[2025] JMSC Civ 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV01665

BETWEEN	**YULANDO STANFORD**	**CLAIMANT**
AND	**MARLENE LAIDLEY**	**FIRST DEFENDANT**
AND	**KENIEL THOMAS**	**SECOND DEFENDANT**
AND	**RAYON McGIBBON**	**THIRD DEFENDANT**

IN OPEN COURT

Mr Jahmar Clarke and Ms Ayana Worges instructed by Jacobs Law for the Claimant

Ms Kerry Ann Sewell instructed by Jacobs Law for the First and Second Defendants

Ms Suzette Campbell instructed by Burton-Campbell & Associates for the Third Defendant

HEARD: March 11, 12, 2024 and January 23, 2025

Negligence – Motor Vehicle Collision – Personal Injuries – Causation – Liability– Damages

Road Traffic Act, sections 51(1) and 51(2),

Law Reform (Tort-Feasors) Act Sections 3(1) and 3(2)

WINT-BLAIR J

Background

[1] On or about the 15th day of August 2018, Yulando Stanford, of Hart Hill in the parish

of Portland was a passenger in a Probox motor car being driven by Rayon McGibbon. While driving along the Annotto Bay Main Road in the parish of St. Mary, it is alleged that Mr McGibbon, so negligently drove, managed and/or controlled the Probox motorcar that it collided into a Kia motorcar owned by Marlene Laidley and driven by Keniel Thomas. As a consequence, the claimant suffered personal injuries, loss, damages and incurred expenses. The claimant relies on res ipsa loquitur. This claim is against the defendants to recover damages for negligence arising out of this motor vehicle collision.

[2] Marlene Laidley, the first defendant/ancillary claimant, counterclaims against the third defendant, Rayon McGibbon, on the grounds that the said collision of August 15, 2018, was caused and/or materially contributed to by Rayon McGibbon. She claims against Rayon McGibbon in damages for negligence in relation to the loss suffered and expenses incurred together with an indemnity and/or contribution in relation to the claimant's claim.

The Evidence

[3] It is agreed that the vehicles involved in the collision on August 15, 2018, were a white 2006 Toyota Probox registered 5132 PE ("the Probox") being operated as a taxi by the third defendant Rayon McGibbon o/c "Greg"; and a red Kia Sportage registered 3286 FK ("the Kia") driven by Keniel Thomas, the servant and/or agent of Marlene Laidley, the owner. On the material date, on or about 12:00 noon, the weather was bright and dry, the road was asphalted and smooth, there was a drain to the left of the road as one approaches Buff Bay and a soft shoulder on the driving lane going in the direction of Annotto Bay. There is no challenge to the fact that there were five people in the Probox; that both vehicles were travelling in opposite directions nor that Mr Thomas was the sole occupant of the Kia.

The Claimant

[4] Mr Stanford, in his witness statement, gave evidence that on or about the 15th day of August 2018, sometime after 12:00 noon, he and his mother entered a taxi, in the town of Annotto Bay. Their intended destination was Hart Hill in the parish of Portland. The taxi driver "Greg" was his childhood friend. The day was very bright

and the road was dry. The road in the town of Annotto Bay is wide enough for two (2) lanes of traffic, the road is asphalted, smooth and properly marked. After about 10 minutes of waiting in the taxi, it was loaded and began to travel through the town.

[5] The claimant's mother was seated in the front passenger seat and he was seated at the window immediately behind her on the left side of the car. A lady was seated in the middle and another gentleman was seated by the window on the right side. The claimant leaned into the spot between the two front seats conversing with his mother. He stated that he was able to see the road properly from this position.

[6] The taxi was travelling at a fast speed through the town and on reaching the vicinity of the Annotto Bay Primary School, he observed a Kia motor stopped mid-way into crossing the left lane of the road. The Probox continued to travel at a fast speed in the left lane heading towards the Kia which was halfway in the left lane. The claimant realized that they kept driving at the same speed towards the Kia and the taxi driver was heading for a head-on collision.

[7] He also realized that the taxi driver was not paying attention to the road and immediately feared for his and especially his mother's life. All he could do was shout "Greg!" The left side of the taxi on which Mr Stanford and his mother sat, collided with the Kia that was still in the road. Upon impact, the claimant hit his head on a hard surface. He did not know what surface that was, but he immediately had a severe headache and was bleeding from his nose.

[8] He quickly opened the back passenger door on the left side of the taxi and helped his mother by placing her on the plaza to sit out of the sun. At this time his headache was even more severe and he was still bleeding from his nose.

[9] About five (5) minutes after exiting the taxi, he, his mother and the lady who had been sitting next to him were taken to the Annotto Bay Hospital by a passing taxi. Upon arrival at the hospital, he was treated by a doctor, whose name he does not recall and admitted overnight. He was discharged the next day and given prescription medication, which he purchased and took as prescribed. He was also given a referral to do a brain scan in Portmore and two (2) weeks sick leave.

[10] Four (4) days after being discharged from the Annotto Bay Hospital, he went to the Pines Imaging Centre in Portmore in the parish of Saint Catherine to have a brain scan done. The scan revealed that there was no "serious damage" to the brain.

[11] After the two (2) weeks of sick leave expired, he returned to work as a farmer with Jamaica Producers. He found that he could no longer bear to be in the sun. He felt pain, which was such that it affected his work. He was unable to meet his quotas and complete tasks generally. He went to the doctor and was given two weeks' sick leave. It became increasingly difficult to complete his assigned tasks and he continued to fall below his quota. He was laid off from his job. He stated that on occasion, he self-medicates with over-the-counter painkillers and natural herb remedies.

[12] During cross-examination, Mr. Stanford said that at the section of the road where the accident happened, if a motor vehicle was parked on either side of the road, then two motor vehicles could not pass each other easily. He testified that when he first saw the Kia, it was facing the direction of St Mary on the left side of the road. It was not moving; it had its left indicator on and it seemed like it was going into the plaza on his left. He could not tell where the damage was on the Kia and agreed that the police arrived some ten minutes after the collision. After the collision, the taxi was on the opposite side of the road. The point of impact on the taxi was to the bonnet on the left side before the front passenger seat.

[13] Mr Stanford explained that when he saw the collision about to occur the only thing he could do was shout out the driver's name because the driver did not appear to be taking any evasive action to avoid the accident. He agreed that "something transpired in that moment," (this was not explored,) the driver was not keeping a proper lookout and was driving at an excessive speed and swerved from the Kia to avoid the collision.

[14] The claimant said that from his seated position, he could see up to fifty metres ahead. There were no vehicles parked on either side of the road. He disagreed that the collision occurred on the side of the road headed to Annotto Bay police

station. When it was suggested to Mr Stanford that he was untruthful when he said the Kia was not on its correct side of the road, he said the taxi was on the left going up and the driver had to swing to the right, that's why the passenger side got hit, however, when he was talking to his mother, he was not viewing the road one hundred percent.

[15] In cross-examination, the claimant also stated that he was sitting at the edge of his seat talking to his mother but that he was not in that position at the moment of impact. He frequently shifted to speak to his mother and did so just before the accident. He spoke to her from either the window side of her seat or the other side. When he was about to say something to her, the collision took place. Upon seeing the oncoming car, his first response was to brace for impact so he sat back in his seat. After he saw the red car, he shouted to the taxi driver before going back into his seat. Despite moving back into his seat, he hit his face on the passenger seat.

[16] He noted that the taxi was speeding after leaving the park. The journey had not begun that way but he did not look at the speedometer nor did he know the speed limit on that road. He admitted to not asking Mr. McGibbon to slow down or stop so that he could exit the taxi. He added that the plaza was on the left side of the road and that there were no markings on the road that he could recall. He said he saw the collided vehicles in the position that they had stopped in after the collision and that exhibits 4A and 4B presented to the court were accurate representations of where the vehicles were after the collision.

[17] Mr Keniel Thomas, the truck driver, gave evidence that on August 15, 2018, he was driving a Kia towards Annotto Bay along the Annotto Bay Main Road coming from Portland. Just before reaching the Annotto Bay Primary and Infant School, he indicated his intention to make a right into a plaza as he intended to go to the Western Union. This plaza was on his opposite side of the road.

[18] The Annotto Bay main road at this point is very wide and it can accommodate three lanes of traffic though it is marked out for only two lanes. One lane going in either direction and a soft shoulder on the left-hand side of the road as one approaches from Portland.

[19] When he got to the entrance of the plaza, he moved the vehicle to the extreme right side of the lane he was travelling in, stopped the vehicle and waited to make the right turn. While he was waiting, he saw a Probox motor vehicle approaching from the opposite direction. It was traveling at a fast rate of speed. Suddenly and without warning the driver of the Probox swung his car to his right and collided into the left front of the Kia. He testified that the driver seemed to have lost control of his vehicle. The Kia was stationary at the time of the collision. The collision occurred in the Kia's driving lane.

[20] After the collision**,** Mr Thomas realised that the Probox which had collided with the Kia, was being driven by Greg who is a known taxi driver in Annotto Bay. Greg's correct name is Rayon McGibbon. Mr. Thomas got out of the car and looked at the vehicles. Greg's car was on Mr Thomas' side of the road with the left-back wheel on the dividing white line. The Probox was entirely in his lane, with his front wheels turned to the right. The left front bumper, left fog lamp, radiator and front grille were damaged on the Kia.

[21] While they waited for the police to arrive, several cars were able to pass easily on Greg's side of the road. Mr. Thomas stated that vehicles could also pass on his side of the road but they would have had to be very skilled drivers to do so. The accident was caused because Greg was not keeping a proper lookout and was driving too fast at the time. Mr Thomas said that exhibit 4A is a picture taken from the side of the road going towards Annotto Bay police station from Port Antonio. It does not show the distance between the stationary vehicles and the plaza.

[22] In cross-examination, Mr Thomas said he angled the Kia to turn into the plaza with his tyres locked to the right but had not started to make the turn. He maintained that his vehicle was stationary and did not encroach on the opposing lane. He saw the Probox about one minute and thirty seconds before the accident but did not move out of the way, as it was stationary and did not obstruct the road. He disagreed with the suggestion that he could have avoided the collision considering that he could see the Probox for a minute and a half before the

collision, approximately thirty-five feet away. Using a measuring tape, he pointed out the distance in the courtroom estimating that thirty-five feet was approximately one and a quarter times the length of the courtroom. He stated that there were no vehicles in front of the Probox which was travelling fast and over the thirty kilometre per hour speed limit. He denied contributing to the accident by positioning the Kia to make a right turn.

[23] He stated that he frequently drove on the Annatto Bay main road, which had a solid white line in the middle of the road which meant "stay in your lane." He has a general driver's licence and eighteen years' experience behind the wheel. He described the width of his lane as fourteen to fifteen feet wide including the soft shoulder and the driving lane as twelve feet, there is no line on the shoulder. The Kia is roughly five feet wide. When he stopped close to the right side of the lane between his vehicle and the shoulder, four feet remained. The shoulder added another three feet. There was seven feet of space to his left and nothing coming on the left side at the time of the collision. He did not move his vehicle into the available seven feet of space to his left.

[24] He first saw the Probox about fifty feet away on its correct side of the road. He did not make the turn then because he gave way to the Probox to pass. He had his indicator on. He denied swerving into the path of the Probox. No obstruction entered the path of the Probox. When the Probox was about thirty-five feet away, it suddenly swerved left, towards the Kia. Mr Thomas said that seventy percent of the Probox came towards him and the left front of the Probox hit the Kia. The Kia was stationary and the Probox was "crossway the road." The vehicles remained like that until the police came, half of the Probox was in the right lane after the collision.

[25] He testified that the left back wheel of the Probox was on the dividing line, that is the same half of the vehicle that was in the right lane. He confirmed his vehicle was closer to the plaza but did not go over the white line. In describing exhibit 4B, he said the Kia is shown in a head-on collision, it is positioned straight with its tyres ninety percent straight, the tyres had a little turn to the right. He saw the Probox

coming when it was thirty-five feet away but could do nothing. The collision shown in exhibit 4B is not in the Probox's lane.

Marlene Laidley Ford

[26] Marlene Laidley Ford gave evidence that in July 2018 she left her Kia Sportage in the care of her friend Mr. Keniel Thomas. The damage to her vehicle was assessed by Smiles Loss Adjusters Limited, whose report is dated October 10, 2018. It sets out the repair cost at $586,740.00[1] and assessor's fees at $18,000.00.[2]

[27] Mrs Ford commenced an ancillary claim against the third defendant, on September 25, 2019 on behalf of her insurers, General Accident, who have compensated her for her loss. The ancillary claim seeks to recover expenses related to repairing her vehicle and the assessor's report for General Accident from the party it believes to be liable for her loss.

Rayon McGibbon

[28] Mr. Rayon McGibbon, taxi operator, gave evidence that he has a general driver's licence which allows him to operate public passenger vehicles. It was first issued to him in 2002. In 2018 he was the owner of a Probox motor car, registered as a public passenger vehicle which operated on the route Annotto Bay to Buff Bay in the parish of Portland. On August 15, 2018, he was involved in an accident while driving along Main Street in Annotto Bay. This road allows traffic in two directions. One lane for vehicles going towards Buff Bay and the other lane for vehicles going from Buff Bay to Annotto Bay.

[29] He stated that the surface of the road was asphalted and in a good condition. However, he did not recall whether there was a white line dividing the roadway into two lanes. Two vehicles going in opposite directions can pass easily at the same lime on the roadway. When going towards Buff Bay there is a drain at the edge of the asphalted surface of the road. A pedestrian can step over the drain but a car

[1] Exhibit 5
[2] Exhibit 6

cannot drive onto it. On the side going towards Annotto Bay there is a soft shoulder.

[30] Mr McGibbon stated that after 12:00 noon he was driving in the left lane of the roadway going towards Buff Bay. There were four passengers in the vehicle with him. He was passing a little plaza on his left when he saw a red van coming from the opposite direction, it came over onto his side of the road. He tried to move right to avoid a collision but the van came and collided with the left front section of his motor car.

[31] He stated that he could not go further left as there is a drain on the left side of the road. He came out of his vehicle and used his cell phone to take pictures of the accident scene and the vehicles on the road. The police came to the scene of the accident and he gave his car documents to them. The vehicle which collided with his car was a Kia driven by Keniel Thomas. Mr McGibbon stated that his vehicle was towed to the Annotto Bay Police Station. The Kia was driven to the station.

[32] He testified that the passenger in the front seat of his car was Myrtle Stanford who used a wheelchair before the accident and that on the day of the accident, he was transporting her from the doctor. One of the other passengers in his vehicle suffered a burst lip.

[33] The front section of his vehicle was damaged in the accident; the bonnet, front bumper and front lights were damaged and the Kia had damage to the front bumper. Mr McGibbon stated that he did not cause the accident as it was the driver of the Kia that came over onto his side of the road and collided with his car.

[34] In cross-examination, he agreed that Mr Stanford was a passenger in his vehicle at the time of the accident and that paragraph one of his defence, which states that he does not know the claimant is inaccurate. He also denied that the claimant sat directly behind his mother.

[35] He gave evidence that there were no vehicles travelling in front of him, and he had a clear view of the road. He denied travelling at high speed and said he heard the claimant shout “Greg!” when the Kia swerved across. He first saw the Kia when it was nine feet away on his side of the road coming towards him. The right front

driver's side was angled towards him turning into the plaza on the right side, for the Kia to access the plaza it had to turn across his lane. The speed limit is thirty kilometres per hour in that area and he denied that he could have avoided the accident by travelling within the speed limit. He denied that if he was travelling within the speed limit, he would have been able to stop safely, allowing the Kia to turn into the plaza. He further denied that having first seen the Kia nine feet away he would have been able to stop safely before the point of impact.

[36] He disagreed that he failed to stop before the collision although agreeing that he did not stop just before the collision. He disagreed that he failed to slow down before the collision; that he was able to see the Kia well in advance of the accident; that he wasn't paying attention; that because of his speeding, all he could do was swerve; that his failing to keep a proper lookout was the cause of the accident and that it was when the claimant shouted Greg that he began to pay attention. He said that he swerved to the right in an attempt to avoid the collision.

[37] Mr McGibbon stated that he heard a shout and saw the red Kia swerve into his lane from about 9 feet away, which prompted him to swerve right to avoid the collision. It was put to him that the reason he did not see the Kia until it was nine feet away was because he was not paying attention. Mr McGibbon disagreed. He denied that it was the claimant who pointed out the presence of the Kia and that he failed to maintain a proper lookout, asserting that he was paying attention to the road before the shout. He denied that his car was on the incorrect side of the road. He further denied that because he was speeding, he was unable to take effective evasive action to avoid the collision.

[38] He did agree that in a last-ditch attempt to avoid the collision, he swung his vehicle to the right. He disagreed that the Kia was stationary at the time of the collision and he said he did not collide with its left front section. He disagreed that had the Probox not encroached onto the Kia's side of the road he would have been able to safely pass it. He denied that other vehicles passed on the left side of the road after the collision, to include the police vehicle which did not drive by his vehicle on the left and park behind the Kia.

[39] When shown exhibit 4B, Mr McGibbon stated that the road slopes gradually towards a drain on the left side of the road. He said there is no plaza, only a laundromat and the drain is there. He agreed that exhibit 4B does not show the part of the road which is closer to the plaza on the left-hand side. It is a side view of the collision which does not show the width of the road. It was put to the witness that based on exhibit 4B, he was untruthful by saying that the vehicles were closer to the plaza than to the centre of the road, Mr McGibbon disagreed.

[40] **Issues**

1. Whether the doctrine of res ipsa loquitur is applicable in this case.
2. Whether the collision was caused by the negligence of the defendants.
3. Whether the second and/ or third defendant is contributorily negligent.
4. Whether damages should be recovered by the claimant and if so in what quantum.

Submissions

The Claimant

[41] Counsel relied on the case of **Esso Standard Oil SA Ltd. & Another v Ian Tulloch**[3] and section 51(2) Road Traffic Act to argue that it is well accepted that all road users of the road owe a duty of care to other road users. In the case of **Attorney General of Jamaica v Tanya Clarke (nee Tyrell)**[4], special damages must be specifically pleaded and proved. It was submitted that the claimant should be awarded Forty-Two Thousand Dollars ($42,000.00) as special damages with interest at 3% per annum.

[42] In regard to general damages, it was submitted that personal injuries should be reasonable and assessed with moderation and so far, as possible, comparable injuries should be compensated by comparable awards.

[43] Counsel relied on the case of **Natalie Gray v Donald Pryce & Noel**

[3] (1991) 28 JLR page 557
[4] SCCA 109/2002 (delivered 20th of December, 2004

Newsome[5]**,** to submit that given the nature of the claimant's injuries, there is some similarity as to the injuries in that case. It was submitted that One Million, Nine Hundred Thousand Dollars ($1,900,000.00) is a fair and reasonable award with interest at 3% per annum.

The first and second defendants

[44] Counsel also relied on section 51(2) of the Road Traffic Act as well as the cases of **Lloyd Bell v Alcar Construction & Haulage Company Limited**[6], **Hammerstone v. Leary**[7] and **Norman McBean v Rainford Wade & Anor**[8] to support the contention that the second defendant and the third defendant had an obligation to observe the provisions of the Road Traffic Act and Road Code and a duty of care to each other as they were traversing the roadway. Both the claimant and the second defendant agree that the third defendant was speeding. Had the third defendant not been driving at an excessive speed in the circumstances, then the accident would not have occurred.

[45] The court is urged to take into account the damage to the respective vehicles[9] as the second defendant's evidence is that at the time of the collision, he was stationary in the extreme right of his correct left lane along the Annotto Bay Main Road. His right indicator was engaged. He was waiting to make a right turn into a plaza which was on his right side of the road.

[46] The claimant's evidence corroborated the second defendant's version of events in the following material aspects-

a. He agrees that the first time he saw the red SUV it was in the right lane.
b. He also confirms that the second defendant was travelling in the opposite direction to the vehicle in which he was travelling.
c. He agrees that the taxi in which he was a passenger was travelling at a fast rate of speed.

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[5] (2015) JMSC Civ 118
[6] [2018] JMSC Civ 3
[7] [1921] 2 KB 664
[8] [2017] JMSC Civ. 74
[9] **Calvin Grant v David Paradeen & Augustus Paradeen** (Supreme Court Civil Appeal No. 91/87, delivered on the 4th of October 1988

d. He agrees that the taxi swung into the right lane and the left side of the taxi collided into the Kia.
e. The third defendant was not keeping a proper look out as it was he who had to warn the driver of the presence of the Kia.

[47] In his cross-examination, it was clear that the claimant himself was not keeping his eye on the road. This is understandable as he had no duty to do so and further, he was more concerned with talking to his mother. Since he was not keeping a proper lookout, he may not have noticed that the taxi was no longer driving in its correct lane, until it was too late to avoid the collision. Hence, his statement *"the only thing I could do was shout Greg".*

[48] The third defendant's evidence gives a noteworthy version of events when compared to that of the claimant, for the lack of urgency which would be required of a driver when faced with such an unexpected situation likely to endanger himself and his passengers. The third defendant did not say the red van suddenly swung to his right; he said "*it came over to my side of the road"*. He says, *"I tried to move right*" not I swerved to my right, or I applied my brakes sharply.

[49] The third defendant's statement that "*a red van came over onto my side of the road'* is vague as to the way the second defendant purportedly encroached onto the third defendant's driving surface. This vagueness invites the court to speculate as to how the accident occurred. Did the second defendant attempt to make a right? Did his vehicle drift slowly into its incorrect lane? Was the encroachment sudden? As previously stated, nothing in the third defendant's witness statement suggests that the encroachment was sudden.

[50] What is certain from the evidence is that the vehicles collided head-on resulting in damage to the left front bumper, left fog lamp, radiator and front grille being damaged on the Kia. The damage to the third defendant's vehicle was to the left front section. It is submitted that the only way the collision could have been head-on was if both vehicles faced each other and not one vehicle changing direction.

[51] The damage profile corroborates the second defendant's version of events, i.e. that he was stationary waiting to make a right turn when the collision occurred. The third defendant suddenly came onto his side of the road and collided head-on with

his vehicle.

[52] Had the second defendant's vehicle encroached onto the third defendant's proper driving surface by attempting to make a right turn, the impact would not have been head-on, there would have been a side impact, and the damage to the second defendant's vehicle would be to the left front side extending to the left front wheel.

[53] If the encroachment had been by slowly drifting into the third defendant's lane, why didn't the third defendant have time to take effective evasive action? Further, if the second defendant was driving in the left lane as suggested by the third defendant, why wasn't he able to switch to his right lane to avoid the collision? At that time the right lane (the second defendant's left lane) ought to have been unoccupied.

[54] In light of all of the above, counsel submitted that the third defendant's speed combined with his failure to keep a proper lookout, resulted in the third defendant not seeing the second defendant's stationary vehicle until it was too late to avoid a collision by either stopping his vehicle or slowing down or returning to his correct driving lane.

[55] The third defendant relied on exhibits 4A and 4B. In cross-examination, the third defendant admitted that the photograph marked 4A is a side view of the vehicles post-collision and that based on the angle from which the photograph is taken, one cannot see the entire street nor the width of the entire road. Since this photograph does not show the position of the vehicles in relation to the width of the road, this photo ought not to be relied on by the court to arrive at any finding in respect of the position of the vehicles in the road post-collision.

[56] In addressing the issue of general damages, counsel submitted that the claimant relies on the medical report from Annotto Bay Hospital dated December 18, 2018, prepared by Dr. Ram M. Yadav based on his examination of the claimant on the day of the collision. The report states that the claimant had facial injuries secondary to a motor vehicle accident. He was treated with analgesics. There is no proof that the claimant saw a doctor on any other occasion after that date in relation to the injuries he alleges.

[57] It was submitted that based on the cases of **Mark Douglas and Desrene Douglas et al v Rory Simpson et al**[10] and **Raymond Shaw v Michael Gordon**[11] an appropriate award is between $300,000.00 - $350,000 as general damages. On special damages, it was submitted that the claimant has proven the sum of $19,100.00.

[58] In relation to costs, counsel submits that the overarching principle in relation to the award of costs in civil proceedings is adumbrated in section 30(3) of the Judicature (Appellate Jurisdiction) Act. Costs lie within the discretion of the Court and follow the event. Based on the injuries the claimant sustained, the sum recoverable in damages should be less than $1,000,000.00. The claim therefore falls within the jurisdiction of the Parish Court. This Court has the discretion to award costs in accordance with the Parish Court Tariff of fees. The tariff allows a successful litigant to recover $10,000.00 in costs for every $100,000.00 in damages awarded.

[59] In respect of the first defendant's claim seeking to recover damages for repairs to her vehicle as a result of the motor vehicle, if the court finds that the second defendant was not negligent then it ought to find in favour of the ancillary claimant and award costs to her.

The Third defendant

[60] Counsel for the third defendant in relying on the cases of **Glenford Anderson v George Welch**[12] and **Ng Chun Pui and Ng Wang King v Lee Chuen Tat and Another**[13] submitted that as in all negligence cases, it is for the claimant to satisfy the court on a balance of probabilities that the defendant owed the claimant a duty of care, that the defendant breached that duty in that, he has been negligent and to provide proof of any injury, loss or damage suffered. Also whether the said injury, loss and damage were caused by the defendant's negligence.

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[10] 2009 HCV 03545

[11] Harrison and Harrison Assessment of Damages for Personal Injury p. 61

[12] [2012] JMCA Civ 43

[13] PC Appeal No. 1/1988

[61] Counsel relied on the case of **Boss v Litton**[14] and the Road Traffic Act to contend that there is a duty on the driver of a motor vehicle to take such action as may be necessary to avoid an accident. (See **Cecil Brown v Judith Green & Ideal Car Rental**[15] and **Blyth v Birmingham Water Works Co.**[16])

[62] In determining liability, the court is to have regard to the following matters:

(1) Did any of the drivers involved in the accident fail to keep a proper look out and whether this contributed to the accident.
(2) Was speed a factor in the accident.
(3) On which side of the road did the accident take place.
(4) Whether the driver(s) exercised due care in taking evasive action to avoid the accident.

[63] The duty to keep a proper lookout generally means that motorists on the road are to keep a reasonable lookout for other users of the roadway. In defining a proper lookout the court in **Foskett v Mistry**[17] stated that the person must look out for other traffic which is on or maybe expected to be on the road whether in front of him, behind him or beside him. This is especially important when approaching an intersection or road junction. Where a person fails to see something plainly visible to the average person, then there may be an inference of negligence. The duty to keep a proper lookout requires the driver to heed what he sees by taking reasonably prudent action to avoid what his lookout discloses, this may include braking, blowing his horn, slowing or swerving.

[64] The claimant in his witness statement at paragraph 11 states *'I realized the taxi driver (third defendant) was not paying attention to the road…"* That statement must be weighed against the claimant's evidence in cross-examination that when he first saw the Kia it was moving. Later he says he had his head down and was talking to his mother and when he looked up the only thing he saw was the "red", referring to the Kia motor vehicle. No attempt was made by the claimant's attorneys

[14] [1832] 5 C&P 407
[15] Claim No. 2006 HCV 0256
[16] 856 Exch 781
[17] (1984] R.T.R. 1

to reconcile the evidence given. The Kia could not be stationary and moving at the same time. It must therefore be that the claimant is not a credible witness with regard to the issue of whether the third defendant was keeping a proper lookout.

[65] The second defendant has given no evidence against the third defendant that he was not keeping a proper lookout. To the contrary, he gave evidence to the effect that the third defendant was proceeding in his correct left lane and suddenly swerved his motor car onto the second defendant's side of the roadway. The question to be asked is if the third defendant was on his correct side, what would have occurred to cause him to swerve. Taking him as suggested by the evidence to be a reasonably prudent driver, the only reasonable interpretation of the swerve made by the third defendant from his correct lane is that there must have been some obstruction in his path.

[66] Neither the claimant nor the second defendant has pointed to there being any other vehicle, pedestrian or obstruction in the road. The only impediment would have been the Kia vehicle coming onto the third defendant's side of the roadway which would have caused him to swerve. The evidence of the second defendant is that he saw the third defendant's Probox motor car approaching from it was fifty kilometres away. While he was waiting, about a minute and thirty seconds would have passed. There was seven feet of empty roadway to the left of the second defendant's vehicle at the time of the accident but he made no attempt to move away from the third defendant's vehicle.

[67] The second defendant keeping a proper lookout could easily have avoided the accident by moving to the left of his lane since by his own account only about seventy percent of the third defendant's vehicle had entered the lane. The third defendant cannot be liable for failing to keep a proper lookout. He did in fact see the second defendant's motor vehicle as it attempted to turn across his path to enter the plaza. He not only saw it but swerved in an attempt to avoid the collision but could not do so.

[68] The claimant alleged that the third defendant was speeding, however upon cross-examination he admits to not knowing the speed limit nor looking at the speedometer. He did not ask the third defendant to slow down or to stop because

he felt his speed was too fast. Further, upon collision, both vehicles stopped and did not travel from the point of collision suggesting no excessive speeding. There is no concrete evidence that the third defendant was speeding, there is only a perception which may be self-serving in the claimant's attempt to make his case. Similarly, the second defendant estimated the third defendant's vehicle to be travelling at fifty-five kilometres per hour when the speed limit is thirty kilometres per hour but provided no basis for this estimate nor did he signal the third defendant to slow down. The third defendant acknowledged knowing the speed limit and stated he had not exceeded it.

[69] Even if the third defendant had been speeding this does not equate to negligence (See **Tribe v Janes**[18] and **Barna v Hudes Merchandising Corp**[19]). Speed is only negligent if it prevents the offender from reacting reasonably in a case of emergency and the third defendant had no reason to suppose the road he was travelling on would be blocked. He saw the second defendant's Kia motor vehicle only when he was nine feet away and had no prior warning of the second defendant's intention to make the turn. The third defendant was aware of the second defendant's motor vehicle and was able to take action to avoid the accident. The accident could have been avoided if the second defendant had turned across his path.

[70] The side of the road on which the accident took place is critical to the determination of liability. This can be ascertained by the place where both vehicles came to rest after the collision since by the account of all witnesses the vehicles stopped immediately on impact. Both the claimant and the third defendant agree that there was no centre line dividing the road into two lanes. It is only the second defendant who speaks to the presence of there being a solid white line.

[71] Attempts were made by his attorney to suggest the road was not straight, that a part of the road was elevated and that there was the presence of a laundromat and drains along the road. None of this is sufficient to displace the evidence of all the

[18] (1961) 105 Sol Jo 931
[19] (1962) 106 Sol Jo 194.

witnesses that this road was straight and allowed two lanes of traffic each going in the opposite direction.

[72] Given the layout of the road and the circumstances giving rise to the accident, it must be telling where the vehicles ended up after the collision. Bearing in mind the redacted portions of the claimant's witness statement, he cannot state the place where the collision took place. However, on being confronted with exhibits 4A and 4B, he confirmed that after the collision, both vehicles were in the third defendant's correct left lane. He further confirmed that this was the lane they were in at the time of the collision. He further identified the plaza which was exactly to the left of the third defendant's left lane of the roadway.

[73] The third defendant states both in his witness statement and on cross-examination that the accident took place in his correct left lane and it is where the vehicles came to rest after impact. The claimant's and third defendant's evidence were corroborated by the photographs entered in evidence which clearly showed both vehicles on the third defendant's side of the road.

[74] In her cross-examination, the second defendant's attorney suggests that the reason why both vehicles are in the third defendant's left lane is the result of the angle at which the photographs were taken. She has, however, failed to bring any evidence to suggest the angle could obscure the contents of the document. To the contrary it not only shows both vehicles in the third defendant's left lane but the empty space in the second defendant's lane which by his estimate was about seven feet in width.

[75] The second defendant is the only witness alleging that the collision was in his lane and that the vehicles were in his lane after the accident. However, a careful examination of his evidence will indicate his position to be untenable. At paragraph six of his witness statement, he says after the accident the third defendant’s Probox was in his lane *'with the left back wheel on the dividing line.'* This would mean that the entire Probox was in the second defendant's left lane. Travelling in the opposite direction the furthest point on the Probox away from the second defendant's vehicle would be the left back section, if was on the white line then the

rest of the vehicle must also be in the second defendant's lane.

[76] However, in cross-examination without any attempt at clarification or explaining the reason for changing his evidence, the second defendant stated that only seventy percent of the Probox was on his side of the road. The uncontroverted evidence in the photographs shows that the collision took place in the third defendant's correct left lane which was where the vehicles stopped after the collision.

[77] The third defendant saw the second defendant's vehicle when it was fifty feet away and had at least seven feet of empty space to the left of his vehicle but did not swerve to avoid a collision. As between the defendants, an additional factor to determine liability for the accident is whether the second defendant executed the right turn he was performing negligently. The issue of turning was never pleaded by the claimant. The second defendant had a duty to ensure it was safe to turn along the roadway including being aware of oncoming traffic and avoiding any dangerous manoeuvre.

[78] It's unclear why the second defendant would have found it necessary to move his vehicle to *"the extreme right side of the lane I was traveling in..."*. to run the risk of colliding with a vehicle travelling close to the edge of the lane for vehicles going in the opposite direction, such as the third defendant. The third defendant denies seeing an indicator or signal from the second defendant that he intended to turn right and states that the second defendant made a sudden swerve along the roadway. This has to be accepted as being true as the only explanation as to how the second defendant's vehicle came to be on the opposite side of the road after the collision as shown on exhibits 4A and 4B and testified to by the claimant and third defendant.

[79] Counsel relied on sections 3(1) and 3(2) of the Law Reform (Tort-Feasors) Act Jamaica and the case of **Jackson v Murray**[20] to submit that the court is empowered to apportion liability in claims for negligence. Having regard to the evidence in the claim, if the court contemplates contributory negligence, the

[20] [2015] UKSC 5

second defendant ought to bear the greater responsibility for the following reasons:

(1) He was the motorist changing directions and therefore had the greater duty of care.

(2) He swerved his vehicle into the path of the third defendant's motor car thus causing a collision on the third defendant's side of the road and both vehicles ended up on the third defendant's side of the roadway after the collision.

(3) He saw the third defendant's motor car when it was 50 feet away but took no evasive action to avoid the accident although he had at least 7 feet of empty space in his lane.

[80] The second defendant's action or inaction caused the collision and in the event should bear at least 80% of the blame for the accident.

[81] In addressing the issues of damages, counsel submitted that special damages should be awarded in the sum of Twenty-Two Thousand, Five Hundred Dollars ($22,500.00) as proven by the receipts admitted into evidence.

[82] On general damages, counsel argued that the medical report from Annotto Bay Hospital indicates that the claimant suffered only 'facial injuries'. The report is vague as to specifically what the injuries were but based on the lack of follow up treatment, it is clear they were not severe. Although the claimant has given evidence of continuing symptoms these are unsupported by any medical evidence. Counsel relied on the case of **Boysie Ormsby v James Bonfield & Conrad Young**[21] to submit that general damages for pain, suffering and loss of amenities be in the sum of Four Hundred Thousand Dollars ($ 400,000.00).

[83] Further, should there be a finding in favour of the second defendant, special damages on the ancillary claim should be awarded in the sum of Six Hundred and Four Thousand, Seven Hundred and Forty Dollars ($604,740.00) for damage to the motor vehicle totalling Five Hundred and Eighty- Six Thousand, Seven Hundred and Forty Dollars ($586,740.00) plus the assessor's fee of Eighteen

[21] pg. 213 vol. 4 Khan

Thousand Dollars ($18,000.00). In relation to costs, it was submitted that given the damages to be recovered both under the claim and ancillary claim, costs are unlikely to exceed the jurisdiction of the parish court the costs awarded should be taxed according to the scale of fees in the Parish Courts.

Discussion

Issue 1: Whether the doctrine of res ipsa loquitur is applicable in this case.

[84] In the Particulars of Negligence, the claimant relies on the doctrine of Res Ipsa Loquitur. In discussing the application of the doctrine, Morrison, J.A (as he then was), in the case of **Shtern v Villa Mora, Cottages Limited and Another**[22] stated:

> *"[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, op. cit., 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, 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."*

[85] *The rule finds its purpose where there is no evidence as to why or how the accident occurred*.[23] The case at bar is not one in which there is no evidence as to how the collision came about. Each witness pleaded as well as testified to how the accident occurred, the doctrine of res ipsa loquitur therefore does not apply.

[86] The issues to be determined concern questions of fact and law, that is, whether the defendants so negligently drove their vehicles in a manner which led to the collision.

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[22] [2012] JMCA Civ. 20

[23] Wolfe-Reece, J in **Anderson, Aubrey v Henry, Melford consolidated with Bailey, Carlos v Henry, Melford Consolidated with Henry, Melford v Robinson, Neville et al** [2020] JMSC Civ. 168

Issue 2: Whether the collision was caused by the negligence of the defendants

[87] I adopt the following statement of the law from the case of **Lloyd Bell v Alcar Construction & Haulage Company Limited**[24] it is well- settled law in the tort of negligence that: *"To prove negligence there are four requirements namely:*

1. *The existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in question in question on the class on person to which the claimant belongs by the class of person to which the defendant belongs is actionable.*
2. *Breach of the duty of care by the defendant, i.e., that he failed to measure up to the standard set by law.*
3. *A causal connection between the defendant's careless conduct and the damage.*
4. *That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."*

[88] Also, section 51(2) of the Road Traffic Act which provides:

> *"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 a collision, 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."*

[89] The duty of care for motorists is succinctly summarized in the case of **Cecil Brown v Judith Green & Ideal Car Rental**[25] where McDonald-Bishop, J (as she then was) emphasized that both common law and statute require motorists to exercise reasonable care while driving and to take all necessary precautions to prevent accidents.

[90] The claimant must demonstrate that the defendants had a duty of care towards

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[24] [2018] JMSC Civ 3

[25] Claim No. 2006 HCV 0256

him, that this duty was breached, and that it was foreseeable that the breach would lead to the loss suffered by the claimant. It is trite that all road users owe a duty of care to other road users. As a passenger in a motor vehicle, the claimant was a road user and the defendants, also being road users, owed him a duty of care.

[91] To ascertain whether this duty was breached, Morrison, J.A. (as he then was) in the case of **Shtern v Villa Mora, Cottages Limited and Another**[26] discussed the burden of proof as follows:

> *"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)."*

[92] The court finds the following facts from the evidence presented in this case:

[93] Mr Thomas put on his indicator in order to signal the intention to make a right turn, the claimant said he saw a left indicator however, I accept that as a passenger and not the driver this is an error on the claimant's part. The Kia was stationary at first and positioned in its correct driving lane at this point it was some fifty feet away from the Probox. Mr Thomas did not wait for one and a half minutes for the Probox to pass him as he said, rather he began his manoeuvre to turn right by positioning the Kia.

[94] In order to do so, Mr Thomas encroached on the driving lane of the Probox and then stopped. I do not find that he drove into the path of the Probox, rather, I find that the Kia was positioned in the path of the Probox with its wheels locked to the right. Mr McGibbon did not see the Kia until he was nine feet away from it as he

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[26] [2012] JMCA Civ. 20

was not paying attention. He swerved to his right in an effort to avoid a head-on collision with the Kia but nevertheless collided with the left front section of the stationary Kia.

[95] The point of impact on each vehicle was to the left front. After the collision, the Kia remained where it had stopped in the driving path of the Probox. Mr Thomas said he angled the Kia to turn into the plaza with his tyres locked to the right and his vehicle did not move. This is evidence I accept. The angle of the Kia was a factor in the obstruction of the right of way of the Probox.

[96] The evidence of Mr Thomas as to the position of the vehicles after the accident varied from the Probox was in his lane *'with the left back wheel on the dividing line,* to: *"only seventy percent (70%) of the Probox was on his side of the road*", as well as: *"half of the Probox was in his lane after the accident*." These inconsistent answers weakened the cogency of the evidence of Mr Thomas as to where the Probox was after the collision. I do not accept that the Kia was on its correct side of the road after the collision, rather it was in the driving lane of the Probox.

[97] The photographs in evidence, (exhibits 4A and 4B) do not show a solid white line in the centre of the road, this accords with the evidence of the claimant and Mr McGibbon. Had there been such a line it ought to have been visible at the rear of the Probox in exhibit 4A. This evidence that there was a solid white line on the main road on the date of the collision is rejected.

[98] I find that the claimant was the more credible and reliable witness on the cause of the collision and the position of the vehicles before the collision. The position of the vehicles after the collision has been resolved by accepting that while the claimant was challenged on the point that the taxi continued to travel at a fast speed "*in the left lane heading toward the red Kia Sport"* he was not challenged by the second and third defendants on the following aspects of his testimony: *"he observed a Kia motor stopped mid-way into crossing the left lane of the road*." As well as his evidence **"***that the Kia was halfway in the left lane*." The claimant said that "*mid-way into crossing the left lane to enter into the plaza I saw the red Kia*

Sport stopped in the road."[27] This evidence agrees with that of Mr Thomas in that the Kia was first moving and then it was stationary. The position of the Kia both before and after the collision was in the left driving lane of the Probox.

[99] While I accept that Mr McGibbon failed to keep a proper lookout, as evidenced by the claimant having to draw his attention to the Kia with a shout, "Greg!" As well as the evidence from Mr McGibbon that he saw the Kia when he was nine feet from it on a straight main road.

[100] I find that Mr Thomas positioned his vehicle to change direction and in doing so obstructed the path of Mr McGibbon. This intended change of direction posed a risk to users of the road in the left lane which was Mr McGibbon's right of way. Mr Thomas estimated that the Probox was going at about fifty- five kilometres per hour, this means he had time to observe both its speed and distance and could have re-positioned his vehicle quite readily, there being no evidence that another vehicle was in front of or to the left side of the Kia.

[101] It is clear from the evidence that the second defendant took no evasive action to avoid the collision. However, at no point in the narrative did Mr McGibbon, the driver of the taxi slow down or stop. Both the claimant and the second defendant agree that the third defendant was speeding. The inference to be drawn from this is that he could not do so as he was going too fast.

[102] I find that Mr McGibbon was not keeping a proper lookout and could neither slow down or stop by the time he saw the Kia some nine feet away. There is no evidence that Mr McGibbon attempted to brake, rather, he swerved as that was the only manoeuvre he could make in an attempt to avoid the collision

[103] Mr. McGibbon's responses in cross-examination appear to be that he did not see the vehicle driven by Mr. Thomas. There was no evidence that Mr. McGibbon acted, only that he reacted. He did not signal his intended manoeuvre; it was sudden and unplanned. The swerve on the part of Mr McGibbon was without warning and suggestive of a failure to keep a proper lookout.

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[27] witness statement of claimant at [9]

[104] I say this as the Kia moved into its position and then stopped on the evidence of the claimant and Mr Thomas, it was only Mr McGibbon who did not notice what the Kia was doing until some nine feet away. Mr McGibbon did not notice that the Kia had its indicator on unlike the claimant and Mr Thomas. Mr McGibbon therefore cannot supply the evidence as to anything that took place before that. This is against the backdrop of the claimant saying when he first saw the Kia it was not moving, then being able to see the Kia and shouting "Greg!"

[105] Mr McGibbon said *"a red van came over onto my side of the road,"* this statement when taken in context corroborates the testimony of the claimant. It is buttressed by his (Mr McGibbon's) own evidence that he did not see an indicator or signal from the second defendant that he intended to turn right and states that Mr Thomas made a sudden swerve along the roadway. I find that it was the claimant that brought the Kia to the notice of Mr McGibbon who was not keeping a proper lookout.

[106] The cause of this collision was two-fold. Mr McGibbon was travelling at a speed which was too fast in all of the circumstances. Speed becomes negligent where, as in this case, it prevented Mr McGibbon from being able to react safely. As well as Mr Thomas who contributed to the collision by positioning his vehicle in a way which obstructed the right of way of Mr McGibbon.

[107] The damage to the vehicles does not suggest that the Kia had turned across the path of the Probox, it is more consistent with an encroachment by Mr Thomas onto Mr McGibbon's driving lane.

[108] It is the duty of a driver to maintain a proper lookout. A driver who fails to observe in time that another person's actions have created a potential risk is usually negligent (see **Foskett v Mistry**[28]). The driver must be alert to other vehicles that are or could be on the road, whether ahead, behind, or alongside.

[109] The common law rule states that when two vehicles approach each other from opposite directions, each driver must keep to the left or near side of the road to

[28] [1984] R.T.R. 1, CA

allow the other to pass. Failing to follow this rule is considered prima facie evidence of negligence. This common law principle is upheld by section 51(1)(a) of the Road Traffic Act, which states:

> *"The driver of a motor vehicle shall observe the following rules – a motor vehicle: (a) meeting or being overtaken by other traffic shall be kept to the near side of the road." If a driver is on the wrong side of the road and is forced to react quickly due to approaching traffic which leads to a collision, that driver will be held liable. This is due to the negligence of him driving on the incorrect side of the road."*[29]

[110] It is trite that the driver of a vehicle who is changing direction has a greater duty of care before performing the manoeuvre. This principle is supported by the case of **Pratt v Bloom**[30], where Streatfield, J stated:

> *"The responsibility of a driver changing direction is (1) to signal, and (2) to ensure that no one is inconvenienced by the change. The duty is even greater if the driver initially gives the wrong signal and then corrects it."*

[111] This common law rule has been preserved by section 51(1)(d) of the Road Traffic Act which provides: 51(1) "The driver of a motor vehicle shall observe the following rules – a motor vehicle:

> *(a) shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic;"*

Issue 3: Whether the second and/ or third defendant is contributorily negligent

[112] Section 3 (2) of the Law Reform (Tort-Feasors) Act Jamaica provides that:

> *"(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be*

[29] Henlon v Pink & Ors [2017] JMSC Civ.144
[30] (1958) Times 21 October, Div Ct.

recovered from any person shall amount to a complete indemnity."

[113] In this case, the claimant has pleaded negligence against both drivers. It is for the claimant to prove facts from which liability could properly be inferred. The claimant sustained injuries and blamed both drivers, asserting that both were responsible for causing his injuries and thus liable. Ms Campbell, representing the third defendant, requested the court to apportion 80% of the liability to the second defendant and 20% to the third defendant.

[114] In **McGhee v National Coal Board**[31]**,** the proposition stated was that a defendant will be liable to a claimant if the defendant's breach of duty has caused or materially contributed to the injury suffered by the claimant, even if there are other factors for which the defendant is not responsible, which contributed to the injury. The above principle is relevant not just for the purposes of establishing liability in each defendant but is relevant when considering the question of apportioning damages.

[115] In the case of **Natalie Gray v Donald Pryce and Noel Newsome and Donald Pryce v Noel Newsome**[32], Ms Gray, the claimant and passenger in a taxi, was injured and filed a claim against Mr Pryce, a van driver. Mr Pryce acknowledged his involvement in the accident but claimed that a third party, Mr Newsome, who was driving another motor vehicle, caused the collision by suddenly crossing his path. Ms Gray later added Mr Newsome as the second defendant, while Mr Pryce filed an ancillary claim against him, seeking damages for repairs to his vehicle and Ms Gray's injuries. Mr Newsome denied any liability, however, the court found that liability for the collision should be shared between Mr Pryce and Mr Newsome, with Pryce being 75% responsible and Newsome 25%. In arriving at the decision, P.A. Williams, J, stated that:

"[65] In determining the apportionment of liability one instructive authority is that of ***Brown v Thompson [1968] 2 All ER 708*** *as noted in Bingham's and Berryman's Motor Claim Cases, 10th edition paragraph 22. It was there held inter alia: "...regard must be had not only to the causative potency of the acts*

[31] [1972] 3 All ER 1008
[32] [2015] JMSC Civ. 118

or omissions of each of the parties but to their relative blameworthiness (citing The Miraflores 1967 1 AC 826)."

[66] I also bear in mind the point made by Lord Pearce in ***Uden v Associated Portland Cement Manufacturing Ltd*** *[1965] 2 All ER 213 at page 218. He reminded that the question of apportioning blame "is one of fact, opinion and degree."*

[67] In all the circumstances as I have found them to be both liable and I find a fair apportionment of liability is 75% to Mr. Pryce and 25% to Mr. Newsome."

[116] Section 3(1) (a) and (c) of the Law Reform (Tort-Feasors) Act provides that:

"3(1) Where damage is suffered by any person as a result of a tort (whether or not such tort is also a crime-

(a) judgment recovered against any tort-feasor liable in respect of such damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

…

(b) any tort-feasor liable in respect of such damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, (whether as a joint tort-feasor or otherwise) so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which contribution is sought."

[117] In this instance, each side should bear his portion of the damages in accordance with the degree of negligence assigned. Having regard to the findings of fact, the first defendant/ancillary claimant succeeds in part on the ancillary claim. I say this as she blames Mr McGibbon for leaving his driving lane and hitting her Kia on its left side. She does not accept the fact that her driver was not properly positioned in his lane, he was angled, had his wheels locked, and encroached onto the taxi's driving lane. The argument that the Kia was stationary and therefore did not hit the Probox is only correct if it is accepted that it is the moving vehicle that caused

the collision and not the stationary one. The Kia having posed an obstruction in the driving lane of the Probox did not leave Mr McGibbon with much choice but to swerve to the right.

[118] On the part of Mr McGibbon, was the swerve to the right reasonable in all the circumstances where speed was also a factor? Mr McGibbon as has been found, did not apply his brakes for there is no such evidence physical or otherwise, not even from him. The swerve to the right put him in danger of a much more serious collision than moving to the left, the evidence is that there is a drain to the left but there was no other vehicle parked on the left side of the road.

[119] Mr Thomas said it seemed that Mr McGibbon lost control of the vehicle and this is a violent swerve would give that impression. It would be an unreasonable response in the circumstances of this case as Mr McGibbon was traversing the road which runs past a primary school. This would not be a safe place to exceed the speed limit, make a swerve to the right in like manner, fail to slow down or stop. On any objective assessment of reasonableness, Mr McGibbon's actions fall short.

[120] Liability to the claimant is to be apportioned at 80% to the first and second defendants/ancillary claimants and 20% to the third defendant/ancillary defendant. The claim was brought jointly and severally against the defendants.

[121] Liability to the ancillary claimant is apportioned at 80% to herself and 20% against the ancillary defendant.

Issue 4: Whether damages should be recovered by the claimant.

Special Damages

[122] In **Attorney General** of **Jamaica v Tanya Clarke (nee Tyrell),**[33] the appellant argued that there was no strict proof or documentary evidence to support the plaintiff's assertion of costs per medical visit nor was there any evidence from doctors to substantiate the cost. The court found that there is a need for more than just the plaintiff's assertion to prove the damages, they must be specifically

[33] SCCA 109/2002 (delivered 20th of December, 2004

pleaded and proved.

[123] The claimant in his amended particulars of claim itemised the following receipts to support his pleadings:

a. Receipt for Police Report in the amount of Three Thousand Dollars ($3000)

b. Receipt for Medical Report in the amount of One Thousand Dollars ($1000)

c. Receipt CT-Scan in the amount of Twenty Thousand Five Hundred Dollars ($20,500.00);

d. Receipt for medication in the amount of Two Thousand Five Hundred Dollars ($2,500.00);

e. Transportation receipts in the amount of Fifteen Thousand Dollars ($15,000.00)

[124] In his witness statement, the claimant sought to include items not particularized in his pleadings. However, it is trite that special damages must be specifically pleaded and proven.

[125] The claimant sought to claim Three Thousand Dollars ($3,000) for a police report, a medical report from the Annotto Bay Hospital from Dr. Ram Yadav dated the 18th day of December 2018, in the amount of One Thousand Dollars ($1000) and medications amounting to Two Thousand, Five Hundred Dollars ($2500). However, he has provided no receipt or proof to substantiate the sums claimed. Therefore, the said sum is deducted from the total amount being sought. The claimant in his pleadings receipted payment for a CT Scan at Twenty Thousand, Five Hundred Dollars ($20,500), however, the receipt exhibited was for a payment of Four Thousand, One Hundred Dollars ($4,100). He also claimed transportation in the amount of Fifteen Thousand Dollars ($15,000) and exhibited receipts to prove the same. Special damages proven equal to Nineteen Thousand, One Hundred Dollars ($19,100).

General Damages

[126] In **Natalie Gray v Donald Pryce & Noel Newsome**[34] the claimant suffered loss of consciousness, a cerebral concussion and was left with a scar to her forehead.

[34] (2015) JMSC Civ 118

There was no medical evidence to support any suggestion that the nosebleed she said she suffered from time to time was a direct result of the injury. The court awarded general damages to the claimant for pain and suffering in the amount of $1,500,000.00 with interest thereon at 3%.

[127] In **Mark Douglas and Desrene Douglas et al v Rory Simpson et al**[35] the third claimant suffered soft tissue injury to the left cheek and mild tenderness to the left cheek in the region just over her left mandible. She was treated with the use of anti-inflammatory analgesics. A sum of $225,000.00 was awarded for general damages in February 2014 which now updates to $378,509.86 using the CPI of January 2024(136.6)

[128] In **Raymond Shaw v Michael Gordon**[36] the plaintiff suffered trauma to the face resulting in lacerations to the cheek forehead chin and neck. A sum of $25,000.00 was awarded for general damages in July 1992 which now updates to $533,593.75 using the CPI of January 2024 (136.6)

[129] In **Boysie Ormsby v James Bonfield & Conrad Young**[37]**,** the claimant suffered superficial wounds to the supra orbital area and muscular tenderness in the upper limbs. The updated award would be $689,000.00.

[130] According to the medical report from the Annotto Bay Hospital from Dr. Ram Yadav dated the 18th day of December 2018, the claimant suffered facial injuries which were treated with analgesics. The claimant in his witness statement stated that he received a CT-Brain scan which revealed no serious damage to his brain. There is no other medical report exhibited to support any assertion that the claimant suffered other injuries. There is no medical evidence that the claimant suffered a concussion or loss of consciousness. Therefore, the updated awards cited in authorities would have to be reduced as the claimant's injuries in this claim are much less severe. The closest of the cases cited to the claimant's injuries is **Mark Douglas and Desrene Douglas et al** which updates at the CPI for December

[35] 2009 HCV 03545
[36] Harrison and Harrison Assessment of Damages for Personal Injury p. 61
[37] pg. 213 vol. 4 Khan

2024 of 143.5 to $392,613.24. The claimant did not provide any additional medical reports to substantiate the injuries he complained resulted from the collision.

[131] It is readily seen that based on the injuries that the claimant sustained, the sum recoverable as damages will be less than $1,000,000.00. The claim therefore falls within the jurisdiction of the Parish Court and ought to have been brought in that court. Costs are limited to the maximum award which could be awarded by the Parish Court.

[132] Orders:

1. Judgment for the Claimant with liability apportioned to the First and Second Defendants at 80% and the Third Defendant at 20%.
2. The Claimant is awarded general damages in the sum of $392,613.24 with interest thereon, at the rate of 3% per annum from July 12, 2019, to the date of delivery of this judgment.
3. The Claimant is awarded special damages in the sum of $19,100.00 with interest thereon at a rate of 3% per annum from August 15, 2018, until the date of this judgment.
4. The Claimant is awarded 80% of his costs to be taxed if not agreed.
5. Judgment for the Ancillary Claimant on the Ancillary Claim with liability apportioned to herself at 80% and the Ancillary Defendant at 20%.
6. The Ancillary Claimant is awarded 20% of her costs against the Ancillary Defendant to be taxed if not agreed.
7. Costs are limited to the maximum award which could be awarded in the Parish Court.

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Wint- Blair, J