



[2026] JMSC Civ 71

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2023CV00662**

<b>BETWEEN</b>	<b>TRISHELL VASSELL</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DESMOND ALPHANSO RICHARDS</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Norman Godfrey and Iyana Godfrey instructed by Brown, Godfrey & Morgan Attorneys-at-law for the Claimant.

Racquel Dunbar and Jayanne Williams instructed by Dunbar & Co., Attorneys-at-law for the Defendant

**Heard: 26<sup>th</sup> March 2026 and 5<sup>th</sup> June 2026**

**Negligence - Pleadings in civil litigation - Distinction between pleading statement of facts relied on for negligence and particulars of negligence - Liability for motor vehicle collision - Credibility of Witness**

**C. BARNABY, J**

**BACKGROUND**

[1] This claim, which is grounded in negligence, arises out of a motor vehicle collision on 16<sup>th</sup> February 2019, along the Cobbla Main Road in the parish of Manchester between a Toyota Corolla (the Corolla) owned by the Defendant and driven by Mr.

Trevor Denton and a Toyota Yaris (the Yaris). The Defendant does not dispute the collision or that Mr. Denton was his servant and/or agent.

**[2]** Save that the Claimant claims that she was a belted passenger travelling in the Yaris along the Cobbla Main Road when Mr. Denton “*so negligently drove, managed, controlled and/or operated [the] Toyota Corolla... causing same to collide with the [Yaris]*”, the facts relied upon to ground the allegation of negligent operation of the motor vehicle have not been pleaded. The Claimant does not state the point on the roadway where the collision occurred or how it happened. Mr. Denton’s negligence is nevertheless particularised as follows:

- a. Failing to observe and to have regards for the rules of the road.
- b. Failing to keep to his proper side of the roadway.
- c. Failure to have regard for other users of the road and in particular the Claimant.
- d. Failure to drive, manage, and/or control the motor vehicle so as to cause same to collide with the vehicle in which the Claimant was a passenger.
- e. Driving at a speed that was manifestly unsafe in the circumstances.

**[3]** In consequence of the foregoing, the Claimant says that she suffered injuries to her person and incurred expense. She claims damages and special damages in relief.

**[4]** The Defendant denies that the Claimant was a passenger in the Yaris, and that he owed her a duty of care. In so doing, he contends that the Claimant was not involved in the accident nor was she injured as a result of it. He also denies the allegations of and the particulars of negligence, as well as the particulars of special damages and contends that if she suffered loss, damage and incurred expense it was not due to the negligence of the Defendant or at all.

**[5]** The facts on which the Defendant relies in defending the claim is that the Yaris encroached into the lawful path of his motor vehicle causing the collision. In

consequence he contends that Julian Morgan, the owner and driver of the Yaris caused or contributed to the accident. Julian Morgan's negligence is particularised in this way.

- a) Driving at a fast and/or excessive speed in the circumstances;
- b) Failing to have any or any sufficient consideration for other road users;
- c) Failing to heed and/or observe the Defendant's vehicle in sufficient time or at all;
- d) Failing to keep left to avoid the collision; and
- e) Failing to swerve, stop, slow down or operate his vehicle in order to avoid the collision.

[6] The claim was tried on 26<sup>th</sup> March 2026 and judgment reserved to 5<sup>th</sup> June 2026. The decision and reasons therefore are now returned in consideration of all the evidence, and the submissions and authorities filed by the parties, including those filed in supplement after the taking of evidence.

## ISSUES AND SUMMARY DISPOSITION

[7] The constituent elements of the tort of negligence are well settled. There must be a legal **duty** to take care and **breach** of the duty which **causes or results** in harm or damage. The Claimant bears the burden of proving each element if she is to succeed on her claim. The burden is discharged at the civil standard, that is, on a balance of probabilities.

[8] Whether the Claimant was a passenger in the Yaris to whom a duty of care was owed, and if she was, whether Mr. Denton breached the duty of care to her in operating the Corolla are dispositive of the claim. For the reasons stated below, both issues are resolved in favour of the Defendant.

## REASONS

- [9] The Claimant and Mr. Denton were the only witnesses and they each gave opposing accounts of the collision, the court's assessment of the credibility of each of them is therefore critical to the resolution of the claim.
- [10] The Claimant does not make any submissions in respect of the credibility of the witnesses but urges the court to accept her account of the accident.
- [11] Among the Defendant's submissions is that the Claimant's evidence is unreliable, as the first occasion on which she gives evidence regarding the owner of the vehicle in which she was travelling, the distance between the vehicles when she first observed the Corolla, the point of impact, and the direction of travel of the Corolla was during cross-examination.
- [12] In civil litigation, a claimant must plead the facts relied upon to establish the foundation of the case, sufficient to make out a valid cause of action. This is codified in these courts at CPR rules 8.9(1) and (2) which require a claimant to include a short as practicable statement of all the facts relied upon by him.
- [13] Where the cause of action is negligence, the claimant is required to plead the broad material facts which outline the elements of the cause of action of negligence, which tells the story of what happened and why the defendant is culpable. In other words, the facts pleaded should tell the story of the event and the legal wrong alleged. This is to be contrasted with the particulars of negligence which are specific and granular allegations which connect the facts pleaded to the acts or omissions which a claimant says are blameworthy. These particulars notify a defendant of the specific case he has to answer but are incapable of introducing new causes of action or filling in factual gaps in the main pleading.
- [14] It is true that much of the details which the Claimant gives in respect of the collision were supplied during cross-examination. This includes evidence that she knows the driver of the Yaris who still remained unnamed after the Claimant's evidence, the

distance between the vehicles when she first observed the Corolla, the direction in which the Corolla was travelling, and the point of impact. At this stage of the proceedings, the state of the Claimant's pleadings cause me to approach her evidence with caution.

**[15]** The Defendant also submits that the court should not regard the Claimant as a credible witness, having regard to what is described as numerous contradictions and inconsistencies in her evidence. The following are identified as constituting material inconsistencies.

- (i) The Claimant testified in her Witness Statement that she was travelling "*to Spaulding*" and that the Corolla was travelling on the wrong side of the road when the collision occurred, but said she was travelling "*from Spaulding*" when cross-examined.
- (ii) In her Witness Statement, the Claimant stated that the last thing she remembered was hearing screams from the "*other passengers*" but under cross-examination, she testified that there were only two persons in the vehicle, namely herself and the driver. This was after she acknowledged that a passenger refers to any occupant of the vehicle other than the driver.
- (iii) Counsel further submits that the Claimant's Witness Statement gives the impression that she did not see the Corolla or observe how the accident occurred. This, it is submitted, was confirmed under cross-examination when she admitted that she did not see what collided with the vehicle in which she was travelling. However, in the same exchange, the Claimant subsequently retracted her statement and stated that she was able to provide details of the collision because she saw the Corolla.

**[16]** In contrast, the Defendant submits that Mr. Denton, who was not impeached on cross-examination and has been consistent in accounting for the collision

throughout the proceedings should be accepted as a credible witness and his version of events preferred.

- [17] As I will endeavour to demonstrate in analysing the issues which I consider as determinative of the claim, there is merit in the Defendant's submissions.

*Existence of a duty of care*

- [18] The basis upon which the Claimant claims that a duty of care was owed to her is presence in the Yaris as a passenger at the time of the collision.

- [19] As earlier indicated, the facts on which the Claimant relies in negligence have not been set out in her pleadings. She introduces the facts on which she relies for the first time in her witness statement, which was admitted as her evidence in chief without application to strike out any portions of it.

- [20] It is the Claimant's evidence in chief that she was a passenger in the Yaris travelling "to Spaulding" along the Cobbla Main Road when she suddenly felt the car jerk. At the same time she heard a crashing sound and the vehicle in which she was travelling started to spin towards the wall. Her last recollection was screaming from the other passengers and her head hitting the frame of the motor vehicle. It is her further evidence that she is unsure of how long she was unconscious but that when she woke up she felt severe pain all over her body. She lost consciousness again at some point and woke up in the Percy Junor Hospital. It is also her evidence that she later found out that the car which hit the Yaris was a Toyota Corolla bearing the registration number of that owned by the Defendant, which was being used as a taxi. She also got information about the driver and the owner of the Corolla from the owner and driver of the said Yaris, who she does not name.

- [21] Among the matters relied on by the Defendant in submitting that the Claimant was not a passenger in the Yaris and was not involved in the accident is her failure to provide any details as to the colour of the vehicles involved in the accident. Outside

of the make and registration numbers of the motor vehicles - which can come to one's knowledge by any number of ways which are unrelated to presence in either motor vehicle at the time of the collision in my view - the Claimant does not describe either car involved in the collision in her pleadings or witness statement. The door was opened for her in cross-examination however, where she answered "grey" and "greenish grey" when asked the colour of the Defendant's car and the Yaris respectively. It is Mr. Denton's evidence in chief, as it was in cross-examination that the Yaris was a brown coloured car. That evidence was unchallenged and is accepted. I take judicial notice of the fact that shades of brown are possible on the spectrum of green-grey colours. There is no evidence from Mr. Denton, the sole witness for the defence, of the colour of the car he drove. In these circumstances, I would not find that the Claimant was not a passenger in the Yaris only on account of her failure to describe the colours of the cars involved in the accident in her pleadings and witness statement. I come to a contrary conclusion on consideration of other aspects of her evidence, however.

- [22] It is the Claimant's evidence in chief that when she suddenly felt the car jerk, heard a crashing sound and the Yaris started to spin towards the wall, among the last things she remembered was "*screaming from the other passengers.*" When this aspect of her evidence was recounted to her and she was asked how many other passengers were in the car, the Claimant said she believed there was one (1) other occupant in the car at the time. When asked how many persons in total were in the Yaris, including the driver and herself, the Claimant answered "*two (2) persons*". In cross-examination, she admitted as being correct, that "*a passenger is any other occupant of a car, except the driver*". This prompted Ms. Dunbar to ask, "*... which is the truth, that there were other passengers in the car or just yourself and the driver?*" to which the Claimant answered, "*myself and the driver*". The Claimant offered no explanation for the inconsistency in her evidence in chief and cross-examination as to the persons who were present in the Yaris, which causes me to regard with suspicion her claim and evidence that she was a passenger therein.

- [23] It is Mr. Denton's evidence that after the collision he exited the Corolla, approached the Yaris and observed a female driver and a female passenger who looked to him to be in her late 20's or early 30's. He does not know the identity of either but they came out of the car and spoke to him. He said he did not observe any injuries but that the passenger said she was injured. He said he was advised by the police that she was taken to hospital but he was unsure of who took her. No police gave evidence in the proceedings, so that Mr. Denton's evidence as to what he was told is admitted not for the truth of its contents but that the statement was made to him.
- [24] It is the Claimant's evidence that at some point after the collision she woke up in the Percy Junor Hospital where she was being treated for her injuries. The only exhibit which the Claimant managed to have admitted into evidence, as containing hearsay statements made in a document, is a medical report from the Percy Junor Hospital dated 14<sup>th</sup> October 2022.
- [25] While the medical report states as part of the "*History*" that a Ms. Vassell "*got involved in a motor vehicle accident on the 16<sup>th</sup> of February 2019*", neither the date of presentation of the patient to the hospital nor the identity of the historian is indicated. In their absence I am unable to conclude that any treatment received at that hospital was proximate to the collision so as to make it more likely than not that the Claimant was the passenger present in the Yaris, involved in the collision and taken to the hospital for treatment of injuries caused by the said collision.
- [26] If a contrary view is to be reached, I also observe that a part of the "*History*" states that the patient "*was a front seat passenger unrestrained when the driver collided with another car spin (sic) out of control and hit the wall. Patient hit her head no loss of consciousness.*" This contradicts with the Claimant's claim that she was a "*belted passenger*" and her evidence that she lost consciousness twice after the collision and woke up in the Percy Junor Hospital. It is also her evidence, which is inconsistent with the statement of mechanism of the collision in the medical report, that it was "*the other car*" (the Corolla) which collided with the Yaris.

[27] When the material inconsistency as to passengers in the Yaris is considered together with the evidence which appears on the medical report from the Percy Junor Hospital, and other material inconsistencies in the Claimant's evidence - which I will address subsequently - I am not satisfied on a balance of probabilities that the Claimant was a passenger in the Yaris or that she was involved in the collision. In the result, I do not find that a duty of care was owed to the Claimant. If I should find otherwise, I proceed to address the question of breach of duty.

*Breach of duty of care*

[28] If the Claimant was a passenger in the Yaris, Mr. Denton would undoubtedly have owed her a duty to use reasonable care in the operation of the Corolla.

[29] The Defendant relies on the case of **James Mitchell & Aaron Gordon v. Leviene McKenzie & Dorrell Gordon** SCCA 104/1991 delivered October 21, 1992. While the factual circumstances of that case are distinguishable from the present, I accept the underlying principle that the central issue for the court when the cause of a collision is disputed is the identification of the true cause of the accident. In this regard, I am assisted by the case of **Calvin Grant v. Pareedon & Pareedon** Suit No. C.L. 1983G108 unreported 18/4/1986, also relied on by the Defendant. That case makes it clear that in determining liability arising from a motor vehicle collision, the court may have regard to the surrounding physical evidence, including the point of impact, drag marks, the location and nature of the damage to the respective vehicles, and the final resting positions of the vehicles. Such evidence is capable of assisting the court in determining which version of events is more probable.

[30] I agree with the Defendant's submission that the Claimant's evidence in chief does not suggest that she saw the collision between the Yaris and the Corolla. This is material to both the presence of the Claimant in the Yaris as well as her witnessing the collision.

**[31]** I found this exchange on the Claimant's cross examination telling.

Q *So I am correct that you did not see what collided with the car you say you were in?*

A *Correct*

Q *Having not seen what collided with the car you claim you were in, am I correct that not having seen with your own eyes or heard with your ears, you cannot tell this court about any details of what collided with the car you claim you were in?*

A *Yes, I am able to give details*

Q *You say you are able to give the court the information, is that because at paragraph 7 you said you got the information from the driver and owner of the car?*

A *No, I did see it coming*

Q *Under cross examination just now, you said you did not see the car which collided with the car you say you were in?*

A *No, I said I did see*

Q *Which is the truth, did you see the car coming or did you not see it?*

A *I did see the car coming. It was a misunderstanding.*

**[32]** Counsel's initial question as well as the Claimant's answer were both clear. I do not accept the Claimant's indication that there was any "*misunderstanding*". I do not find that the Claimant has provided a good explanation for the inconsistency on such a material matter. I therefore regard her evidence in this regard as lacking in credibility.

**[33]** Further, the Claimant's evidence in chief is that "*[s]uddenly, [she] felt the car [she] was in jerked (sic) and at the same time, [she] heard a crashing sound and the car started to spin towards the wall...*"

**[34]** "*Suddenly*" is an oft used English word which ordinarily means that something happened quickly, unexpectedly, or without warning. Its use by the Claimant suggests that if she was in the Yaris, she only became aware of the accident when

she felt it jerk. This evidence without any indication that she observed the Corolla before perceiving impact causes me to regard it as more probable than not that the Claimant did not see the Corolla before the collision, or observe how the collision occurred.

- [35] Having so found, I reject the Claimant's evidence that the Defendant's vehicle was travelling very fast and on the wrong side of the road in a manner where it would be difficult for the driver to control the vehicle. This retelling is at odds with the mechanism of the collision which is contained in the medical report relied upon by the Claimant where it is stated that "*she was a front seat passenger unbelted when the driver collided with another car spin out of control and hit the wall*", a narrative which is consistent with the evidence given by Mr. Denton.
- [36] It is also the Claimant's evidence in chief that the Yaris was travelling "*to Spaulding*" when she suddenly felt the car jerk. On more than one occasion in cross-examination she said it was heading "*from Spaulding*". Presence in the Yaris and involvement in the collision being in issue, inconsistency in the evidence as to the direction in which the Yaris was travelling at the time of the collision is material. On re-examination when the Claimant was asked if she could explain the difference in the account, she responded, "*I was travelling from the fruit stall. In the statement I said I was traveling to Spaulding because my mother works in Spaulding, we were doing the brick work, landscaping. Our intention was to buy fruits at the fruit stall then travel back into Spaulding.*" This is not accepted as a good explanation for the material inconsistency as to the direction in which the Yaris was travelling at the time the Claimant said she became aware of the collision. I do not regard the Claimant's evidence in this regard to be credible. On its own and when taken together with other material inconsistencies in the Claimant's evidence, this causes me to conclude that she is not a credible witness.
- [37] In all the foregoing circumstances, the Claimant who bears the burden of proving her case has failed to satisfy me on a balance of probabilities that the collision was caused by Mr. Denton through negligence or otherwise.

**[38]** Having regard to the above conclusion, it is unnecessary to enquire into the Defendant's case, but for completeness and in deference to the submissions made in these regards, I proceed to address them.

**[39]** It is submitted on behalf of the Claimant that Mr. Denton's evidence is corroborative of her claim that he caused the collision. Particular reference is made to paragraph 5 of Mr. Denton's Witness Statement and it is argued that the account there is indicative of negligence on his part. In particular, it is submitted that it is corroborative of excessive speed and the Corolla's presence on the wrong side of the roadway, which is said to have necessitated swerving by the driver of the Yaris. It is also contended that having regard to Mr. Denton's description of the roadway, the collision could not have occurred in the manner described by him, as any swerving to the left would likely have resulted in impact with the embankment situated on that side of the road.

**[40]** It was also submitted that the location of the damage to the vehicles demonstrate that the collision could not have occurred in the manner described by Mr. Denton. It is argued that the fact that the front right fender and tyre collided with the back right fender of the Toyota Yaris shows that:

- i. the Yaris had not drifted into the other lane;
- ii. Mr. Denton had not in fact turned left to avoid the collision as, if he did so, the point of impact would have been different;
- iii. if the Yaris had drifted into the other lane, the point of damage would more probably be on the front of it; and
- iv. the dimensions of the road as described by Mr. Denton would have resulted in a head on collision as opposed to the impact described.

**[41]** The Claimant further urged the court to reject Mr. Denton's evidence that approximately (5) five vehicles were parked near the fruit stall. It was also submitted that the roadway in question was a major thoroughfare and would be sufficiently

wide to accommodate parked vehicles without obstructing the flow of traffic in any event. Counsel also invited the court to find that there existed a lay-by in the vicinity of the fruit stall which allowed vehicles conducting business in the area to park without impeding traffic. It was further submitted that the location of the accident was near a square which is inordinately wider than any other section of the thoroughfare.

**[42]** The Claimant also seeks to rely on the fact that the Defendant's vehicle ultimately came to a rest approximately two (2) car lengths beyond the point of collision, as being indicative of the speed at which the Corolla was travelling, thereby pushing the Yaris into the left lane behind the Corolla and across the roadway. It is also submitted that a vehicle travelling at a fast rate of speed is more likely than not to have had its tyre blown out.

**[43]** I do not find the Claimant's submissions meritorious.

**[44]** It is Mr. Denton's evidence that he was heading to Spaulding from Mandeville through Cobbla Square. He described Cobbla Square as an asphalted, fairly smooth, slightly curved main road. He stated that the area where the collision occurred is like a gradual corner and that on entering the corner, which he also describes as "*like an S-corner*" you are able to see what is coming from the other direction, a few vehicle lengths away. He further stated that there were no white lines on the road at the time but that the roadway accommodated two lanes of traffic travelling in opposite directions. The left of Cobbla Square is bordered by an embankment and beyond the embankment is bush and houses, and stalls are to the right. A fruit stall was located in the corner of the square and was located to his right.

**[45]** He also gave evidence that there were about five motor vehicles parked on his right by the fruit stall and that it appears that persons were buying fruit. No vehicles were parked on his side of the road. He said the parked cars were about 5 feet wide so that they took up about 5 feet of the roadway, leaving about 8 to 10 feet of roadway.

The Corolla he was driving was also about 5 feet wide. According to him, upon reaching Cobbla Square, he observed a motor vehicle travelling from the opposite direction, namely from the direction of Spaulding, approaching the parked cars. It drifted towards his lane to go around the said parked vehicles. As it got closer to him, the vehicle came around the parked cars and came over towards him. Mr. Denton said he turned his steering wheel to his left to try and get away from that other vehicle but that both vehicles collided. That in essence was paragraph 5 of his witness statement. He also says that at the time of the collision the Corolla was being driven about 1 foot from the left side of the road which had a '*banking*'.

**[46]** Mr. Denton says the front right fender and wheel of the Corolla was hit and the front right wheel blew out. It is also his evidence that the back right wheel of the Yaris was hit causing damage to the right rear tyre, which was the only damage to that vehicle. It is also his evidence that the Yaris then came "*cross way*" the road and hit the "*banking*" on his left side of the roadway and came to a stop with its front facing the "*banking*" and the rear out into the road. The Yaris in its stopped position was slanted and blocked off the left side of the road after the accident. His vehicle remained in his left lane but further down the road, approximately two (2) car lengths away from the accident. He removed the Corolla off the road by pulling it to his extreme left, straightened it up and stopped.

**[47]** I found Mr. Denton to be a forthcoming and credible witness whose account of the collision withstood the test of cross-examination. On my assessment he offered a credible version of the accident, which is accepted. I find it corroborative of the Defendant's case, and not at all incompatible with it.

**[48]** It is not disputed that there was a fruit vendor operating in the vicinity of where the accident occurred. Consistent with his evidence in chief, Mr. Denton stated in cross-examination that the fruit stall is on the right hand when he is coming from Mandeville, and going back to Mandeville it is on the left. His evidence was unchallenged and is accepted.

- [49] While it was suggested to Mr. Denton in cross-examination that there was no vehicle parked along the right-hand side of the roadway in the vicinity of the fruit stall, Mr. Denton insisted there were (4) to five (5) vehicles parked there. His evidence in chief was that approximately five (5) vehicles were so parked. I find his evidence in this regard consistent. In any event, no inconsistency was proved and I do not regard it as improbable that the cars could be so parked. In fact, the Claimant's own evidence in unsuccessfully attempting to explain the inconsistency in the direction the Yaris was travelling suggests the probability. She was travelling from the fruit stall as she "*intended*" to buy fruits there.
- [50] While the Claimant submits that there was a lay-by near the fruit stall which would have allowed vehicles to park without obstructing traffic, there is no evidence of any such lay-by. I accordingly find on a balance of probabilities that there were vehicles parked in the vicinity of the fruit stall which obstructed the lane to Mr. Denton's right as testified to by him.
- [51] I also find on a balance of probabilities that the collision took place in the left lane where Mr. Denton was lawfully travelling. I so find when I consider Mr. Denton's evidence - which was not impeached on cross-examination - that the front right fender and wheel of the Corolla hit the back right wheel of the Yaris when the latter was attempting to pass the parked vehicles and his evidence as to the location of damage to both vehicles. The undisputed evidence as to where both vehicles ended up after the collision also fortifies me in this view. Both cars ended up in the left lane of the roadway. The view is unchanged by the Claimant's submission that if Mr. Denton had swerved left while being only 1 foot away from the embankment, his vehicle would likely have collided with the embankment itself.
- [52] The verb "*collision*" refers to two or more objects striking each other with forceful impact. I do not consider it impossible that an embankment/banking, depending on its height and other specifications could be mounted and demounted by the operator of a motor vehicle. There being no evidence in this case of the specifications of the embankment from which Mr. Denton said he was a foot away,

I cannot conclude that it was improbable for him to swing left away from an oncoming hazard and move further up the roadway without “*colliding*” into the embankment. In any event, it is for the Claimant to prove her claim, and for reasons already indicated, I have found that she has not done so at the required standard.

**[53]** Considering the points of impact and where the vehicles ended up after the collision, I also find it difficult to see how the Yaris could have been travelling in its authorised right lane and swerved to avoid the collision but ended up where it did in the left lane. It appears to me to be more probable than not, that it was the Yaris which drifted towards the left of the roadway into the path of the Corolla which was lawfully travelling there.

**[54]** As to the blowing out of the tyre on the Corolla, I do not regard it as being indicative of Mr. Denton travelling at a fast speed causing the collision. No evidence has been presented of the speed limit on the roadway to suggest that Mr. Denton was travelling in excess of it. Additionally, there is no evidence of any approximate speed at which Mr. Denton was travelling. Further still, if Mr. Denton was travelling in his lawful left lane as I have found, and the Claimant was travelling in the opposite lane in the opposite direction, I cannot find that any speed at which Mr. Denton was driving in his lane would have been excessive only on account that the right tyre of the Corolla blew out. It is possible that this occurred because the front right fender and wheel of the Corolla were hit in the collision as testified to by Mr. Denton.

**[55]** On consideration of all the evidence, including the physical evidence relating to the point of impact, the point at which the vehicles stopped, and the view which I have taken of the witnesses’ credibility, I am unable to find that Mr. Denton breached any duty of care owed to the Claimant if she was a passenger in the Yaris. Mr. Denton being the admitted agent and/or servant of the Defendant, there is no basis upon which to find the Defendant liable for negligence.

**[56]** It is in all the foregoing premises that I make the orders below.

**ORDER**

1. Judgment for the Defendant on the claim.
2. Costs of the claim to the Defendant to be taxed if not agreed.
3. The Defendant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby  
Puisne Judge