



[2025] JMSC Civ. 49

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017 HCV00172

BETWEEN	STEVEN THOMPSON	CLAIMANT
AND	BARRINGTON BROWN	1st DEFENDANT
AND	PATRICIA CARNEGIE-SMITH	2nd DEFENDANT

Mr Sean Kinghorn instructed by Kinghorn & Kinghorn for the claimant

Miss Jamila A. Maitland instructed by Campbell McDermott for the 2nd defendant

Heard: April 13, 2023, June 2, 2023 and May 16, 2025

Negligence - Road Traffic Accident – Damages for personal injuries

IN OPEN COURT

CORAM: JARRETT, J

Introduction

[1] Steven Thompson (the claimant) claims against Barrington Brown (the 1st defendant), and Patricia Carnegie-Smith (the 2nd defendant), damages for personal injuries he allegedly sustained in a road traffic accident, along the Penn Hill main road in the parish of Manchester on February 14, 2013. At the time of the accident, the claimant was riding his bicycle, with a pillion rider sitting on the handlebar (cross bar), on his way from Christiana to Mandeville. The 1st defendant

was driving a Toyota Corolla motor car, owned by the 2nd defendant and heading in the opposite direction from Mandeville to Spaulding. The primary issue in this case is whether the 1st defendant breached the duty of care he owed to the claimant, to exercise reasonable care in the management and control of the 2nd defendant's motor vehicle, which was being operated as a taxi on the day of the accident.

The pleadings

The claim

- [2] In his claim filed on January 24, 2017, the claimant pleads that he is a delivery man, born on September 2, 1996. The 1st defendant was the driver of motor vehicle registration number PB8509 (the taxi), owned by the 2nd defendant and was, by operation of law, her servant and/or agent. On February 14, 2013, he was riding his bicycle along the Penn Hill main road in the parish of Manchester, when the 1st defendant negligently, drove and/or operated the taxi such that it collided into him, causing him to fall off his bicycle, sustaining injury and loss.
- [3] The particulars of negligence on the part of the 1st defendant are alleged to be ; a) driving at too fast a rate of speed in the circumstances; b) failing to apply his breaks within sufficient time or at all; c) causing the taxi to collide into the claimant ; d) losing control of the taxi; e) failing to see the claimant within sufficient time or at all; f) driving in a careless manner, and; g) failing to stop, slow down, swerve or otherwise operate the taxi to avoid the collision. The claimant also pleads the doctrine of *res ipsa loquitor*, in the alternative to the particulars of negligence.
- [4] The injury alleged is an open fracture of the right knee. Special damages of \$2,000.00 in medical expense, and \$ 10,000.00 in transportation costs are also pleaded.

The defence and counterclaim

- [5] The 2nd defendant filed a defence and counterclaim on December 21, 2018. She denies that the accident occurred as alleged by the claimant. She pleads that the 1st defendant was lawfully driving along the Shooter Hill main road¹ when, upon negotiating a corner, he came upon the claimant on his bicycle travelling in the opposite direction, in the 1st defendant's path and on the 1st defendant's correct side of the roadway. It is alleged that the claimant was in the process of overtaking a line of traffic, travelling in the opposite direction, had a pillion rider on the cross bar and was riding at a fast speed. To avoid the collision, the 1st defendant swerved to the left, but he was unable to prevent the claimant from colliding into the right front section of the taxi.
- [6] It is pleaded that the accident was caused solely by the claimant and/or contributed to by him, due to his negligence. The particulars of the claimant's negligence are pleaded as ; a) failing to keep any or any proper look out; b) riding at an excessive and/or improper speed; c) transporting a pillion on the cross bar of the pedal cycle; d) overtaking a line of traffic when it was unsafe to do so; d) failing to see or to heed the presence of the 2nd defendant's vehicle; e) riding without due care and attention; f) riding on the wrong side of the road; g) colliding with the 2nd defendant's motor vehicle on the 1st defendant's correct side of the roadway , and; h) failing to stop, slow down , swerve or otherwise manage and /or control the pedal cycle to avoid colliding into the 2nd defendant's motor vehicle.
- [7] The 2nd defendant counterclaims for the cost of repairing the taxi amounting to \$111,000.00, and loss of use of \$ 28,000.00; making her counterclaim a grand total of \$139,000.00.

The evidence

¹ There is no dispute that the claimant was referring to the same roadway described as the Penn Hill main road.

[8] All the documents relied on by the parties were agreed and admitted into evidence.

The claimant

[9] The claimant's witness statement stood as his evidence in chief. In it, he says that he is 23 years old and at the time of the accident on February 14, 2013, he was 16 years of age. On that day, he was riding his bicycle on Penn Hill with his friend travelling with him on the cross bar. In front of him was a motor vehicle which pulled over to the left, and he continued past it. Suddenly he noticed a motor vehicle with registration number PB8509 travelling in the opposite direction. The motor vehicle was overtaking a long line of traffic and travelling at a very fast speed. Before he could react, the motor vehicle collided with him. He was flung from the bicycle and landed on the road. He did not know what was happening but knew he had to get out of the road. He tried to get up but felt a severe pain in his leg and could not walk. His right leg was broken and bleeding, but he managed to crawl out of the road. His friend was able to get up and assist himself.

[10] According to the claimant, he was in incredible pain. A crowd began to gather, and people demanded that the driver of the motor vehicle bearing registration PB8509, take him to the hospital. He was placed inside the vehicle and that is when he became aware that the driver was the 1st defendant. When he arrived at the Mandeville hospital he was still in intense pain. He was taken to the operating theatre for surgery on his broken leg. The pain was the greatest pain he has ever experienced, and he even passed out because of it. He cannot remember how long he was hospitalised, but he thinks it was about three months. His injury was severe, and he needed constant medical attention. Pins were placed in his foot, and he had to do surgery. His foot was placed in a cast, and he could not walk without the use of a crutch. Eventually he was discharged from hospital after being treated for a long time.

[11] When he returned home, he could not do anything for himself and had to rely on his family for basic things. He needed help moving around the house. At the time,

he was a student at Troy High School and had to stay out of school due to his injuries. The cast was on his foot for approximately one year. It had to be removed, surgeries done on the foot to ensure it healed properly and because of that, his foot had to be broken and set back: "over and over".

[12] He loves playing football, and cricket, but because of his injuries he was unable to play. This seriously depressed him. After the cast was removed, he was not able to play sports as he used to. He spent a lot of money in transportation costs, as he had to make frequent visits to the hospital. He spent \$ 24,500.00 in transportation costs and paid \$2,000.00 for a medical report which he received from the Mandeville Regional Hospital. The accident is the worst experience of his life, and he still has nightmares about the incident and is afraid to ride on the road.

[13] The Medical Report he relies on is from the Mandeville Regional Hospital is dated May10, 2013. It is signed by Dr. Margaret Wong. Under the rubric: "Incident" she writes:

"Patient was the rider of a bicycle which was towing his friend on the handlebar. Attempted to overtake a car, lost control and ran into the car. Fell of (sic) the bicycle and hurt right leg on 14th February 2013".

Her diagnosis was open fracture of the right knee. He was given analgesia, his wound cleaned, tetanus antibiotics given, and a referral made to the orthopaedic team for admission.

[14] In cross examination, the claimant said he was going downhill at the time of the accident, but he was not going fast. He said the bicycle's brakes were working properly, he denied that it is harder to control the bicycle when carrying someone on the cross bar and also denied that it is harder to control the bicycle while riding downhill. According to him, he carries his cousin on the cross bar all the time. In describing the road where the accident occurred, he said there are guardrails and a soft shoulder on both sides. After the accident he was taken to the hospital in Mandeville by the 1st defendant. It was the following morning that the doctor and

the nurse at the hospital spoke to him, because when he first arrived, he was in so much pain and was given an injection to numb the pain.

[15] The following exchange took place between cross examining counsel Miss Maitland, and the claimant: -

Q: You told them how the accident happened?

A: Yes.

Q: When she was talking to you, she was writing down what you were saying?

A: Yeah

Q: You are relying on a report from the doctor at the hospital.

A: How?

Q: The medical report from the doctor. You are using it in court today as your evidence?

A: Yes.

Q: In the report the doctor wrote: "Patient was the rider of a bicycle which was towing his friend on the handlebar. Attempted to overtake a car, lost control and ran into the car. Fell of (sic) the bicycle and hurt right leg on 14th February 2013". That's what you told the doctor?

A: No. A Nuh dat mi tell her.

Q: You alone spoke to the doctor?

A: I don't know if mi next friend was speaking to the doctor too. Because him did chip up. The back of his hand and his knee had chip up.

Q: The doctor was not where you crashed?

A: No.

Q: You say a nuh dat you tell the Doctor. Are you saying the doctor is lying?

[Objection from Mr Kinghorn, counsel for the claimant sustained by the court].

Q: Agree with me that what the doctor wrote is the truth of how the accident occurred?

A: No. Mi can't tell him dat mi ride in a car and crash.

Q: After the accident isn't it true that Barrington Brown's vehicle was on his side of the roadway?

A: No. He was on the middle side. Mi a go round the car that stop on my side. Mi go round it and mi see him coming from Mandeville and go round the car dem and hit me. He was coming up the hill dem fast and hit me off the bicycle, me and mi friend.

[16] The claimant said he could not say how many cars were in the line of traffic, the 2nd defendant's car was overtaking before it hit him. No vehicles were in front of him and none behind him except the one that he had passed. When asked why he could not stop, he said:

"Mi done go round the car and a try balance myself. Mi de pon mi bicycle and a him mi see a come up. Mi de pon mi side same way. He lick mi right foot. Mi would a dead and mi friend bruk up if mi did lick his car. Bare bad word him tell me."

[17] He said he spent six months in the hospital and did not go back to school. He did not check how long the wore he cast, but it was a long time. He denied coming down the hill on the 1st defendant's side. When it was suggested to him that the 1st defendant had to swerve into the soft shoulder to the left, he responded:

“No. A fi mi side him deh pon.”

He denied losing control of the bicycle. He also denied that he was overtaking a line of traffic when it was not safe to do so and that he crashed into the 1st defendant on his side of the road.

The defendants

1st defendant

[18] The 1st defendant's witness statement stood as his evidence in chief. He says that he resides at White Shop District, Spaulding, in the parish of Clarendon, and is a route taxi operator. On February 14, 2013, he was involved in a motor vehicle accident with a pedal cycle being ridden by the claimant on the Penn Hill main road. At the time of the accident, he was employed to the 2nd defendant. At 6.30pm on the day of the accident, he was driving a green Toyota Corolla motor vehicle owned by the 2nd defendant along the Penn Hill main road, heading from Mandeville to Spaulding which is the taxi's route. He had four passengers in the taxi. The sun was set, but it was not dark, and he could see properly without the need for light.

[19] The roadway was approximately 25 feet wide and had two lanes of traffic. At the point of impact, there was a corner on a hill. Travelling to Spaulding, the drive is uphill, while heading to Mandeville it is downhill. According to the defendant, there were no vehicles ahead of him, but a few were behind him but not travelling too closely to him. There was however a line of traffic travelling in the opposite direction towards Mandeville. On reaching the Penn Hill main road, while negotiating a corner, he came upon the claimant and another person, travelling on a pedal cycle. One person was seated on the pedal cycle and the other, on the bar. He observed that the pedal cycle was overtaking the line of traffic at a fast speed down the hill and was on his (the 1st defendant's), side of the road. He immediately pressed his brakes, but everything happened so suddenly, as the pedal cycle collided into the right side of the motor car. There was nothing else he could have done to avoid

the collision. The pedal cycle lost control, and after the collision, came to a stop about two car lengths on its correct side, down the road.

[20] After the collision, he came out of the motor car and observed that damage to it was to the right front fender and the right driver door. He then observed the claimant and the other person who was on the pedal cycle, about two car lengths away from the impact. He went over to them and noticed they had cuts and bruises. He asked his passengers to get another taxi, and he placed the bicycle in the trunk, helped the claimant and the other person into the car and drove to the Kendal Police station where he made a report. He then took the claimant and the other person to the Mandeville Regional Hospital for treatment.

[21] On cross examination, he said that to his left was a soft shoulder which was about four feet wide. He admitted to travelling at an extremely slow speed at the time of the accident. When he entered the corner, he could see about 20 feet ahead of him and observed a line of traffic coming down the hill. In that line of traffic, there was a bicycle coming down the hill on his (the 1st defendant's), side of the road. When asked how far away he was from the bicycle when he first saw it, he said:

“It was so close after I saw it, I just shorn my vehicle to the soft shoulder and it just come and hit into my vehicle”.

[22] When asked if there were several vehicles which the bicycle overtook, the 1st defendant said it was the last vehicle in the line of traffic. He said he did not see the bicycle before it started to overtake the line of traffic, and that last vehicle was about 10 feet away from him, when the bicycle started to overtake it. The following exchange then took place between cross examining counsel Mr Kinghorn and the 1st defendant: -

Q: So, when you saw this bicycle overtaking on your side, am I correct that you immediately slammed on your brake?

A: I pulled away to the soft shoulder.

Q: So that the first thing you did was to pull away to the soft shoulder?

A: Yes.

Q: The soft shoulder you told us was about 4 feet wide, so how much into the soft shoulder did you pull in?

A: I took up almost the 4 feet. Almost hit the railing.

Q: So, you pulled off the road unto the soft shoulder and then applied your brakes?

A: Yes.

Q: Did your vehicle come to a stop when you applied your brake?

A: Yes. Came to a complete stop.

Q: Are you saying you did all that and the bicycle still came and hit in the side of your vehicle?

A: Yes

Q: At the time this bicycle hit into the side of your vehicle your vehicle was already on the soft shoulder and had come to a stop.

A: Yes sir

[23] The 1st defendant agreed that he did not mention in his witness statement that at the time of the accident he had pulled off to the soft shoulder and that the motor car had come to a stop at the time the bicycle collided with it. He said the damage to the taxi was to the rear fender and rear door of the right side of the car. He denied that he was speeding. In answer to a question from the court as to why he

was travelling so slowly, he said that the motor car was loaded, he was going uphill, and he would have had to have a powerful engine to be going any faster.

The 2nd defendant

[24] The 2nd defendant's witness statement (with the last sentence of paragraph 2 struck out on the basis of hearsay) stood as her evidence in chief. She lives in Spaulding and is the owner of the taxi. On February 14, 2013, she was informed of the accident by the 1st defendant. Later that day she saw the motor car. There was damage was to the right front fender, windshield, right side view mirror and right corner lamp. She took the vehicle to Neil's Auto Service for repairs, and he gave her an estimate of repairs totalling \$111,000.00. She had the repairs done and paid for them in full. The estimate of repairs dated March 22, 2013, was one of the agreed documents. A footnote to the document states that it is valid for 30 days.

[25] On cross examination the 2nd defendant said she could not remember the exact date when she repaired the taxi but said it was in 2013. She thinks she received a receipt but did not have it with her.

Analysis and discussion

[26] This is a claim in negligence and therefore the burden of proof is on the claimant to show that on February 14, 2013, the 1st defendant owed him a duty of care which was breached, and as a result, he (the claimant), suffered loss and injury. There is no contest that in this matter, a reciprocal duty of care was owed by the parties to each other. The real bone of contention in the claim, is whether that duty was breached by the 1st defendant.

[27] In relation to the counterclaim, no defence has been filed by the claimant. Mr Kinghorn, counsel for the claimant argued that as no request was made for default judgment by the 2nd defendant, and since there is no automatic default judgment, the court should "look in the normal way", on whether, on the evidence, the

counterclaim has been made out. He submits that the 2nd defendant has failed to prove the special damages, since the estimate of repairs is not only inconsistent with the evidence of the 1st defendant in respect to the damage sustained by the taxi, but the estimate is not valid, as it has expired, and cannot be relied on. Miss Maitland for her part, argued that in the absence of a prior request for default judgment, the court is entitled to, and she asks that it enter such a judgment, as the counterclaim is for a specified sum, and no defence has been filed in relation to it.

[28] I agree with Miss Maitland. The reality is there is no defence to the counterclaim. The counterclaim is for a specified sum, and so with no issue being raised as to service, the 2nd defendant is entitled to judgment in default of defence to counterclaim.

[29] I turn then to the claim. The burden is on the claimant to prove, on a balance of probabilities, that on the evening of February 14, 2013, the 1st defendant failed to take all reasonable care in his control and management of the taxi, that it collided into and knocked him off his bicycle. It is indisputable that at the time of the accident, the claimant was riding downhill on a bicycle with his friend as a pillion sitting on the cross bar. There is no evidence that the claimant's bicycle was designed for anyone but a single rider. There can be no question, that it is unsafe to ride a bicycle with a pillion rider on the cross bar. I find the claimant's evidence that it is not harder to control the bicycle with a pillion rider on the cross bar, difficult to accept. In my view, the extra weight on a bicycle not designed to carry a pillion rider on the cross bar, would likely create difficulties for a rider to maintain balance and to stop quickly, particularly, as in this case, when riding downhill.

[30] The claimant's own evidence on cross examination was that he could not stop the bicycle when he saw the 1st defendant as he was trying to balance himself. This, it seems to me, was because he was going downhill and had the added weight of the pillion rider on the cross bar. The claimant admits to telling the doctor and the nurses at Mandeville Regional Hospital who attended to him, how the accident

occurred and that the doctor wrote down what he said, on the morning after his admission. He relies on the medical report from the Mandeville Regional Hospital in which Dr Wong reports that the claimant was a rider of a bicycle which was towing his friend and lost control when he attempted to overtake a car, ran into the car, and fell off the bicycle and hurt his leg. The claimant denies this is what he told Dr Wong, but admits that she was not at the scene of the accident.

[31] No explanation has been given for the claimant's allegation that the statement of the incident, made by the doctor in a medical report being relied on by him, is inaccurate. If Dr Wong had made a mistake when she made the report on May 10, 2013, I would have expected that since that date, steps would have been taken by the claimant to have Dr Wong correct it, before a trial, which took place 10 years later. Dr Wong's report is consistent with the 1st defendant's evidence that even after he came to a stop, the bicycle still came and hit into the side of the taxi. It is also consistent with the claimant losing control of the bicycle while riding downhill, after overtaking the vehicle that was in front of him. As observed earlier, the claimant admitted to trying to balance himself. In the circumstances, I reject his evidence that what Dr Wong recorded in the medical report is not what he told her. I therefore find that it is more probable than not, that the claimant, riding downhill with a pillion rider on the bicycle's cross bar, had difficulties balancing the bicycle, lost control of it and collided into the right side of the 2nd defendant's taxi, travelling uphill, in the opposite direction.

[32] I also find it more probable than not, that since the 1st defendant was driving a loaded motor car up hill, he was not driving at the excessive speed that the claimant alleges. The 1st defendant's evidence that he had four passengers in the taxi has not been disputed. Mr Kinghorn in his submissions argued that there are fatal discrepancies in the defendants' pleadings and the 1st defendant's evidence in relation to whether he swerved his vehicle upon seeing the claimant, whether he applied his brakes rather than swerved and came to a stop on the soft shoulder; and whether the claimant collided into a stationary vehicle.

- [33]** There is consistency between the defence and the 1st defendant's oral evidence, in respect of the 1st defendant's response to seeing the claimant in his correct lane. In both instances, the allegation is that the 1st defendant swerved to the left. In his witness statement however, the 1st defendant said his immediate response was to apply his brakes. I do not find this inconsistency fatal. While it is not pleaded in the defence that the 1st defendant swerved onto the soft shoulder, it is pleaded that he swerved to the left. His undisputed oral evidence is that there was soft shoulder to his left where the accident occurred and after he swerved onto it, he applied his brakes.
- [34]** Mr Kinghorn also pointed to inconsistencies between what is pleaded in the defence, the witness statements of the 1st and 2nd defendants, the estimate of repairs (relied on to support the counterclaim), and the oral evidence of the 1st defendant, in relation to the damage sustained by the taxi. The defence, the estimate of repairs, and the witness statements of the defendants, all speak to damage to the front right portion of the taxi. But the evidence on cross examination of the 1st defendant, was that the damage was sustained to the right rear fender and the right rear door. On a balance of probabilities, I believe that the damage was indeed to the right front door and the right front fender of the taxi, as this is consistent with the suddenness of the collision and the 1st defendant's evidence of how the accident occurred. I accordingly reject that aspect of the 1st defendant's oral evidence, regarding where the taxi sustained damage. This will not lead me however, to reject his evidence in its entirety, as Mr Kinghorn urged me to do in his submissions. It is a trite observation that a court, on evaluating evidence, is entitled to accept parts of a witness's evidence and reject other parts.
- [35]** Another discrepancy highlighted by Mr Kinghorn is the fact that the 1st defendant's oral evidence was that he had swerved and had come to a stop on the soft shoulder, nevertheless, the claimant collided into the taxi. Counsel argued that this was not pleaded. I do not find that this critique is warranted. The pleadings indicate that the 1st defendant swerved to the left but was unable to prevent the claimant colliding into the taxi. This is not a case of a vehicle stopping on the side of the

road for reasons unconnected to a motor vehicle accident, and a bicycle happens to come along and collide into it. Context is important. The 1st defendant's evidence is that he swerved left onto the soft shoulder, applied his brakes, took up almost all of the soft shoulder, but the claimant collided into the right side of the taxi. There is nothing in the defence that alleges, that after swerving to the left, the taxi kept on moving forward and that that is when the collision occurred.

[36] In any event, the inconsistencies raised by Mr Kinghorn do not affect my earlier findings that it was the claimant who lost control of the bicycle while overtaking the vehicle that was in front of him, and in doing so, collided into the right side of the 2nd defendant's taxi, being driven by the 1st defendant. I find that there was nothing else the 1st defendant could have done in the circumstances, to avoid the collision.

Conclusion.

[37] Having regard to the foregoing, the claimant has failed to discharge the burden on him to prove that the 1st defendant breached the duty of care owed to him on February 14, 2013. In the result, I make the following orders: -

1. The claim is dismissed.
2. Costs to the 2nd defendant on the claim to be taxed if not agreed.
3. Judgment on the counterclaim in default of defence in the amount of \$139,000.00 is entered in favour of the 2nd defendant.
4. Costs to the 2nd defendant on the counterclaim to be taxed if not agreed.

A Jarrett
Puisne Judge