



[2026] JMSC Civ 61

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV03557

BETWEEN	ROSE ROBINSON-BROWN	CLAIMANT
AND	JASON SIMPSON	FIRST DEFENDANT
AND	MICHAEL MARLON MALCOLM	SECOND DEFENDANT

IN OPEN COURT

Ms. Danielle S. Archer instructed by Danielle S. Archer & Associates for the Claimant

Ms. Suzette Burton-Campbell instructed by Burton Campbell & Associates for the Defendants

Heard: May 22, 2025 & May 19, 2026

NEGLIGENCE – COLLISION BETWEEN PEDESTRIAN AND MOTOR VEHICLE – CONTRIBUTORY NEGLIGENCE – DUTY OF CARE – LIABILITY – QUANTUM OF DAMAGES

WINT-BLAIR J

Background

[1] The claimant claims damages for personal injury arising from an incident which occurred on or about the 4th day of August 2011 on Manchester Road, in the vicinity of the Mandeville Market, in the parish of Manchester.

- [2] It is her case that she was crossing Manchester Road when she came into contact with a Toyota Hiace motor bus owned by the first defendant and driven by the second defendant. She alleges that the second defendant, acting as the servant and/or agent of the first defendant, negligently drove, operated and/or managed the motor bus, causing or permitting it to collide with her.
- [3] The claimant seeks damages for personal injury, loss, damage and consequential expenses. She relies on the medical report of Dr Jerome Howell, dated 18 January 2012, and his answers to questions, dated 6 March 2026.
- [4] Before considering the evidence, there is one preliminary matter with respect to the Particulars of Claim which refers to the motor vehicle's registration number as PE 5802, whereas the defence and the second defendant's evidence refer to a Toyota Hiace motor bus registered PE 9426. The parties did not resolve this discrepancy before the trial, nor did it seem to have been noticed.
- [5] The Court cannot amend a pleaded case of its own motion. It must determine whether that discrepancy in the registration numbers stated in the parties' statement of case goes to the real issues joined between the parties. In this case, the defendants did not complain of any inability to meet the claimant's case arising from this, and in fact, it is admitted that there was contact between the claimant and the motor bus. The second defendant admits that he was the driver at the material time, and the first defendant's ownership of the vehicle was not in issue. The defendants do not say that the wrong vehicle, driver or owner has been brought before the Court. Their case is that the accident was caused wholly or substantially by the claimant.
- [6] I am therefore not of the view that the discrepancy in the registration number is material and would affect the real issues to be determined. I find that the vehicle involved was a Toyota Hiace motor bus driven by the second defendant in the course of the first defendant's business and registered PE9426.

The Evidence

- [7]** The claimant is a retired teacher. She was 73 years old at the time of trial. Her evidence was that on the material date, she was coming from Scotia Bank at Park Crescent and was going towards her taxi stand in Mandeville Park. It was late morning. She came to Manchester Road, opposite the Parish Church, intending to cross from the park side to the market side, where the taxi stands and vendors were located.
- [8]** The claimant said that a white car stopped and signalled for her to cross. She began to cross. A white minibus then came around the stopped car and made contact with her. She said she fell. One shoe came off, and her glasses and handbag also fell.
- [9]** After the incident, she felt dizzy and weak. The second defendant took her to the hospital. After waiting for some time, he took her to see Dr Smith and then back to the hospital. She said she received no attention and later asked the second defendant to take her home.
- [10]** The following morning, she felt pain in the lower back of her head, the back of her neck and extending down to the middle of her back. She later attended Dr Jerome Howell. She also said her blood pressure was high and remained elevated, and that she underwent further check-ups over several weeks.
- [11]** In cross-examination, the claimant said that traffic was “scanty”, and this surprised her because the area was usually busy. She admitted that she had a duty to keep a proper lookout while crossing. She also admitted that her witness statement did not include all the details later given in her oral evidence, including that she stopped to look before moving into the next lane of traffic on a three-lane road and that she fell on her buttocks. She said she did not see the bus.
- [12]** The second defendant is a taxi driver and public passenger vehicle operator. He gave evidence that he was driving the Toyota Hiace motor bus towards the bus

park in Mandeville. He said that Manchester Road was a one-way road with three lanes. He said traffic was bumper-to-bumper and that he was travelling at approximately 10 kilometres per hour.

- [13] The second defendant said that the claimant stepped into the roadway and came into the path of the bus. He swerved, and the claimant struck the right side wing mirror. He said that it was the claimant's left hand that hit the right mirror. He said the bus stopped after contact, not before. He said the claimant stumbled but did not fall, and that she told him she was okay.

Issues

- [14] The issues for determination are whether the second defendant was negligent; whether the claimant contributed to the accident; whether the defendants are liable and, if so, to what extent; and what damages, if any, should be awarded.

The Law

- [15] The claimant bears the burden of proving negligence on the balance of probabilities. She must prove duty, breach, causation and damage. The fact that a motor vehicle made contact with her while she was a pedestrian does not, without more, prove negligence.
- [16] A driver owes a duty to take reasonable care for pedestrians and other road users. That duty includes keeping a proper lookout, driving at a reasonable speed, maintaining proper control of the vehicle, and taking such action as is reasonable in the circumstances to avoid a collision. Section 51(2) of the now-repealed Road Traffic Act provides that it is the duty of the driver of a motor vehicle to take such action as may be necessary to avoid a collision. That duty does not create strict liability. It must be applied to the facts as they existed at the material time.
- [17] A pedestrian also has a duty to take reasonable care for her own safety. A pedestrian crossing a roadway, particularly a multi-lane roadway, must keep a

proper and careful lookout. The fact that one vehicle stops or signals that it is safe to cross in front of it does not mean the entire road is safe.

Discussion

- [18]** It is undisputed, on the evidence, that the claimant was crossing Manchester Road from the park side towards the market side, where the taxi stand and vendors were located. That was the direction she said she was travelling. That evidence is consistent with the location of the taxi stand and with her reason for crossing the road.
- [19]** Based on that movement across the roadway, the bus would have been to her left. This fact is important because the admitted contact was between the claimant's left hand and the right side mirror of the bus.
- [20]** The second defendant's account is that the claimant stepped into the roadway and came into the path of the bus. I am not satisfied that this account necessarily explains how the collision occurred. The claimant's stepping directly into the path of the bus is more consistent with a point of impact at the front-right corner of the bus, such as the right-front bumper or right headlight. In contrast, the admitted point of impact was between the claimant's left hand and the bus's right-side wing mirror.
- [21]** The claimant's evidence that she was already in the roadway when the bus overtook the stopped vehicle supports a conclusion that the contact between her left hand and the right-side mirror occurred while she was already in the roadway. This explanation is more consistent with her account that the bus moved into or across her path as she was crossing from one lane to another.
- [22]** The second defendant admitted that the bus was moving when contact occurred and that he swerved. He also admitted that the bus stopped only after it had made contact. These facts do not support a finding that the claimant was the sole cause

of the accident; rather, they support a finding that the bus's movement was an important causative factor.

- [23]** I reject the second defendant's evidence that, at the time of the accident, he was travelling in the lane closest to the sidewalk and that traffic was bumper-to-bumper as he described. His account does not support the admitted point of contact or the mechanics of the collision. It also does not adequately explain why, if there was bumper-to-bumper traffic and his speed was 10 km, it was necessary to swerve rather than stop, as there is no evidence that he applied his brakes. His evidence is that he stopped after the claimant made contact with the mirror, not before.
- [24]** There is also a conflict in the evidence regarding traffic. The claimant said traffic was light. The second defendant said traffic was bumper-to-bumper. I do not accept the second defendant's account of the traffic conditions or of his lane position. I do, however, accept that the bus was moving at a low speed. That evidence is consistent with the nature of the contact described, namely, contact between the claimant's left hand and the bus's right-side mirror. It is also consistent with the absence of any evidence of a more forceful impact. But low speed does not address the issue of negligence. A slow movement may still be negligent if it is made without a proper lookout and without first ensuring that the way is clear.
- [25]** If traffic was light, the claimant had an opportunity to see the bus and was required to keep looking to her left. If traffic was heavy or bumper-to-bumper, the second defendant had a duty to proceed carefully before moving around or past a stopped vehicle in a market area where pedestrians were to be expected, and therefore reasonably foreseeable.
- [26]** This was not an open highway; the collision took place in the vicinity of the Mandeville Market and taxi park. There were bus parks, taxi stands, vendors and pedestrians. A driver of a public passenger vehicle in that area was required to appreciate that a vehicle which had stopped may have done so for any number of

reasons, including to allow a pedestrian to cross in an area in which pedestrian traffic was to be expected.

[27] I am therefore not satisfied that the collision occurred in the manner described by the second defendant. The evidence I accept bolsters the claimant's account that she had already entered the roadway when the bus came around or passed the stopped vehicle. The second defendant's admissions support the claimant's explanation as to contact and the balance of probabilities.

[28] The claimant presented her evidence through the pleadings, witness statement, and oral testimony. She stated that she was crossing at a pedestrian crossing, but this was not included in the pleadings. If it was intended to be part of her case, it should have been pleaded as a material fact. As such, she cannot rely on this evidence as a separate pleaded basis of liability. The court is not required to accept every detail of the claimant's account; the question is whether, on the totality of the evidence, she has proved negligence on a balance of probabilities.

[29] On the central issue of how contact occurred, I find that the evidence supports the claimant's account. The contact between her left hand and the right side mirror of the bus is consistent with her already being in the roadway and with the bus moving around or past the stopped vehicle. It also contradicts the suggestion that the claimant was solely responsible for the accident as she unexpectedly stepped into the bus's path.

The second defendant's evidence contains the admission that the bus was moving when contact occurred. He accepts that he swerved. He accepts that he stopped only after making contact with the claimant, in an area where pedestrians were plainly foreseeable.

Liability

[30] I find that the second defendant breached his duty of care. He was driving a public passenger vehicle in an area where pedestrians were to be expected. The bus

moved around or past a stopped vehicle. That movement brought the right side mirror into contact with the claimant.

[31] Had the second defendant kept a proper lookout, waited, applied his brakes, or ensured that the way was clear before moving around or past the stopped vehicle, the accident would probably have been avoided. The breach was therefore not merely technical; the manner of driving was a causative factor, as it was the movement of the bus which brought the mirror into contact with the claimant while she was already in the roadway. I therefore find that the defendants are liable.

[32] That is not, however, the end of the matter. The claimant was crossing a multi-lane roadway. She was required to keep a proper lookout. The fact that one vehicle stopped or signalled to her did not entitle her to assume that all lanes were safe to be crossed. Particularly if, as she said, traffic was light, she had an opportunity to see the bus before contact, but she did not do so.

[33] I find the claimant contributorily negligent. Her fault was not in crossing the road, but in failing to maintain a proper and careful lookout while doing so. However, the greater responsibility lies with the defendants. The claimant was an elderly pedestrian who began crossing after another vehicle stopped for her. I apportion liability at 80% to the defendants and 20% to the claimant.

Medical Evidence

[34] The claimant relies on the medical report of Dr Jerome Howell, dated 18 January 2012, and on his answers to questions, dated 6 March 2026. The injuries relied on are blunt trauma to the back and buttocks, moderate blunt trauma, whiplash injury with bony injury to be ruled out, soft tissue injury, mild tenderness of the proximal thighs, blurred vision, unresolved neck pain, pain in the right knee, and no permanent disability.

[35] The claimant said in her witness statement that she fell to the ground, that one of her shoes came off when she "dropped on the ground", that she tried to move but

was weak and dizzy, and that she struggled to stand up. She said the bus driver came and helped her up from the ground.

- [36]** The claimant did not state in her witness statement the date of her first visit to Dr Howell. She said she had to see her doctor after waking with pain the morning after the collision. That evidence does not, by itself, establish that she saw Dr Howell on that same day.
- [37]** The medical report also omits the accident date and the date of the first examination in the history section. This is significant because the evidence indicates that the claimant left the hospital on the date of the accident and went home without being treated.
- [38]** The medical report records review dates of August 8, 2011, August 23, 2011, September 20, 2011, October 27, 2011 and December 21, 2011. Some aspects of the medical opinion state facts that have not been established, such as the claimant falling backwards and striking her head or back on the road surface.
- [39]** I find that the objective findings in the report were rather limited. The report recorded moderate tenderness in the neck and proximal thighs. The back and left buttocks were non-tender. The cervical spine X-ray showed mild arthritis at C6-7. Dr Howell stated that the arthritis was not the cause of the neck pain because the pain began at the time of the accident. That conclusion depended in part on the history provided by the claimant.
- [40]** Counsel for the defendants submitted, and I agree, that the medical evidence was unreliable. Although the claimant complained of pain in the left buttock, lower back, both hips, head, neck and blurred vision, the back and left buttock were found to be non-tender. The only objective evidence of injury was moderate tenderness in the neck and proximal thighs.
- [41]** When questioned about the divergence between the claimant's account and his findings, Dr Howell relied in part on the claimant's history rather than on any

objective clinical findings. Dr Howell found that the injury to the neck was caused by the claimant's neck and body moving in different directions when she was hit, and by her falling and hitting her back and head on the road surface.

[42] However, there is no evidence that the claimant's body was struck by the bus in that manner. The only point of contact was the claimant's left hand and the bus's right-side mirror. There is also no evidence that the claimant fell backwards and hit her head or back on the road. The medical report attributed blurred vision to a head impact, which has not been proved.

[43] Counsel relied on **Cooper Payen Limited v South Hampton Terminal Containers**¹ for the proposition that expert opinion forms only part of the evidence in the case and that, where the assumptions underlying the expert opinion prove incorrect, the opinion may no longer be relevant. I accept that submission. An expert opinion must be tested against the facts found by the court. Where the opinion proceeds on facts which have not been proved, the court is not bound to accept it.

[44] In **Marcia Bellegarde v Ideal Betting Company Limited & Donovan Lewis**,² this Court stated:

"[175] There is therefore a duty on this court to scrutinise the viva voce evidence as well as the reports produced by the expert witnesses. A judge or a jury is not obliged to accept the views of an expert. The duty of the experts called by either side is to furnish credible information so that the court can make an independent assessment by applying the information presented by the expert to the facts found in the case.

¹ [2003] EWCA Civ. 1223

² [2024] JMCC Comm 35

[176] Rule 32.3 (1) of the CPR governs the duty of an expert witness to render assistance to the court, in an impartial manner on the matters relevant to his or her expertise. This duty overrides any obligations to the party by whom the expert has been retained. In Cala Homes (South) Limited and others v Alfred McAlpine Homes East Limited, Laddie J said and I agree with the following:

'The function of a court of law is to discover the truth relating to the issues before it. In doing that it has to assess the evidence adduced by the parties. The judge is not a rustic who has chosen to play a game of Three Card Trick. He is not fair game. Nor is the truth: That some witnesses of fact, driven by a desire to achieve a particular outcome to the litigation, feel it necessary to sacrifice truth in the pursuit of victory is a fact of life. The court tries to discover it when it happens. But in the case of expert witnesses the court is likely to lower its guard. Of course the court will be aware that a party is likely to choose as its expert someone whose view is most sympathetic to its position. Subject to that caveat, the court is likely to assume that the expert witness is more interested in being honest and right than in ensuring that one side or another wins. An expert should not consider that it is his job to stand shoulder to shoulder through thick and thin with the side which is paying his bill...'

[45] While I accept that the claimant suffered some pain as a result of the accident, I do not accept the full extent of the injuries advanced on her behalf. In particular, I do not accept those injuries that depend on the unproven assertions in the medical report that she suffered a head impact, that she fell backwards with force onto her back, or that her body was struck by the bus in the manner assumed by Dr Howell.

[46] The medical evidence, therefore, assists the claimant only to the extent that it supports the presence of pain and soft tissue discomfort following the incident. It

does not prove the more serious injury alleged by Dr Howell. The court must assess damages on the injuries proved, not on those alleged.

Assessment of Damages

- [47] The authorities relied on, give a range of awards for whiplash-type and soft tissue injuries. The appropriate award depends on the nature and severity of the injury, the duration of symptoms, the objective findings, the prognosis, and the presence of permanent disability.
- [48] The claimant had no permanent disability. Her prognosis was that she was almost completely healed. The sum of \$2,800,000.00 sought by her counsel cannot be sustained, having regard to the evidence which I accept.
- [49] In **El Sade Bridge v Randy Miguel Graham and Jules Graham**,³ the claimant alleged injuries arising from a collision. She was first seen by a doctor some two months and approximately three weeks later. She was assessed, treated and referred to physiotherapy. The prognosis was that she had shown good improvement and was expected to experience occasional episodes of pain, which would settle within three to six months. General damages for pain and suffering were awarded in the sum of \$357,750.00, which, when updated to the March 2026 CPI, amounts to \$373,139.81.
- [50] The present case is weaker on injury than **Bridge**, as, unlike Ms Bridge, the claimant here has not proven her injuries. Having regard to what has been established on the record, the absence of any permanent disability, and the inconsistencies in the medical evidence, I award the nominal sum of \$250,000.00 as general damages for pain and suffering, before the reduction for contributory

³ [2025] JMISC CIV 14

negligence. After the 20% reduction, the award for general damages is \$200,000.00.

[51] Special damages must be specifically pleaded and proved. In the present case, the damages under this head were agreed at \$23,045.07, and that is the award I will make.

Conclusion

[52] I find that the claimant has proved, on a balance of probabilities, that the second defendant breached his duty of care. The contact between the claimant's left hand and the bus's right-side mirror supports the conclusion that she had already entered the roadway and that the bus moved around or past a stopped vehicle while she was crossing the roadway.

[53] I also find that the claimant contributed to the accident by failing to maintain a proper and careful lookout while crossing, and liability is apportioned 80% to the defendants and 20% to the claimant.

[54] Orders

1. Judgment for the Claimant against the Defendants.
2. The Claimant is awarded general damages in the sum of \$200,000.00 with interest at 3% per annum from October 17, 2012, to the date of judgment.
3. The Claimant is awarded special damages in the sum of \$23,045.07 with interest at 3% per annum from 4 August 2011 to the date of judgment.
4. Costs to the Claimant to be apportioned in the sum of 80:20 as between the Claimant and Defendants, to be taxed if not agreed.
5. Costs awarded in order number 4 are limited to the maximum sum which could be awarded in the Parish Court.

Wint-Blair, J