collision;

(d) stepped out into the roadway at a time when it was manifestly unsafe to do so; and

(e) failed to have any or any adequate regard for her own safety.

- [4] The trial was heard over two (2) mornings on the 19<sup>th</sup> November and 5<sup>th</sup> December 2024 and a decision reserved to today's date.

## **ISSUES AND SUMMARY DETERMINATION**

- [5] There is no doubt that Ms. Palmer and Mr. Sinclair owed a duty to each other to move with due care in using Manchester Road as pedestrian and motorist respectively; and it was never in issue that the parties were involved in a collision.
- [6] The existence of a duty situation and damage alone are insufficient to ground a claim in negligence, however. Ms. Palmer is required to establish, on a balance of probabilities that in moving about Manchester Road Mr. Sinclair failed to exercise due care for her safety.
- [7] The Defendant having invoked negligence or contributory negligence on the part of Ms. Palmer, the court is also required to determine whether she was wholly or contributorily negligent; and the quantum of damages, if any, which are payable.
- [8] I find that although Mr. Sinclair was negligent, Ms. Palmer was contributorily negligent, reducing the damages determined to be recoverable for injuries she sustained in the incident by sixty percent (60 %).

## **THE CLAIMANT'S EVIDENCE**

- [9] It is Ms. Palmer's evidence that between 9:00 a.m. and 10:00 a.m. she came out of the Bakery and there were no vehicles parked in front of it. She observed that people were moving freely and that there were no vendors at that time of the morning. The road being one-way, she looked towards the Bashco store to see if there was any oncoming traffic. She said she was able to see freely, there being nothing obstructing her view.
- [10] She goes further in her Witness Statement - which was admitted as her evidence in chief – to give this account of the collision:

6. *I stepped out into the road to cross over to the other side, the left side, so I could walk go uptown to the supermarket. As I reached the middle of the road, all of a sudden, I suddenly felt an impact to my right side and something heavy on top of my right foot. I then realized that it was a motor car. I quickly pulled away my left foot so that the vehicle would not run over it as well, because the driver did not immediately stop. It was the front left tyre that ran over my foot, I screamed in pain. I started hitting the glass window of the car and the driver just looked at me with a frightened look on his face. He revved his engine and I kept hitting the window and telling him to stop revving the engine. I forced my foot from under the car's front wheel and the driver of the car drove away.*

[11] On enquiry in cross examination as to what she meant when she said the driver revved his engine, she said *"that it was pressing on [her] foot."*

[12] In cross examination Ms. Palmer had difficulty recalling material observations about the condition of Manchester Road on the morning of the accident, including observations recounted in her Witness Statement signed some six (6) months before trial. She could not remember for example:

- (i) if the building to her right, after stepping out of the Bakery, had a *"piazza"* (a word with which she seemed unfamiliar although she had used it in her Witness Statement);
- (ii) whether she saw any vendors when she looked down the road towards the Bashco store before attempting to cross the road;
- (iii) whether there were any pedestrians when she looked down the road; and
- (iv) whether when she said in her witness statement that people were moving freely, they were so moving *"in the road"*.

[13] She was also unable to remember whether she was hit on any other part of the body except her right foot; and whether after she got hit, she fell to the ground. It is part of her pleaded case that the vehicle *"hit her down from behind and ran over her right foot, causing her to seek immediate medical attention for her injuries."* She does not give evidence in her witness statement that she was hit down, and

no such complaint appears to have been made when she sought medical attention following the collision.

### **THE DEFENDANT'S EVIDENCE**

- [14] It is Mr. Sinclair's evidence that he was travelling along Manchester Road at about 9:00 a.m. and was going very slowly, no more than 5 km/h on account that he was driving and stopping due to heavy, slow-moving traffic. Pedestrians were also moving in and out of the traffic.
- [15] It is also his evidence that he was coming from the direction of the Bashco store and on reaching the Bakery there was a small crowd of pedestrians to his left and right. He continued to travel slowly and had stopped at times to allow pedestrians to cross. He goes further to say that just after passing the Bakery he saw a van among the vehicles parked on the left side of the road. The van was protruding a little more into the road in comparison to the other parked vehicles and there was a pile up of pedestrians by it, "jostling" for space to go around the said van in both directions. He stopped to allow persons to go around the van and across the street and then moved off. Just as he was passing the back of the protruding van, he heard a loud shout "*man yuh run over the lady foot*". There being other vehicles behind him, he drove further up the road, parked and returned and met two ladies, one of whom had bruises on the top of one of her feet. He said he told the bruised lady that he did not know how he ran over her foot but that he could assist her to the doctor and did so. He admits that his vehicle ran over Ms. Palmer's right foot.
- [16] Mr. Sinclair then went on to say that he does not know how the incident occurred as he observed that the road was busy, he was travelling slowly, had blown the car horn repeatedly between Burger King and the Bakery because of pedestrians in the roadway, and that he had also stopped to allow pedestrians to go around the van. He says that Ms. Palmer's allegations that he failed to keep a proper look out, hit her from behind, or that he was driving at an excessive speed are not true.

### **ANALYSIS**

- [17] As demonstrated above, Ms. Palmer and Mr. Sinclair have both given very different accounts of the circumstances under which the collision arose. Of the two of them however, I found Mr. Sinclair to be the more reliable witness. Further and in any

event, I also find his account of the conditions on Manchester Road on the morning of the collision to be a more probable one, for reasons appearing below.

**[18]** Considering the common evidence of the parties that Manchester Road, a one-way street:

(a) is normally busy with pedestrian and vehicular traffic;

(b) that there are businesses on both sides of the road to include a bakery, restaurants and supermarkets; and

(c) that vehicles are normally parked with their fronts to the stores and backs to the roadway;

I find it to be more probable than not - in the absence of evidence as to any peculiarity on Manchester Road on the date of the collision - that as is usually the case, the road was busy with both pedestrian and vehicular traffic; and that a van was among the parked vehicles.

**[19]** I am also inclined to accept Mr. Sinclair's evidence that the road was busy. If it were not so, I believe it to be more likely than not that Ms. Palmer would have been alerted to the presence of his approaching car which she says was driven at an excessive and/or improper speed. When asked on cross examination whether she heard the car she said she had not.

**[20]** I also find on a balance of probabilities that Mr. Sinclair was required by the busy condition of Manchester Road to drive slowly, stop and slow down at points to allow pedestrians to cross from one side of the roadway to the other. I find support for this conclusion on Ms. Sinclair's own evidence that she *"kept hitting"* the window of the vehicle and telling Mr. Sinclair *"to stop revving the engine"*, and that *"she had to force her foot from under the car's front wheel"*. If Mr. Sinclair was driving at an excessive and/or improper speed it is my view that there would be no opportunity for the vehicle to remain on Ms. Palmer's foot thereby requiring her to *"force"* it from under the front wheel, or to keep hitting the car window and tell Mr. Sinclair to stop *"revving his engine"*.

**[21]** On that evidence it also appears to me to be more probable than not that the road was busy with "jostling" pedestrians wanting to cross from one side of Manchester Road to the other as stated by Mr. Sinclair, and that Ms. Palmer was among them.

- [22] I also find that a wheel of the vehicle ran over Ms. Palmer's right foot and there was no further contact by the vehicle with her person. Her being hit from behind or falling to the ground after being hit is entirely unsupported by the evidence.
- [23] Although Mr. Sinclair has admitted to running over the Claimant's foot, it is his evidence that he does not know how the incident occurred as he was travelling slowly, blew his horn repeatedly between Burger King and the Bakery, and had stopped to allow pedestrians to go around the protruding van before moving off.
- [24] On a balance of probabilities I find that the car ran over Ms. Palmer's right foot at a point between Mr. Sinclair stopping in the vicinity of the Bakery to allow pedestrians to go around the van protruding in the road and shortly after moving off. I arrive at this conclusion having regard to Mr. Sinclair's evidence, which I accept, that it was just as he was passing the back of the protruding van that he heard a loud shout "*man yuh run over the lady foot*".
- [25] The conditions of Manchester Road as described by Mr. Sinclair and accepted by the court, appear to have given rise to a chaotic situation involving a risk of collision. This required greater than usual vigilance from both motorists and pedestrians as they moved about the road. As observed in **Ena Pearl Nance v British Columbia Electric Railway Company Limited** [1950] AC 1 which was cited with approval in **Aikman v Hibbert** [2024] JMSC Civ 36:

*Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot or whether one is on foot and the other controlling a moving vehicle...when a man steps from the kerb into the roadway, he owes a duty to the traffic which is approaching him with the risk of collision to exercise due care.*

- [26] In the face of Mr. Sinclair stopping to permit pedestrians to cross, all pedestrians in the vicinity may have formed the view that they would be permitted to cross. Having found that Ms. Palmer was among the pedestrians seeking to cross the street, and there being no evidence that Mr. Sinclair had allowed all the jostling pedestrians to cross before he moved off, it is my view that he would have failed to sufficiently heed Ms. Sinclair's presence and in consequence, he ran over her right foot.

- [27] Save at a pedestrian crossing, where pedestrians are also required to exercise care for their own safety, there is no obligation for a motorist to stop to allow pedestrians to cross a road. If that were the case, motorists would get nowhere on thoroughfares which are heavily trafficked by pedestrians. Accordingly, pedestrians in the position of Ms. Palmer are required to exercise due care for their own safety and attempt crossings only when it is safe to do so for as stated by Lord Denning LJ in **Jones v Livox Quarries Ltd** [1992] 2 QB 608, 615:

*[a] person is guilty of contributory negligence if he ought reasonably to have or seen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings, he must take into account the possibility of others being careless.*

- [28] Section 3(1) of the **Law Reform (Contributory Negligence) Act** provides that:

*[w]here any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage...*

- [29] Considering the conditions which I have found were in existence in the vicinity of the Bakery, it is my view that Ms. Palmer did not act as a prudent person in attempting to cross the road at the time she did and failed to take into account the possibility of motorists like Mr. Sinclair being careless in their attempt to navigate the roadway. Accordingly, while I do not believe Ms. Palmer was wholly negligent, it is my view that she failed to have adequate regard for her own safety in moving about Manchester Road at the time of the collision and was contributorily negligent.

- [30] At this stage of the enquiry, I regard the scales as evenly balanced between Ms. Palmer and Mr. Sinclair in respect of responsibility for the collision. The scale nevertheless tips in favour of Mr. Sinclair who was already proceeding down Manchester Road. There being no evidence that he would have been able to avoid travelling in the vicinity of the Bakery at the material time, it is my view that he was compelled to compete with vehicular and pedestrian traffic for space and use of the roadway. Ms. Palmer as a pedestrian was not so constrained. It appears to me that she could have walked on the very side of the road she was already on to get to her next destination, but as stated at paragraph 5 of her Witness Statement, after she left the bakery she intended to go to the supermarket which was in town and



*... decided to cross over to the other side of the road because it is easier to walk on the other side to go into town.*

- [31] In all these circumstances, it is my judgement that although Mr. Sinclair was negligent, Ms. Palmer contributed to the collision and her own injuries in a material way. I therefore find that it is just and equitable to reduce any damages recoverable by her by sixty percent (60 %).

## **DAMAGES**

### *Special Damages*

- [32] Special Damages in the amount of **One Hundred and Sixty-Five (\$165,000.00)** was agreed.

### *General Damages*

- [33] Dr. Kevin Gwyn L. Jones, Consultant Orthopaedic Surgeon was admitted as an expert witness in the proceedings and his medical report dated 7<sup>th</sup> April 2025 admitted as expert evidence without him being called for cross examination. The report shows that he first saw Ms. Palmer at his office on 17<sup>th</sup> March 2021 for evaluation and treatment of injuries she allegedly sustained to her right foot in a road traffic accident on 16<sup>th</sup> March 2021. She had been referred by a general practitioner.
- [34] On examination, he observed the following of Ms. Palmer:
- i. Moderate swelling of the right foot and ankle; and
  - ii. Superficial abrasions over the medial aspect of the dorsum of the foot with tenderness over the lateral malleolus of her ankle and over the dorsum of her foot.
- [35] X-rays of the right foot were conducted, and Ms. Palmer was diagnosed with:
- i. Closed Lis-Franc type fracture dislocation of the tarsometatarsal joints (TMTJs) of her right foot.

Ms. Palmer was placed in a below knee cast and advised not to bear any weight on her foot. She was recommended for surgical reduction and fixation of her injury and given an invoice for surgery. She was advised that she could discuss the situation with her relatives and make a decision as to how she would proceed.

- [36] The report goes on to say that 20<sup>th</sup> April 2021, Ms. Palmer returned to the doctor having missed the desired window to surgically correct her injury. Radiographs done showed mild improvement in the position of her injury. Based on observations made, the doctor took the view that the benefits of surgical intervention at that time were outweighed by the possible risks and complications associated with a surgical procedure and a decision was made for her to maintain the cast for a further two (2) weeks.
- [37] She returned for a follow-up visit where the cast was removed. Her right leg was found to be non-tender over the fracture site. Radiographs done showed that her fracture had healed in an acceptable position, and she was assessed as adequately healed. She was referred for physiotherapy to rehabilitate muscles in her foot and ankle and was required to return for follow up for repeat x-rays of the foot.
- [38] On 15<sup>th</sup> June 2021 when she again visited Dr. Jones, Ms. Palmer reported improvement in her symptoms with intermitted episodes of swelling in the foot which was made worse when ambulated. On examination she was found to have mild right sided antalgic gait, mild to moderate swelling of her foot with good range of motion of her foot and ankle. Radiographs on the day showed that the fracture was fully healed. She was required to return in three (3) months for repeat x-rays of her foot.
- [39] Ms. Palmer's final visit to Dr. Jones was on 14<sup>th</sup> September 2021 some six (6) months after the collision. She reported intermittent episodes of pain and swelling in the foot since her previous visit. Physical examination revealed that she walked with a normal gait, had mild swelling of her foot with no localised tenderness over the fracture site and good functional range of motion in her foot and ankle. X-rays of her foot showed that the fracture was fully healed and in an acceptable position with mild subluxation at the TMTJ, in consequence of which she was advised to continue her physiotherapy until discharged and engage in appropriate home exercise programme to ensure continued improvement on muscle strength. She was discharged from follow up care. Ms. Palmer was diagnosed with LisFranc type fracture dislocation of the right foot, which was regarded as consistent with the mechanism of the accident. While she was assessed as having a low risk of developing degenerative arthritis in her foot, she had reached a point of maximum medical improvement for the injury to her right foot. Residual signs and symptoms were assigned a 7% lower extremity impairment which is equivalent to a 3% impairment of the whole person.

- [40] Ms. Meikle relies on **Martia King v Matthew Hibbert and Rohan Grant** [2017] JMSC Civ 122 in submitting that Ms. Palmer should be awarded general damages of \$5,800,000.00. In that case Ms. King was awarded the sum of \$3,500,000.00 for pain and suffering on 6<sup>th</sup> September 2017. When updated using the most current CPI of 141.9 (December 2024), this updates to \$5,294,776.12.
- [41] The **Martia King** case is not an appropriate comparator as the injuries suffered by Ms. Palmer and the period of suffering are far less than Ms. King's.
- [42] Ms. King was a passenger in a vehicle which collided with another motor vehicle during a high-speed chase. As a result of the collision she suffered pain in her chest, back, and left foot; swollen left foot with tenderness to the lateral aspect; fracture of the left calcaneus and fracture of the left lateral malleolus with mild motion deficit; comminuted fracture of the left calcaneus with depression of the medial and articular surfaces; recurrent swelling to the left ankle and foot; pain in the left foot with weight bearing; L-shaped scar of 15 cm to lateral aspect of ankle joint; ankle range of motion - 10 dorsiflexion; subtalar range of motion limited by pain; and was assessed with a 9% PPD by one doctor and 14% by another. About a year and a half after the accident she was experiencing swelling of the foot and increased pain at the end of each day and was unable to wear heels or closed shoes due to the widening of the heel. As a result of the fracture, she had trouble finding shoes to accommodate the deformity of the foot and was unable to walk along uneven terrain for long distances due to pain. She had developed lower back pain due to her abnormal gait, had no subtalar motion, and when walking her heel moved into varus. Radiographs of the left ankle showed that she had lost height on the medial aspect of the calcaneus with degenerative changes of the subtalar joint and Bohler's angle loss. Because of intra-articular fracture of the calcaneus, it was determined that there was a probability of her developing osteoarthritis in the subtalar.
- [43] The first of Mr. Sinclair's authorities is **Errol Finn v Herbert Nagimesi and Percival Powell** Suit No. C.L. 191 F 117 delivered on 5<sup>th</sup> May 1994, **Khan's** Vol. 4, 66. The claimant motorcyclist was involved in a motor vehicle accident and suffered a compound fracture of 5<sup>th</sup> metatarsal of left foot and a wound at the fracture site requiring stitches. His foot had been immobilised in a plaster cast. He was totally disabled for the better part of a month from the date of the accident, had a disability of 30% of his extremity for one month and 10% for a further month. After three (3) months he had no significant final disability. He was awarded the sum of \$64,365.00 as general damages which updates to \$931,978.93 using the current CPI of 141.9.

- [44] While Mr. Finn's injuries are more comparable to Ms. Palmer's, his period of suffering was less, and he did not have a significant final disability three (3) months post-accident. In these circumstances an upward adjustment of the award in the **Finn case** is entirely appropriate.
- [45] The Defendant also relies on **Joy Hew v Sandals Ocho Rios Limited** [2013] JMSC Civ 42. Ms. Hew fell when her shoe was lodged between an uneven interlocking pavement on 21<sup>st</sup> March 2006. The doctor whom she visited about a month after the fall found that the dorsum of her right foot was swollen with tendon of 4<sup>th</sup> metatarsal and base of 5<sup>th</sup> metatarsal. Radiograph revealed that she had a comminuted undisplaced intra-auricular fracture to the base of the right 5<sup>th</sup> metatarsal. A cast boot was applied. It was removed and she was assessed as clinically healed a month after presentation - all pain had ceased, and the fracture was assessed as healed with fibrous union. Ms. Hew was assisted by physiotherapy but reported mild pains after excessive activity some three (3) months post fall. On examination it was found that there was very mild tenderness to the fracture site and moderate pain with resisted eversion. There was no disability, but the doctor indicated that there may be occasional pain and discomfort. Some three years after the fall Ms. Hew visited another doctor who was privy to her previous medical reports. Although his examination revealed that there was mild tenderness on palpation of the base of fifth metatarsal and mild pains on inversion of the foot, and mild tenderness at the point of insertion of the planter facia to the heel, the discomfort being experienced by Ms. Hew was determined to be due to tendonitis which could be treated with short course physiotherapy and or a corticosteroid injection and was not found to be the result of the bony injury. She was assessed as having a whole person disability of 1%. Although her claim was dismissed on the point of liability, Batts J considered that if he was wrong, he would have awarded Ms. Hew the sum of \$650,000.00 for pain and suffering and loss of amenities on 5<sup>th</sup> April 2013. The award stands at \$1,213,618.42 when updated with the current CPI of 141.9.
- [46] Although Ms. Hew may be said to have had a similar injury to Palmer's, the period of suffering from the date of the accident to healing of the injuries sustained appears to be slightly less. In any event, when one has regard to the whole person disability rating in the **Hew case** and that of Ms. Palmer, the impact of the injuries sustained by Ms. Hew is less severe than the impact of Ms. Palmer's injuries. An upward adjustment would be in order in my view.
- [47] Although not specifically cited, I find **Caswell Rodney v Audrey Binnie Palmer & Norman Spaulding** Claim No. HCV 1950 delivered on 3<sup>rd</sup> March 2005 and

reported in **Khan's** Vol. 6, 60 to be quite instructive. The decision is referenced in the **Martia King** case relied upon by Ms. Palmer.

- [48] Mr. Rodney suffered injuries from an accident involving his motor vehicle and the 1<sup>st</sup> defendant's vehicle on 26<sup>th</sup> March 2003. He suffered a fractured medial malleolus of the right ankle and was managed on plaster for eight weeks with strict instructions for non-weight bearing on the ankle. One year post injury he was assessed as fully recovered. While the ankle was lightly swollen and tender over the medial aspect of the joint, he had full range of movements at the ankle joint with pain at the extremes of movement and walked with a slight limp. X-rays confirmed that he had early onset of osteoarthritis which the court found was a direct result of the injury sustained in the motor vehicle accident. He was assessed as having a PPD of 10% ... of the function of the right lower limb. Mr. Rodney was awarded general damages for pain and suffering and loss of amenities in the sum of \$650,000.00 on 3<sup>rd</sup> March 2005 which updates to **\$2,820,642.20** using the current CPI of 141.9.
- [49] While I find that the injury suffered by Ms. Palmer was similar to that suffered by Mr. Rodney, the latter appears to have been more severely impacted. Mr. Rodney was assessed as having a PPD of 10% of the function of the right lower limb while Ms. Palmer's residual signs and symptoms were assigned an 7% lower extremity impairment which is equivalent to a 3% impairment of the whole person. Further, while Ms. Palmer was assessed as having a low risk of developing degenerative arthritis in her foot, Mr. Rodney was confirmed as having early onset osteoarthritis which was the direct result of the injury sustained in the motor vehicle accident. A downward adjustment of the award in the **Rodney case** is therefore appropriate in my view.
- [50] On consideration of the foregoing authorities in the context of Ms. Palmer's injuries, I find that an award of **\$2,000,000.00** for general damages is appropriate.

## ORDER

1. Judgment for the Claimant against the Defendant.
2. General damages are assessed in favour of the Claimant against the Defendant in the sum of \$2,000,000.00 and is reduced by 60% based on the Claimant's contribution to her own injuries. Accordingly, the Defendant is to pay the sum of **\$800,000.00** as general damages for pain and suffering.

3. Special Damages of **One Hundred and Sixty-Five (\$165,000.00)** agreed in favour of the Claimant against the Defendant is reduced by 60% based on the Claimant's contributory negligence. Accordingly, the Defendant is to pay the sum of **\$66,000.00** as special damages.
4. Interest on general damages payable is calculated at 3% per annum from 16<sup>th</sup> May 2023 to 27<sup>th</sup> January 2025.
5. Interest on special damages payable is calculated at 3% per annum from 16<sup>th</sup> March 2021 to 27<sup>th</sup> January 2025.
6. The Defendant is to pay 40% of the Claimant's costs which are to be taxed, if not sooner agreed.
7. The Claimant's Attorney-at-law is to prepare, file and serve this order.