



[2020] JMSC Civ 78

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2007HCV04968

BETWEEN	DAVID RICKARDS	CLAIMANT
AND	ANDREW MCCREATH	1ST DEFENDANT/ ANCILLARY CLAIMANT
AND	CONSTABLE CHESTON MOTTA	2ND DEFENDANT/ 1ST ANCILLARY DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	3RD DEFENDANT/ 2ND ANCILLARY DEFENDANT

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008HCV02775

BETWEEN	JACQUELINE STERLING	CLAIMANT
AND	ANDREW MCCREATH	1ST DEFENDANT/ ANCILLARY CLAIMANT
AND	CHESTON MOTTA	2ND DEFENDANT/ 1ST

AND

THE ATTORNEY GENERAL OF JAMAICA

**ANCILLARY
DEFENDANT
3RD
DEFENDANT/
2ND
ANCILLARY
DEFENDANT**

Ms. Allia Leith-Palmer instructed by Kinghorn & Kinghorn for the claimants

Stuart Stimpson & Hadrian Christie instructed by Hart Muirhed Fatta (formerly JSM) for the 1st defendant/ancillary claimant

Ms. Cheryl-Lee A. Bolton and Ms. Deidre Pinnock instructed by the Director of State Proceedings for the 2nd defendant/1st ancillary defendant and 3rd defendant/2nd ancillary defendant.

Motor vehicle accident – Doctrine of Res Ipsa Loquitur inapplicable where there is evidence of how accident occurred – No case submission where defendant not put to election – Emergency vehicle regulations – Duties owed by other drivers to drivers of emergency vehicles – Duties of drivers of emergency vehicles – Evidence of Accident Reconstruction Experts

October 16 – 17, 2013 and May 8, 2020

D. FRASER J

INTRODUCTION

[1] On New Year's Day 2006 sometime after 11 p.m., an accident occurred within the intersection of Maxfield Avenue and Hagley Park Road, between a Toyota Hiace Mini Bus with registration number 1490 EJ and a police car bearing registration number 20-3141. The Toyota bus owned by the 1st defendant was being driven by Princeroy Ellis his servant or agent. Traveling as passengers with Mr. Ellis were David Rickards, the claimant in claim number 2007HCV04968, Jacqueline Sterling, the claimant in claim number 2008HCV02775, and Tanisha Smith. Mr. Ellis was transporting these passengers under a contract which Andrew McCreath,

the 1st defendant in both claims, had with Tastee Limited to transport its workers home. The police car was being driven by then Constable Cheston Motta the 2nd defendant in both claims. Travelling with him was then Sergeant Steele.

THE CLAIMS

- [2] The claim by Mr. Rickards was filed on December 05, 2007 against the 1st defendant with particulars of claim in support. An amended claim form and particulars of claim were subsequently filed on June 10, 2008 by which the 2nd and 3rd defendants were added to the claim. Ms. Sterling filed her claim on May 29, 2008. Both claimants contend that the accident was occasioned by the negligence of the servant or agent of the 1st defendant and/or the negligence of the 2nd defendant, which led to each claimant sustaining personal injury and suffering loss and damage, for which each claimant has claimed compensation in damages. Mr. Rickards also relied on the doctrine of *res ipsa loquitur* in proof of his claim. Given that both claims arise from the same accident, are against the same defendants and involve similar questions of law and fact, in keeping with the overriding objective, the two claims were consolidated by order dated February 28, 2012.
- [3] The 1st defendant filed his defences in response to the claims on June 2, 2008 and August 5, 2009 respectively. In both defences, he admitted that he was the owner of the motor vehicle bearing registration number 1490 EJ but indicated that Princeroy Ellis was the driver. In both defences, he also denied negligence by himself or his servant and/or agent and contended that while Mr. Ellis lawfully drove into the intersection on a green light the collision was caused by the negligence of the 2nd defendant, who unlawfully broke a red light and drove into the intersection without either his siren or flashing lights on. Apart from the issue of causation, the 1st defendant indicated that the issue of quantum was also in dispute.
- [4] The 3rd defendant filed its defence in response to the Sterling claim on August 20, 2008 and its defence to Rickards' claim on August 21, 2008. In both defences the

3rd defendant blamed the accident on the agent of the 1st defendant unlawfully breaking the red light and driving into the intersection, while the 3rd defendant asserted that the 2nd defendant lawfully drove motor vehicle 20-3141 with siren and flashing lights on, through the intersection of Maxfield Avenue and Hagley Park Road, as the traffic light showed green in his favour. The 3rd defendant neither admitted nor denied that the claimants sustained personal injury and suffered loss and damage as a result of the collision but put the claimants to proof of all such sequelae from the accident.

- [5] The 1st defendant also filed an ancillary claim for negligence against the 2nd and 3rd defendants, contending that the 2nd defendant was either the sole cause or alternatively that he negligently contributed to the collision and the resultant injuries, loss and damage suffered by the claimants. In its defences to the ancillary claim filed August 20, 2008 (Rickard's claim) and May 28, 2010 (Sterling claim), the 3rd defendant/2nd ancillary defendant asserted that the 2nd defendant acted lawfully and that Mr. Princeroy Ellis the servant/agent of the 1st defendant was the sole cause of the accident.

THE ISSUES

- [6] By agreement the parties sought to have only the question of liability determined in these proceedings. Depending on the outcome separate proceedings may ensue to address any issue of damages to be assessed. Despite the fact that counsel for the claimants made closing submissions on both liability and damages, the focus of the evidence adduced and the challenge to that evidence was on the question of liability. In the determination of liability, if any, several factual and legal issues arise. They are:

- i) Which driver failed to obey the traffic signal (stop light) at the intersection?
- ii) Whether the police service vehicle emerged from the 4th slip lane on the extreme left or from the 2nd lane from the right on Maxfield avenue?

- iii) Whether the police service vehicle driven by the 2nd defendant had its siren on?
- iv) Whether one or both of the drivers was/were negligent in causing the collision in the middle of the intersection?
- v) If both drivers are found to be negligent, in what proportion are they liable for the collision and the loss which resulted therefrom?

THE SUBMISSION OF NO CASE TO ANSWER MADE BY COUNSEL FOR THE 1ST DEFENDANT

- [7] As the review of the evidence shortly to be conducted will show, the evidence adduced by the claimants came primarily from Jacqueline Sterling. In summary her evidence is that the driver of the vehicle she was in, the servant/agent of the 1st defendant, lawfully drove through a green light at the intersection of Maxfield Avenue and Hagley Park Roads and a police car without siren drove through the red light at the same intersection causing the vehicle she was in to collide into the police car.
- [8] On the basis that the court could be saved a considerable amount of time, counsel for the 1st defendant made a submission that the 1st defendant had no case to answer as there was no evidence on the claimant's case of excessive speed or any other factor by which the 1st defendant could be fixed with liability. Counsel accordingly submitted that the 1st defendant should not be called upon but the case should proceed on his counterclaim against the 2nd and 3rd defendants, in respect of which it was open to the 2nd defendant to contend that the 1st defendant was liable. He relied on the authorities of ***Muller & Co v EDBW Vale Steel Iron & Coal Co Ltd*** [1936] 2 ALL ER 1363 and ***Mullan v Birmingham City Council*** All ER Official Transcripts May 27, 1999 (unreported decision).
- [9] Counsel for the claimants in response, submitted that the application was premature. She stated that the claimants were relying on the doctrine of *res ipsa loquitur* which did not have to be specifically indicated. Counsel also submitted that where there is a collision and an allegation that each driver is wrong, it is for the

court to hear all the evidence and then make a decision as to liability. This in a context where there is an inference that both drivers were negligent which places the onus on them to show that they did all they could have in the circumstances to avoid the collision and so are not liable. Counsel cited the authorities of ***Hummerstone v Leary*** [1921] 2 KB 664 and ***Pamela Thompson et al v Devon Barrows et al*** Claim No. CL 2001/T143 (Jud. Del. December 22, 2006). Ms. Pinnock for the 2nd and 3rd defendants adopted the submissions made on behalf of the claimants.

[10] The court ruled that the 1st defendant had a case to answer primarily on the authority of ***Hummerstone v Leary***. In that case, plaintiffs were injured in a collision between a motor lorry in which they were passengers and a motor car. They brought an action against the drivers of both vehicles. While the plaintiff's evidence made it probable that the driver of the car rather than the driver of the lorry was the cause of the accident, their evidence did not conclusively show that the driver of the lorry was not to blame. A no case submission made on behalf of the driver of the lorry having succeeded, it was held on appeal that, as the evidence of the plaintiffs raised the reasonable inference that prima facie, one if not both of the defendants was negligent, the case against both of the defendants should have been heard before a decision was arrived at. A new trial was therefore ordered.

[11] The palpable similarity in the key facts and issues which arose in ***Hummerstone v Leary*** to those before the court in the instant case, dictated the determination that the 1st defendant be called upon to answer the claims. As the submission was ostensibly made with a view to saving the court's time if the submission had succeeded, the court had not put the 1st defendant to his election. Consequently, the 1st defendant was permitted to adduce evidence as a part of stating his case.

THE EVIDENCE

- [12] The evidence for the claimants primarily came from Jacqueline Sterling. In her witness statement which was received as her evidence in chief, she indicated that she was a passenger in the Hiace motor vehicle registration number 1490 EJ travelling from Papine to Spanish Town on her way home. She stated that she was sitting in the second row, behind the driver and that on reaching the traffic light at the intersection of Maxfield Avenue and Hagley Park Road, the traffic light which was red turned green. She further outlined that the driver of the Hiace proceeded toward Hagley Park Road when a Police vehicle registration number 20-3141 travelling from Maxfield avenue drove through the red light and collided with the Hiace.
- [13] In cross-examination by counsel for the 1st defendant, she stated that she saw the police car go through the red light, but did not hear the police siren. She also indicated that she did not recall how long after the driver got the green light and drove off, the accident happened. In cross-examination by counsel for the 3rd defendant, she stated that she was sitting next to the window. She said the light that turned green was the light on “our side” on the road that you pass Mother’s patty and for you to go straight ahead; and when you cross you go over to Hagley Park road. She further stated that she could see the stop-light regulating the road the police was coming from on the left hand side. She maintained that she was looking on the road and saw the changes to the light.
- [14] Mr. Rickards was not able to assist the court regarding how the accident occurred. The first 7 paragraphs of his witness statement were received in evidence in chief. Essentially those paragraphs confirm that he was a passenger in the Hiace bus registration number 1490 EJ on January 1, 2006 at the material time. However he indicated in his statement that the next thing he knew, he woke up in the hospital. In cross-examination, he explained that he was sleeping as the bus passed the clock in Half-Way Tree. Therefore even his indication in his statement that there was an accident between the bus he was travelling in and another vehicle

registered 20-3141, is not first-hand information he could give of his own knowledge.

- [15] The 1st defendant's witness statement confirmed that he is the owner of the Toyota Hiace bus registration number 1490 EJ driven by Mr. Princeroy Ellis, his employee, who at the material time was transporting Tastee workers home. He indicated that it was Mr. Ellis who informed him of the collision. Mr Ellis in his witness statement which was received as his evidence in chief, with slight amplification, stated that about 11:05 pm he was driving from Hope Road and heading towards Hagley Park Road. He had three (3) passengers on board the vehicle; Tanisha, who was seated on the front passenger seat and David and Jacqueline who were seated at the back of the bus. He stated that the weather and visibility were good, the road surface smooth and dry, and he was driving at a speed of about 50 km/h.
- [16] He indicated that upon reaching the traffic light at the intersection of Maxfield Avenue and Hagley Park Road, the light on his side was green. Then, as he was proceeding across the intersection he glanced to his left and observed some stationary vehicles at the side of the intersection at the top of Maxfield avenue in front of the fire station, as well as a police car coming around the left of the vehicles and onto the intersection. He indicated he didn't hear any siren, but the police car had flashing lights. He tooted his horn and applied the brake of his vehicle. The driver of the police car stopped in the path of the bus, which slid straight into the right side of the police car. He denied the assertion in the statement of Constable Motta that the police car was in the second lane from the right, from the fire station.
- [17] In cross-examination by Ms. Palmer, he indicated that when he approached the intersection he was going at about 50 km/h and he maintained this speed from he saw the light change about 90 feet from the stoplight, until he was going through the intersection. He said he never slowed down when he was going through the intersection as he was going at the speed limit so he just drove normal speed. He stated that there were no other cars travelling before his van. He indicated that the intersection is wide and that approaching near to the stoplight one can see a

decent section of the road down Maxfield and up Eastwood Park road. He however said that when he first saw the police car, he was at the entrance of the intersection over the white line and basically through the light, while the police car was not yet in the intersection, but was passing the vehicles at the head of the line at Maxfield avenue entering the intersection. At this time it was about two car lengths from his vehicle. He indicated that there were four lanes at the intersection on Maxfield avenue and the police car was in the far left lane next to the plaza across from the fire station. He said the police car never stopped moving until it got into the intersection.

- [18]** In terms of his response to this situation, he said his hand was pressed on his horn, and he applied his brakes when he saw the police car. He stated that he did not swerve to right or left as he was approaching the police car. He disagreed that he failed to approach the police car with caution when he first saw it, and that he contributed to the accident. He said the front of his vehicle hit the police car and the whole front was damaged.
- [19]** Cross-examined by Ms. Pinnock he testified that the van was new and he usually did routine checks (lights, horn and brake) before driving away; and that on that particular day, he had felt nothing unusual about the braking system. He indicated that at the time of the accident the lighting was good and when he entered the intersection the traffic to his left was not that heavy. He reiterated that when he entered the intersection he saw the flashing lights of the police vehicle, which was at that time passing the vehicles at the head of the line. He then blew his horn as he wanted the driver to see or hear him coming and applied his brake. However the police car didn't stop or slow down; it came straight around the vehicles it into the intersection, and didn't give him any time to stop. He said his vehicle skidded about a car length into the police car as when you apply the brake and all four wheels lock up you find it will slide. He said he knew that from the road code, a driver should stop as soon as he sees the flashing lights of a police vehicle.

- [20]** He stated that when the van hit the police vehicle both vehicles turned in the road. The back of the bus turned to Maxfield end and the back of the police vehicle swerved to Hagley park end. It was not turned to any particular road. The front of the police vehicle was turned slant to Eastwood Park road and upper Hagley Park road. In re-examination he stated that he could not say the speed he was going at the point of the collision as he applied his brakes and that the collision took place in the centre of the intersection. To the court he explained that he didn't swerve as he was approaching the police car as he was afraid of running into a wall or light post or something.
- [21]** The 1st defendant's case was also supported by the evidence of Mr. Devon Tucker. Mr. Tucker's witness statement together with some amplification was permitted to stand as his evidence in chief. He indicated that having bought a meal at the Burger King Restaurant just below York Plaza (which is closed now), he was walking back to where his vehicle was parked in Hagley Park Plaza. He indicated that he noticed that about four vehicles stopped on the Maxfield avenue side at the stop light. He stated that while he was in the extreme right lane of Maxfield avenue in the process of walking across to Hagley Park Plaza, he noticed a police car with flashing lights but no siren, coming from the entrance of the Half Way Tree Police Station. He also noticed that the police car entered the extreme left or slip lane (fourth lane) on Maxfield Avenue, which was the only lane with no vehicle, and then sped towards the intersection, where it was hit by a Toyota Hiace bus coming from the Half Way Tree direction, heading towards Hagley Park road.
- [22]** He stated that the vehicles hit up in the middle of the intersection, more to the west, near the Saint Andrew Parish Church. Significantly, he also indicated that the traffic lights were working properly and that the traffic light for the traffic heading from Half Way Tree to Hagley Park road was on green. After the accident he said he quickly put his meal in his vehicle and then went to assist in getting the police out of the service vehicle. He indicated they were eventually taken out by personnel from the Fire Brigade.

- [23]** Cross-examined on behalf of the claimants, he indicated that he did not hear the sound of brakes. In response to cross-examination by Ms. Pinnock on behalf of the 2nd and 3rd defendants he outlined that after leaving Burger King, he came down on the left side of the road. When he was at the edge of the road he noticed the cars had stopped and he started to cross. He indicated that from the time he walked to the sidewalk and stepped down into the road would be seconds. He said he looked at the lights at Maxfield Avenue which were red at the time which was why he was able to cross. While in the middle of the extreme right lane the police car with the blue lights passed and he was still in the middle of that lane when the collision occurred in the intersection. He stated that when he went to the police car it was close to the old church, where it had been pushed by the “lick” and the front of the police car was facing the church. He indicated that he remained on the scene until the wrecker came and removed the vehicles.
- [24]** He denied the suggestion that at the time he was crossing the road the police car was in the second lane from the right. He also denied the suggestions that the traffic lights at Maxfield Avenue were green and that the police car had on its siren. He indicated that he never gave a statement to the police, but left his number with the driver of the Hiace bus, as he was still there. In re-examination he explained that from he was walking towards the intersection he saw the traffic lights for the Hiace bus on green. To the court he explained that when he was coming to the intersection, the light from where he was coming changed to green so he knew automatically that the light on Maxfield Avenue would be red and he saw the vehicles stop. He further indicated that, when he came to the road to cross, the Maxfield Avenue side was already on red. He stated that it was seconds after he saw the light change to green on the Hiace bus side, that he saw the accident happen.
- [25]** The 1st defendant also relied on the evidence of Mr. Ian Blackwood, an accident reconstruction expert as a part of his case. The 2nd and 3rd defendants in their defence similarly relied on an accident reconstruction expert, Dellon Lewis, a Sergeant at the time of his engagement in this matter. To facilitate ease of later

comparison of their evidence, the review of the evidence of both experts, will be undertaken after all the other evidence has been reviewed.

[26] Apart from the evidence of Sergeant Lewis, the evidence for the 2nd and 3rd defendants came from Cheston Motta (Constable) and Keith Steele (Inspector). The witness statement of Constable Motta who was the driver of the police car registered 20 – 3141 which was involved in the accident, was permitted to stand as his evidence in chief. He stated that at about 10:40 p.m. on January 1, 2006 he was driving the previously mentioned service vehicle when he heard a transmission from Police Control about a shooting incident, after which he was summoned back to the Half Way Tree Police station by Sergeant Steele and he returned there. He further indicated that at about 11:05pm he drove back out of the station and proceeded along Maxfield Avenue towards Molynes Road with then Sergeant Steele as observer, and a female complainant and her son in the rear seat of the car. He and Sergeant Steele were assisting the complainant and her son to get transportation and were going to look for the man against whom the complainant had made a report.

[27] He stated that there was heavy vehicular traffic and permission was obtained from Area 4 Control to use the siren to proceed. He indicated that the siren, as well as the flashing lights, were then turned on. He stated that when they left the station the traffic light at Maxfield avenue and Hagley Park road facing them was showing red, but on their approaching the Half Way Tree Fire Brigade it turned green. He further stated that vehicles on Maxfield avenue started pulling left and right to give passage to his vehicle which was travelling closer to the right side of the road along Maxfield avenue, with two lanes to the left of the car and one lane to the right.

[28] He indicated that as he drove the vehicle into the intersection of Maxfield avenue and Hagley Park road he heard a vehicle braking and then a loud impact to the right driver side of the service vehicle he was driving. He blacked out on impact and when he later woke up there was a Fireman digging off his door. However he

was assisted through the passenger door and then rushed to the University Hospital of the West Indies.

- [29]** In cross examination by counsel for the claimants, he stated that the siren was turned on as he exited the police station and the flashing lights about 5 feet from the station near the court house. He testified further that from the entrance of the police station to the entrance to the intersection is about 90 feet and he was travelling below 5 km/h, a speed he never exceeded all the way to the intersection. He indicated he was prevented from going fast by the long line of traffic up to the stoplight in all lanes and therefore it took him about four minutes to get to the intersection as persons were having difficulty giving clear passage.
- [30]** Though he agreed that the intersection is wide, he said he never saw any vehicles coming from his right as at the end of the fire station he could not see to his right or left as it was blocked with vehicles. He contended that other cars were ahead of and moved off with him, but did not go through the intersection as they moved to the left and the right to give him passage. He indicated that he never saw the 1st defendant's van coming from his right nor did he hear the van's horn being tooted; and that he did not swerve or take any evasive action as he only became aware of the 1st defendant's van when the collision happened. He stated that he never applied his brakes at any time entering or going through the intersection.
- [31]** While he denied the suggestion that his vehicle did not have on its siren, he agreed that even when siren and flashing lights are on, a driver is still required to obey the signs and stop signals on the road and to drive with care and caution. He denied that he contributed to the collision by failing to drive with care and caution.
- [32]** Cross examined by Mr. Christie, counsel for the 2nd and 3rd defendants, he stated that the two reasons he sought permission to turn on the siren were because of the shooting and heavy vehicular traffic, which at 11 p.m. came all the way up to the entrance to the station. He indicated that the intention had been to drop off the complainant and her son, go to the scene of the shooting and then try to see if they

could find the man the complainant had said had been following her. He said his vehicle was not the only one from Maxfield Avenue that entered the intersection, but his was the only vehicle that went into the middle of the intersection where the collision occurred, and was the only one that got hit. Though he agreed that there were four lanes on Maxfield Avenue, including the slip lane to the left, he denied entering the intersection from that extreme left slip lane. In re-examination he indicated that it was seconds between when he heard the screeching of the tyres and the impact.

- [33]** The evidence of Inspector Steele, a Sergeant at the time of the accident, largely corroborated that of Constable Motta, concerning the amount of traffic, the use of both the siren and flashing lights, the lane of travel of the police vehicle and the manner in which the accident ultimately occurred. In relation to the issue of the siren, he indicated in cross-examination that that he had received permission for its use from Police Control, but had not sought a transcript in support of that assertion as, *“It is the first time I am hearing this about this issue.”* The main difference between his evidence and Constable Motta was that he indicated that he no intention of going to look for the man who the complainant had made a report against after going to the scene of the shooting as he could not have done that again at that time. Also interestingly, while in his witness statement, received as his evidence in chief he indicated that he got the report of the shooting while in the car on Maxfield Avenue, in cross-examination by Mr. Christie on behalf of the 1st defendant, he indicated that when he entered the car he already had received the report of the shooting.

The Evidence of the Experts

- [34]** I will first outline the evidence of Sergeant Dellon Lewis, (Corporal at the time he compiled his report), expert called on behalf of the 2nd and 3rd defendants, as he conducted his investigations and compiled his report long before Ian Blackwood, the expert called by the 1st defendant, and Mr. Blackwood both relied on and critiqued some of his findings. Sergeant Lewis indicated that he was at the scene

of the 30 minutes after the accident. He noted his observations of skid marks from the stop line on the east bound side of Hagley Park road towards the middle of the intersection, that turned left as one faces east at a 45° angle. He indicated that as one faces east, the right skid mark measured 9.7 metres while the left skid mark measured 10.3 metres. He also noted the point of impact as being where he saw debris and the skid marks diverted. Using an equation of motion and adding μ to represent the coefficient of friction he further determined that the Toyota Hiace bus was travelling at a minimum velocity of 60.6km/h at the point of impact.

[35] Among his conclusions were that i) as the intersection was controlled by stoplights, one party would have disobeyed his light causing the vehicles to collide; ii) only a credible eye witness strategically position to have a clear view of the entire intersection at the time of the collision could indicate who broke his light; but that iii) looking at the circumstances of the collision, including the skid marks, he concluded that the Toyota Hiace broke its red light.

[36] When invited to comment on Mr. Blackwood's report he indicated that he disagreed with Mr. Blackwood's depiction of the pre-impact position of the service vehicle and the line of travel of the service vehicle leading up to the point of impact. He stated that his finding was that the police vehicle was travelling in the right centre lane on Maxfield avenue immediately beside the extreme right lane.

[37] In cross-examination by counsel for the 1st defendant he agreed that the diagram produced by Mr. Blackwood accurately depicted the intersection. He confirmed that based on his observations at the scene, the sequence of the traffic lights was what it was supposed to be. He also indicated that in his investigations he never spoke to anyone except the investigator. He agreed that the weight and efficiency of the braking system would impact speed and that the efficiency of braking as well as the weight of the passengers would help to determine the rate of deceleration. He indicated that nowhere in my calculations did I factor in those considerations and that none of his calculations required weight, nor did the formula he used

account for impact. He denied the suggestion that the formula he used was for a vehicle that slides to rest without an impact.

- [38] He conceded that despite his conclusion that the Hiace bus had the red light, it could have been the police service vehicle that broke the red light and the Hiace bus had the green. To the court he indicated that the point of impact, identified by a heavy concentration of debris, oil stain and the location of the diversion of the tire marks caused by the impact between both vehicles, was in line with the line that separates the extreme right lane and the right middle lane. He also stated to the court that based on the location of the damage more to the right front section of the Toyota Hiace bus that was evidence that when contact was made the service vehicle would have been slanted slightly towards the right of the front section of the Hiace bus.
- [39] Mr. Blackwood in his report outlined that he visited the accident site on March 30, 2013, with Mr. Ellis who identified the point of impact and rest locations of both vehicles. He also reviewed the analysis conducted by then Corporal Dellon Lewis. He concluded that the speed time distance analysis used by Corporal Lewis to determine the speed of the Toyota Hiace bus at the stop line and at the point of impact was not applicable to this type of collision as that analysis and formula should only be used if a vehicle slid to a stop without striking an object that would divert its path and significantly reduce the speed of the vehicle.
- [40] He further indicated in his report that in any event even if the analysis had been done correctly it could not tell what colour the traffic light was when the Hiace entered the intersection. Hence, it was his conclusion that *“only a credible independent witness would be able to say who was culpable.”* In the amplification of his report he maintained that he agreed with Sergeant Lewis as to the point of impact, but stated that based on Sergeant Lewis’ measurements the service vehicle could not have come from the second right lane on Hagley Park road and have a collision 42 feet (approximate equivalent of 10.3M) into the intersection. His opinion was however that the collision could have occurred as outlined with the

police service vehicle traveling from the extreme left lane on Hagley Park road into the intersection.

[41] In cross-examination by Ms. Pinnock on behalf of the 2nd and 3rd defendants, he indicated that he confirmed with the National Works Agency that the configuration of the road remained the same. He also stated that based on the damage seen the police vehicle would have spun on impact and that his diagram placed the vehicles where Sergeant Lewis said they were.

THE SUBMISSIONS

[42] The submissions of counsel for the claimant in summary were as follows:

- i) It is significant that while the case for the 1st defendant is that the 2nd defendant disobeyed the stop light and that the 2nd defendant was not driving with the siren, the case for the 2nd defendant is that it was the 1st defendant disobeyed the stop light and that the vehicle he the 2nd defendant was driving had on its siren and flashing lights at the time;
- ii) The principle of *res ipsa loquiter* is relevant, as where the thing is shown to be under the management of the defendants or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care;
- iii) On the evidence presented, the 1st and 2nd defendants should be held liable for the occurrence of the accident. There is clearly a preponderance of evidence which supports and refutes both positions and in such a case, the court should find both sets of defendants equally liable for the collision on the material day. See ***Pamela Thompson and Ors v Devon Barrows and Ors*** CL 2001/T143 (Jud. Del. December 22, 2006) and ***Hummerstone v Leary*** [1921] 2 KB 664;
- iv) On an application of the law to the evidence, the court should enter judgment in favour of the claimants against the defendants on liability.

[43] The submissions of counsel for the 1st defendant/ancillary claimant, in summary, were as follows:

- i) The issues to be determined by the court are:
 - (1) Who had the right of way – did the 2nd defendant or Mr. Ellis disobey a red light and enter the intersection?
 - (2) Was the siren of the service vehicle on?
 - (3) Was there heavy vehicular traffic on Maxfield Avenue?
 - (4) Did the 2nd defendant enter the intersection from the second lane from the right or the farthest lane left as shown in the diagram produced by Ian Blackwood showing a reconstruction of the collision?
- ii) Regarding the following unchallenged aspects of the evidence, the court must determine if it believes that there was a shooting incident; whether the service vehicle was travelling at 5 km/h; whether the service vehicle took 4 - 4.5 minutes to travel from Half Way Tree Police Station to the intersection; and whether Mr. Ellis was travelling at 50 km/h;
- iii) The weight of evidence makes it far more probable that the 2nd defendant disobeyed the red light on Maxfield avenue. The evidence of the 2nd defendant and Inspector Steele that Mr Ellis broke the red light should be disbelieved. The 2nd defendant undoubtedly had a reason to be untruthful, since he may be exposed to liability and Inspector Steele cannot be considered independent and reliable;
- iv) In cross-examination Sergeant Lewis resiled from his determination in support of Constable Motta and Inspector Steele concerning who broke the stoplight and conceded that Cons Motta could have broken the red light in keeping with his earlier conclusion in his report, that only a credible eye witness could substantiate who disobeyed their light;

- v) In admitting that the flashing lights were on and that the siren of the service vehicle was off, the civilian witnesses were being honest as they could have denied that the flashing lights were on. The evidence of the 2nd defendant and Inspector Steele that the siren was on should not be believed and the court is invited in that regard to consider the inconsistency between their evidence as to when they received the information about the reported shooting incident. The court should consider on the evidence that they were not heading to the scene of the shooting, but were only assisting the complainant, in which case no siren would have been needed;
- vi) The weight of the evidence is against their being heavy vehicular traffic that would have necessitated the use of a siren. Mr. Ellis and Mr. Tucker indicated that there was no heavy vehicular traffic at the intersection and it is improbable that for 4 minutes, persons made way for the service vehicle without any cars crossing the intersection. The court should reject the evidence of heavy vehicular traffic and accept the evidence of Mr. Tucker and Mr. Ellis that along Maxfield Ave, there were vehicles in the 3 lanes from the right and none in the fourth lane;
- vii) The court should not accept Sergeant Lewis' finding that the service vehicle entered the intersection from the second to right lane. The diagram contained in Mr. Blackwood's report shows the service vehicle entering the intersection from the 4th lane and having to re-enter the 3rd lane given that the 4th lane was not meant for vehicles going across the intersection. The accident then happened whilst the service vehicle was slanted to the right, trying to re-enter the intersection. The court is reminded that Sergeant Lewis accepted that based on the damage to the vehicles, the service vehicle would have been slanted to the right at the point of impact. This would be as it re-entered the third lane. It is also noteworthy that the 3rd lane would be more in the vicinity of the point of impact 10.3 m from the Hiace's entrance to the intersection, rather than the 2nd lane, given the various distances identified in Mr. Blackwood's report;

- viii) The sole reliable evidence of Mr. Ellis' speed is his own evidence that he was traveling at 50 km/h. Although Sergeant Lewis suggested otherwise in his report, his evidence was discredited during cross examination and by the evidence of Mr. Blackwood. Even if the court were to find that Mr. Ellis was travelling at a speed above 50km/h in the circumstances that existed, it did not amount to negligence on Mr. Ellis' part. See ***Tribe v Jones*** (1961) 10 Sol Jo 931;
- ix) There is no direct evidence as to the speed of the service vehicle but the officers' evidence of 5 km/h cannot be believed. In the circumstances as they were, they would not have been travelling slowly;
- x) There is no indication that Mr. Ellis was negligent in any way as:
- (1) He saw the service vehicle when it was approximately 30 feet away and there is no evidence that he could have seen it sooner nor can it be said that he failed to see it within a reasonable time;
 - (2) He did not fail to apply his brakes in sufficient time or to stop, swerve, or otherwise conduct the Toyota Hiace so as to avoid the collision. See **Bingham's Motor Claims Cases 10th ed.** at p. 77 which shows, based on braking tests, that Mr. Ellis could not have stopped in time to avoid the collision;
 - (3) There is no evidence that he drove in a careless or reckless manner or lost control of the Toyota Hiace bus;
 - (4) He should not be faulted for the 2nd defendant's negligence in darting into the intersection from an unauthorized lane. Mr Ellis acted reasonably in the circumstances and the actions of the 2nd defendant constitute the sole cause of the accident.
- xi) Regarding the ancillary claim the 1st defendant/ancillary claimant advanced that:

(1) The 2nd defendant was negligent in driving without due care and attention and failing to have any or any sufficient regard for other road users. While the use of the flashing lights may absolve the officers of any criminal liability for disobeying the red light, in certain circumstances, it does not remove their civil liability and their duty of care to other road users. See ***Gaynor v Allen*** [1959] 2 QB 403. This conclusion was reached in circumstances where the **UK Road Traffic Act** explicitly exempted police officers from the speed limit. However as our **Road Traffic Act** makes no exceptions to the duty of all drivers to obey all red lights, the decision in ***Gaynor v Allen*** should be applied in Jamaica with even greater force;

(2) The 2nd defendant and by extension the 3rd defendant are the sole cause of the accident and are liable to the 1st defendant for the losses suffered.

[44] The submissions of counsel for the 2nd and 3rd defendants, in summary, were as follows:

- i) The principle for the use of a highway is outlined in Halsburys Laws of England Volume 34 paragraph 44;
- ii) A driver in general owes no duty to traffic entering a light controlled crossing against the lights. However, before the driver enters the road junction he is bound to ensure that it is safe to do so when the lights turn to his favour. See ***Joseph Eva Ltd v Reeves*** [1938] 2 ALL ER 115;
- iii) Section 97 of the **Road Traffic Act (RTA)** requires drivers to obey all traffic signs. Regulation 3 of the **Road Traffic (Emergency Vehicles) Regulations 1961** indicates that emergency vehicles using a siren have right of passage on the roads. Section 53(a) of the **Island Traffic Authority Road Code 1987** requires drivers who hear a siren or see flashing lights on an emergency vehicle to stop and remain stationary until the emergency vehicle has passed. The special provisions for emergency vehicles was recognised in the case of ***Griffin v Mersey Regional Ambulance*** [1998] IQR 934. Section 95 of the RTA

- indicates that a failure of a motorist to obey the road code may be relied upon in proceedings to establish or negative any liability in question in the proceedings;
- iv) It would not have been possible for Ms. Sterling to see the traffic signal that controlled the service vehicle from the point where she was sitting. Further her account of the traffic light changes is in contrast with that of Mr. Ellis;
 - v) Ms. Sterling's evidence as to the colour of the traffic lights at the material time should be disregarded, as being the passenger, she would not be paying attention to the details such as the colour of the traffic signals and she was unable to recall the time between the lights changing to green and when the collision occurred;
 - vi) In finding liability involving two (2) vehicles where both drivers provide opposing versions of the accident, the court must find one or both at fault. See **Bingham and Berryman's Personal Injury and Motor Claim Cases 13th ed.** Pether, Michael et al October 2010;
 - vii) In the event of an accident it is presumed that the traffic lights were working properly, unless there is evidence to prove the contrary. (See **Wells v Woodward** (1956) 54 LGR 142). Subject to any evidence that allows the court to draw any other conclusion, the inference is that both drivers are equally (50/50) to blame (**Baker v Market Harborough Industrial Co-op Society Ltd.** [1953] 1 WLR 1472). It was not a proper position to conclude that no driver was to be blamed when there was an absence of evidence enabling the blame to be fixed on one driver (**France v Parkinson** [1954] 1 ALL ER 739);
 - viii) The law makes special provisions for drivers of emergency vehicles; nonetheless although these concessions are made, the driver of the service vehicle is under a duty to drive with due care and attention and to not expose the public to an unnecessary danger. (See **Gaynor v Allen** [1959] 2 QB 403 at 407). Both drivers had a duty of care when using the road;

- ix) The court is asked to accept that Sergeant Lewis used the formula that was applicable to the available variables. Sergeant Lewis concluded that the driver of the Hiace minibus applied his brakes in the vicinity of the stop line. The application by Mr. Ellis of his brakes from the stop sign suggests that he reacted to something being either the red traffic lights or the police service vehicle driving into the intersection. On the premise of the findings of Sergeant Lewis, Mr. Ellis failed to stop due to the high speed he was travelling;
- x) The court is asked to infer that if the service vehicle got safe passage as the vehicles moved to give the driver way, then there must have been the use of the siren to alert the drivers of vehicles who were ahead of the service vehicles as the lights alone would not be sufficient to alert them. Mr. Ellis should have observed that and stopped;
- xi) On the weight of the evidence of Mr. Ellis and that of his expert, Mr. Blackwood, the distance between the impact and the skid marks from the intersection would have covered a greater distance. If the court chooses to accept his evidence, it would prove in the 2nd and 3rd defendants' favour that he had a longer distance to react and brake to avoid the accident;
- xii) Based on Mr Ellis' account, the lights were showing green from he was coming from Half Way Tree. Therefore, it seems more probable than not that by the time he would enter the intersection the lights could have changed to red.
- xiii) With regard to the evidence given by Mr. Tucker, even if he was present at the scene, there would have been sufficient time for the lights to change without him being aware of it. Further, he gave contradictory evidence on several things including the lane he observed the service car coming from and the position of the service vehicle after the collision. These inconsistencies are clear and as a result the court is beseeched to reject Mr. Tucker's evidence and not to find him a credible witness to the collision;

- xiv) Much weight should not be attached to the fact that the officers attempted to perform two duties contemporaneously. The absence of the transcript from Police Control ought not to be used to negative the evidence of the officers that the siren and horn was used.
- xv) Speeding alone is not evidence of negligence as the drivers of emergency vehicles are entitled to expect other road users to be aware of their approach and act accordingly. See **Scuffs v Keyse** [2001] 1 ALL ER 238;
- xvi) Mr. Ellis had a duty to stop on seeing the presence of a service vehicle in emergency mode. Further, he should have appreciated that the other vehicles had stopped to allow the service vehicle to pass. The court is asked to find that Mr Ellis is wholly liable for the accident or that at least, the 2nd defendant contributed to the collision and that there should be a joint contribution of 60/40 in favour of the 2nd defendant.

THE LAW AND ANALYSIS

[45] Several statutory and regulatory provisions are relevant to the legal duties arising in this matter. With respect to the **Road Traffic Act (RTA)** the following sections need to be considered:

S. 32(1)-If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence...

Section 51 (1) (d) and (2):

(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 it obstructs any traffic;

...

(2) Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection.

....

S. 95(1) - The Island Traffic Authority shall prepare a code (in this Act referred to as the "Road Code") comprising such directions as appear to the Authority to be proper for the guidance of persons using roads, and may from time to time revise the Road Code by revoking, varying, amending or adding to the provisions thereof in such manner as the Authority may think fit.

(2) - ...

(3) - The failure on the part of any person to observe any provisions of the Road Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

...

S. 96(4) - In this part the expression "traffic sign" includes marks on the surface of roads, all signals, whether automatic electric signals or otherwise, warning sign posts, direction posts and signs or other devices for the guidance or direction of persons using roads.

...

97(1) The driver of every vehicle and the rider of every bicycle shall obey-

(a) all red lights and stop signs; and

(b) all other traffic signs which may be lawfully placed, erected or exhibited on or near any road, or so as to be visible from a road, in accordance with the provisions of section 96.

(2) Any person who fails to comply with any such traffic signs shall be guilty of an offence.

[46] The Road Traffic (Emergency Vehicles) Regulations, 1961 regulations 2 – 4 provide:

2. In these Regulations –

"emergency vehicle" means a motor vehicle specified in the Schedule;

"vehicle" means any vehicle whatever may be its form or construction.

3. Emergency vehicles giving audible signal by siren horn shall have the prior right of passage along all roads.

4. Upon the approach of any emergency vehicle giving audible signal by siren horn,

a. the driver or operator of every other vehicle being used on a road shall immediately drive the vehicle as near as possible and parallel to the left edge or kerb of the road clear of any intersection and shall stop and remain stationary until the emergency vehicle has passed; and

b. every pedestrian on the road shall immediately proceed as near as possible to the extreme edge of the road and shall remain there until the emergency vehicle has passed.

[47] The Island Traffic Authority Road Code, 1987 (“the Road Code”): Part 2 provide at paragraphs 15 – 18 and 53 as indicated below:

Intersection and Road Junction Operation

15. Approach all intersections with caution, have your vehicle in control at all times;

16. Be prepared to stop, rest foot slightly on brake pedal and proceed through cautiously;

17. Bring your vehicle to a full stop at all 'stop' signs and proceed only when it is safe to do so; and

18. At the "Traffic Light Signal controlled junctions", proceed only on the green signal. Do not enter an intersection on red or amber. If you are already in the intersection when the amber light comes on you may proceed cautiously.

Emergency Vehicles

53. When you hear the siren, bell, Two Tone horn or see the flashing red light of an emergency vehicle (Fire, Ambulance, Police) observe the following rules:

Drive your vehicle as near as possible and parallel to the left edge or kerb of the road, clear of any intersection. Stop and remain stationary until the emergency vehicle shall have passed.

Every pedestrian on the road must immediately proceed to the sidewalk as near as possible to the extreme edge of the road and stop until the emergency vehicle shall have passed.

The driver of a vehicle may not follow closer than 500 feet behind any emergency vehicle.

[48] The statutory duty not to engage in careless driving reflected in s. 32 of the **RTA** is applicable to all drivers on the road. Also of significance are the Driving Rules s. 51 (1)(d) of the **RTA** which requires drivers not to obstruct traffic while executing certain manoeuvres. Critically s. 51(2) of the RTA, imposes a general duty on drivers to take such action as necessary to avoid an accident even where the cause of the impending accident is not their fault.

[49] The **RTA** and accompanying regulations, which will be addressed later, are complemented by case law. The tort of negligence requires specific things to be proved by the claimants, on a balance of probabilities, before they can succeed in an action against another road user. In ***Adele Stern v Villa Mora Cottages Ltd and Another*** [2012] JMCA Civ 20, Morrison JA, (as he then was), succinctly stated these requirements at paras 49 - 50 as follows:

[49] The requirements of the tort of negligence are, as Mr Batts submitted, four fold, that is, the existence of a duty of care, a breach of the duty, a causal connection between the breach and the damage and foreseeability of the particular type of damage caused (see Clerk & Lindsell on Torts, 19th edn, para. 8-04). The test of whether a duty of care exists in a particular case is, as it is formulated by Lord Bridge of Harwich, after a full review of the authorities, in the leading modern case of *Caparo Industries plc v Dickman* [1990] 1 All ER 568, 573-574:

“What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of ‘proximity’ or ‘neighbourhood’ and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other.”

[50] As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof, on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case (see Clerk & Lindsell, *op. cit.*, para. 8-149; see also, *Ng Chun Pui v Lee Chuen Tat* [1988] RTR 298, per Lord Griffiths at page 300). But the actual proof of carelessness may often be problematic and the question in every case must be “what is a reasonable inference from the known facts?” (Clerk & Lindsell, *op. cit.*, para. 8-150).

[50] While contemplating what the claimants are required to prove, it is convenient at this point to address the fact that in proof of his claim Mr. Rickards prayed in aid the doctrine of *res ipsa loquitur*. In ***Adele Shtern v Villa Mora Cottages Ltd and Another*** [2012] JMCA Civ 20, Morrison JA at paragraph 57, outlined the circumstances in which a *prima facie* case of the doctrine arises:

[57] *Res ipsa loquitur* therefore applies where (i) the occurrence is such that it would not normally have happened without negligence (the editors of Clerk & Lindsell, [19th Ed], para. 8-152 provide an illustrative short-list from the decided cases: ‘bales of sugar do not usually fall from hoists, barrels do not fall from warehouse windows, cranes do not collapse, trains do not collide and stones are not found in buns’); (ii) the thing that inflicted the damage was under the sole management and control of the defendant; and (iii) **there must be no evidence as to why or how the accident took place**. As regards this last criterion, the editors of Clerk & Lindsell (*op. cit.* para. 8-154) make the important point, based on ***Henderson v Jenkins &***

Sons [[1970] RTR 70, 81 – 82], that “Where the defendant does give evidence relating to the possible cause of the damage and level of precaution taken, the court may still conclude that the evidence provides an insufficient explanation to displace the doctrine”. (Emphasis added).

[51] The doctrine of *res ipsa loquitur* was also relied on in the case of **Igol Coke v Nigel Rhooms and Others** [2014] JMCA Civ 54, in which a collision occurred at a road junction between a police service vehicle and a private vehicle that were both travelling in the same direction. The claimant who was in the police service vehicle sued both the private driver (1st defendant), the police driver of the service vehicle (2nd defendant) and the Attorney General by virtue of the Crown Proceedings Act. Both the 1st and 2nd defendants claimed that the other was the cause of the accident.

[52] At trial, the court upheld the no case submission made by counsel for the 2nd defendant on the basis that the claimant had ascribed no blame for the crash to the police driver. The court later found that the claimant had also not made out a case against the 1st defendant who in his testimony blamed the collision on the 2nd defendant. On appeal, the claimant argued that though not pleaded, the doctrine of *res ipsa loquitur* was relevant and applicable especially as each of the drivers blamed the other for the accident. Having referred to **Adele Shtern v Villa Mora Cottages Ltd and Another** the court stated at paragraph 20 that:

[20] It is fair to say, based on the highlighted portion of that extract, that the present case is not one where there is “no evidence as to why or how the [collision] took place”. Constable Coke both pleaded in his particulars of claim and testified as to what occurred. *Res ipsa loquitur*, therefore, does not apply in this case. That is however, not an end to the matter. The conduct of the case by the learned trial judge has to be examined to determine whether it contributed to this unusual result.

[53] Ultimately the court having assessed the conduct of the case by the learned trial judge ordered a re-trial.

[54] In the instant matter concerning Mr. Rickards, the evidence has revealed that prior to the incident Mr. Rickards was sleeping. On impact it appears he was rendered

unconscious and eventually awoke in the hospital after the accident. However, the totality of the evidence presented goes into significant detail, even including expert evidence outlining how the accident occurred. The fact that aspects of the evidence are diametrically opposed requires the court to assess the evidence and determine the matter on a balance of probability. It is manifest, given the amount of evidence, that the test for the applicability of the *res ipsa loquitur* doctrine that is, “*that there is no evidence as to why or how the collision took place*” is not met. Moreover, the court does not find that the explanation coming from the defendants or the other sources of evidence in this matter is insufficient to displace the doctrine.

[55] The issue of the reliance on the doctrine of *res ipsa loquitur* having been “*put to bed*”, consideration should now be focussed on the fact that the respective duties of care that were owed to other road users by the two drivers in this matter, have to be understood and assessed in the context that the law makes special provisions for drivers of emergency vehicles. However, despite these special provisions, the driver of a service vehicle is under a duty to drive with due care and attention and not to expose the public to an unnecessary danger (See ***Gaynor v Allen*** previously cited at page 407).

[56] A significant case that addresses the respective duties of the driver of an emergency vehicle and a driver of a private vehicle is ***Griffins v Merseyside Regional Ambulance***. It established that there is no absolute rule in favour of traffic crossing a junction on a green light. Consequently, even a private motorist in whose favour the traffic light shows green still has a duty to exercise reasonable care in accessing an intersection. The case however also noted that the duty on the ambulance driver in that matter crossing an intersection against the red light was a heavy one, but that equally there is a duty of care upon the driver of the private motor vehicle, which went beyond merely taking reasonable steps to avoid colliding with the ambulance. The decision in that case was based on the Traffic Signs Regulations and General Directions 1994 applicable in the United Kingdom which imposed particular obligations on drivers upon their being alerted to the approach of an emergency vehicle.

- [57] In the Jamaican context, the relevant statutory and regulatory framework outlining the responsibilities of private drivers when alerted to the presence of an emergency vehicle with emergency signals activated, in the form of **The Road Traffic (Emergency Vehicles) Regulations, 1961; Reg. 4(a) and The Island Traffic Authority Road Code, 1987 (“the Road Code”): Part 2: Para 53** have been set out earlier. That framework requires a private driver to pull over to his left as close to the curb as possible and remain stationary until the emergency vehicle passes.
- [58] It should be noted that the emergency vehicle regulations in Jamaica do not address the duties of the drivers of emergency vehicles but they outline the circumstances in which the specific duty of other drivers arise in relation to emergency vehicles. This however does not negate the duty of care owed to other road users by the drivers of emergency vehicles in Jamaica, based on the **RTA** and the common law.
- [59] The duties imposed on a driver of an emergency vehicle in the Jamaican context was considered in the case of ***Damean Wilson v Christopher Dunn and Ors*** [2014] JMSC Civ 257 in which there was a collision between an ambulance and a motor vehicle driven by the 1st defendant, as a consequence of which the claimant sustained injuries. The 3rd defendant the driver of the ambulance maintained, amongst other things, that his flashing lights were on. The court however found the 2nd and 3rd defendants liable for negligence. Batts J stated at para. 25 that:

The issue which arises is whether there is a breach of duty of care by the 1st Defendant. I hold that he acted reasonably and as any reasonably prudent driver would. He satisfied himself no vehicle was oncoming. He had earlier satisfied himself no one was behind and that vehicles behind were passing to his left. It was reasonable to assume that any other vehicle would follow suit. The accident was in my view entirely caused by the negligence of the 3rd Defendant who failed to operate his vehicle in a safe manner. A vehicle ahead positioned as if to turn right with indicator on, ought to be passed on its left or not at all. **It is an act of negligence to proceed in the reckless expectation that other vehicles will give way stop or move out of the way, merely because one has a light on.** In

fact and as I have found there was no flasher light on the vehicle. Whether or not one was on makes no difference to my decision. This is because a flashing light would not have changed the cause of this accident. The 1st Defendant was positioned to turn right with his indicator on. The 3rd Defendant ought to have stopped or passed to the left of the 1st Defendant. (Emphasis added).

- [60] This case supports the position that although private motorists have a duty to give way to emergency vehicles operating with signals that indicate they are on an emergency mission, drivers of emergency vehicles also have a duty to assess the circumstances and exercise due care and regard for other road users having regard to those circumstances while proceeding on their emergency mission.
- [61] Against this background of legal principles extracted from the relevant legislation, regulations, code and case law, the issues identified will be assessed. Though the resolution of one issue by itself will not necessarily determine liability, the combination of findings across the issues should make it clear where the incidence of liability should fall.

Issue 1: Which driver failed to obey the traffic signal (stop light) at the intersection?

- [62] The claimant Ms. Sterling, Mr. Ellis, the Hiace bus driver and Mr. Tucker, the pedestrian who claimed to have witnessed the accident, maintain that the green light was showing in favour of Mr. Ellis. Conversely, the 2nd defendant and Inspector Steele contend that they had the green light. As indicated in the case of ***Wells v Woodward***, where there is an accident it is presumed that the traffic lights were working properly unless there is evidence to prove the contrary. In fact in the instant case the evidence of Sergeant Lewis, puts the matter beyond a presumption, as he confirmed that when he went to the scene half an hour after the accident, the sequence of the traffic lights was what it was supposed to be. Significantly, both Sergeant Lewis and Mr. Blackwood, the expert called on behalf of the 1st defendant agreed that only a credible witness could substantiate who in fact had the green light at the time of the accident.

- [63] I do not find the arguments against the reliability of Ms. Sterling, Mr. Ellis and Mr. Tucker's contention that Mr. Ellis had the green light convincing. There is no evidence to suggest that Ms. Sterling's view of the street lights would have been compromised because she was sitting behind the driver at a window and hence could not see the lights as she claimed. Mr. Ellis, the Hiace bus driver having indicated that there were other vehicles at the intersection at Maxfield Avenue, would have been taking a significant and irrational risk, if observing that state of affairs he then proceeded to drive straight across that wide intersection on a red light. It is also significant that only the service vehicle came into the intersection from Maxfield avenue. Even if as Constable Motta and Inspector Steele maintain cars were giving them passage, if they had a green light it would be expected that other cars would have followed them into the intersection. I also note that Sergeant Lewis withdrew his conclusion at para 5.8 of his report that Mr. Ellis had the red light, when it was shown in cross examination that it was inconsistent with his earlier conclusion at para 5.7, that only a credible eye witness could substantiate who disobeyed the red light.
- [64] The significant clinching evidence I find comes from Mr. Tucker. There is no indication that he was other than an independent witness. In fact it is unchallenged that he went to lend assistance to the effort to get the policemen out of the service vehicle after the accident. There is therefore no reason to suppose he would be telling a deliberate lie. Equally, there is no reason to suspect that he was less than observant and that the light could have changed after he looked at it. He was in the process of crossing the road, and as he indicated, he would not have been able to be crossing the road with vehicles at the intersection unless the light facing Maxfield Avenue was on red.
- [65] I therefore accept the evidence that Mr. Ellis had the green light and reject the evidence led on behalf of the 2nd and 3rd defendants that it was the 2nd defendant who had the green light. As ***Griffins v Merseyside Regional Ambulance***, established however, there is no absolute rule in favour of traffic crossing a junction

on a green light. Other factors will therefore need to be considered to determine the question of liability.

Issue 2: Whether the police service vehicle emerged from the 4th slip lane on the extreme left or from the 2nd lane from the right on Maxfield avenue?

[66] Mr. Ellis and Mr. Tucker state in their evidence that the service vehicle entered the intersection from the extreme left lane on Maxfield Avenue. Mr. Tucker said it was the only lane that no vehicles were in. Mr. Blackwood supported the account of the service vehicle entering the intersection from that lane. In opposition to that account, Constable Motta and Inspector Steele maintain that the service vehicle travelled from the 2nd lane from the right into the intersection. They were supported in this claim by Sergeant Lewis. Apart from the credibility of both Mr. Ellis and Mr. Tucker which I find to be unimpeachable, my examination of the contending reports of the experts and a crucial bit of evidence given by Sergeant Lewis to the court after re-examination, I find demonstrate conclusively, that the account of the service vehicle travelling from the extreme left lane into the intersection is what actually transpired.

[67] Both experts agree that the point of impact was 10.3 metres or approximately 42 feet from the stop line Mr. Ellis would have crossed entering the intersection. Sergeant Lewis accepted the diagram produced by Mr. Blackwood showed a truer representation of the intersection than his sketch which was not a diagram drawn to scale. The measurements taken by Mr. Blackwood show that the 2nd lane from the right on Maxfield avenue would be 10.5 feet to 21 feet from the right curb and the extreme left lane would be 31.5 to 41.2 feet from the right curb. In interpreting the measurements, allowance has to be made for the irregular shape of the intersection, the fact that Maxfield avenue is at an angle to the intersection and that the stop line that Mr. Ellis crossed would be in an imaginary line beyond the right curb on Maxfield avenue.

[68] Due allowance having been made for those factors, Mr. Blackwood's diagram demonstrates that if the service vehicle was travelling into the intersection from the 2nd lane from the right on Maxfield avenue, the point of impact could not have been 42 feet from the stop line Mr. Ellis crossed, as for that to have occurred, the service vehicle would have to have been travelling slanted left from the 2nd lane from the right on Maxfield avenue. This is significant as the evidence is, as agreed by Sergeant Lewis, that the service vehicle was slanted right when it was hit by the Hiace bus which is consistent with the diagram on Mr. Blackwood that shows the line of travel of the service vehicle from the extreme left lane slanting right towards the 3rd lane that goes straight across the intersection. The credibility of Mr. Ellis and Mr. Tucker on this issue of the lane from which the service vehicle drove, independently established, has therefore additionally been bolstered by the expert evidence of Mr. Blackwood and Sergeant Lewis which the court has accepted.

Issue 3: Whether the police service vehicle driven by the 2nd defendant had its siren on?

[69] Mr. Ellis and Mr. Tucker are at one that the service vehicle had on its flashing lights but no siren. Ms. Sterling also indicated in her evidence that the siren on the service vehicle was not on. Counsel for the 1st defendant submitted that inconsistencies between the accounts of Constable Motta and Inspector Steele concerning the shooting incident suggest that they were not heading to the shooting incident and hence would have had no need for use of the siren. Both Constable Motta and Inspector Steele maintain that permission was sought and obtained from Police control to use the siren. In fact Inspector Steele indicated that he had been unaware that the use of the siren was in issue, which was why no transcript in support of its use was sought from Police Control.

[70] I do not need to make any determination of whether or not Constable Motta and Inspector Steele were on their way to the scene of the shooting. I however accept the evidence of Mr. Ellis and Mr. Tucker the independent witness, both of whom I have already indicated I found to be credible, that flashing lights were on but not

the siren. I find the admission by them that the flashing lights were on strengthen their credibility and causes the court to ask the question, "If they admit the lights why would they falsely deny the siren?" The absence of the use of the siren was perhaps not unusual as on the evidence of the civilian witnesses and given the time of night, I accept that there was not heavy vehicular traffic as indicated by Constable Motta and Inspector Steele. In fact even if there was heavy traffic, surely the use of the siren would have enabled the service vehicle to reach the intersection from the Half Way Tree Police Station in substantially less than the four minutes suggested by Constable Motta. In all the circumstances therefore I find that the service vehicle did not have on its siren at the material time.

Issue 4: Whether one or both of the drivers was/were negligent in causing the collision in the middle of the intersection?

[71] The evidence I have accepted means that I have found that Constable Motta drove into the intersection disobeying the red light and did not become aware of the approach of the Hiace bus until he heard the sound of braking and felt the impact. He having become aware of the Hiace bus just before impact it is unsurprising that he took no evasive action. I do not accept that Cons Motta was driving at 5 km/h or less up to the intersection. In fact in relation to the speed at which he entered the intersection the evidence of Mr. Tucker is that when the service vehicle got into the extreme left lane, it sped towards the intersection, where it was hit by a Toyota Hiace bus. It is therefore clear from the preponderance of evidence, that Constable Motta drove without due care and attention and did not keep a proper look out. His negligence having been established the question that remains is whether Mr. Ellis contributed to the accident and should share a portion of liability.

[72] It should be remembered that s 51 (2) of the RTA imposes an obligation on drivers to take such action as may be necessary to avoid a collision, even if their actions were not what created the hazard. The court therefore needs to examine whether Mr. Ellis drove at a speed or in a manner or otherwise failed to take necessary action which contributed to the accident occurring.

- [73] The report of Sergeant Lewis sought to establish that Mr. Ellis was driving at a minimum of 60.6 km/h which would be in excess of the speed limit. However given the criticisms by Mr. Blackwood of the method utilised by Sergeant Lewis to arrive at that conclusion i.e. that the formula used was inappropriate where an impact has occurred, which I accept, I agree with the submissions of counsel for the 1st defendant that he only credible evidence of the speed at which Mr. Ellis was going is his evidence that he was proceeding at 50 km/h. The fact that I find he was travelling within the speed limit however does not by itself settle the matter. What was the sequence of events and what was the action that he took?
- [74] He first noticed the service vehicle when he was entering the intersection and it was coming around the left of the vehicles at the intersection and onto the intersection. The court bears in mind that the vehicle was in the slip lane which is not the lane from which vehicles normally proceed across the intersection, but being a slip lane vehicles would be expected to turn left. Mr. Ellis indicated that having noticed the service vehicle proceeding into the intersection at which point he was, approximately 34 feet away, he sounded his horn and pressed his brake. The distance is based on the longest skid mark as measured by Sergeant Lewis at 10.3 m. and significantly it started at the stop line that Mr. Ellis had to pass to enter the intersection. That means that from at least that point he reacted to the service vehicle coming into the intersection.
- [75] As submitted by counsel for the 1st defendant, this physical evidence actually supports Mr. Ellis' account of when he observed the service vehicle and applied his brake. Further, based on a braking test contained in **Bingham's Motor Claims Cases 10th ed.** at p. 77, a vehicle travelling at 50 km/h (approximately 30 mph) will come to a stop after travelling for 43 feet on a dry asphalted road with a friction coefficient of 0.7. While all the scientific details applicable to the instant accident are not known that calculation provides some support for the submission that it would not have been possible for Mr. Ellis to stop, prior to coming into contact with the service vehicle, in a context where I find the distance at which he first observed the service vehicle was reasonable in all the circumstances. I therefore find that

there was nothing else that Mr. Ellis could reasonably have done to prevent the collision. There is therefore no need to consider issue v, or the cases that address apportionment of liability. Accordingly I find that sole liability for the accident rests with Constable Motta.

[76] I cannot end this judgment without extending sincere apologies to the parties and counsel for the very long delay in its delivery. I recognise that the effect of the delay is exacerbated by the fact that this decision only determines liability and now the issue of the quantum of damages payable on the claim and ancillary claim will have to be pursued. To expedite the matter being brought to conclusion, the court orders that the assessment of damages is to be facilitated as a matter of urgency, as soon as the prevailing circumstances allow.

DISPOSITION

[77] In the premises the matter is disposed of as follows:

- i) Judgment on the claim for the claimants against the 2nd and 3rd defendants;
- ii) Costs to the claimants against the 2nd and 3rd defendants to be agreed or taxed;
- iii) Judgment on the ancillary claim to the ancillary claimant against the 1st and 2nd ancillary defendants;
- iv) Costs to the ancillary claimant against the 1st and 2nd ancillary defendants to be agreed or taxed.