



[2025] JMSC Civ 15

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. 2011 HCV 07682**

**BETWEEN GLASTON WELLINGTON CLAIMANT

AND KEVIN DEAN FRAZER DEFENDANT**

IN OPEN COURT

**Mr. Sean Kinghorn instructed by Messrs. Kinghorn and Kinghorn attorneys-at-law
for the claimant.**

**Miss Campbell instructed by Messrs. Burton Campbell and Associates Attorneys-
at-law for the claimant.**

HEARD: November 14, 2024 and February 14, 2025

Motor vehicle accident – Damages for Personal Injuries

To be delivered as Oral Judgment

CORAM: J. PUSEY, J

INTRODUCTION

[1] By way of Claim Form filed on December 2, 2011 the claimant seeks damages for negligence arising from a motor vehicle accident that occurred on 9th January 2011 when the claimant, who was sitting on his bicycle on the soft shoulder of the Old Harbour Main Road in the parish of St. Catherine was hit from the cycle by a motor vehicle bearing Registration plate numbers and letters 6923 FU driven by the defendant. The defendant denies hitting the claimant's cycle although he was the only motor vehicle present at the locus in quo, saw the claimant's bicycle on the ground and spoke to the claimant at the material time.

The Law

[2] I adopt what I said in **Kathleen Harrison v Orville Oakley** [2019] JMSC Civ 148 at paragraphs 11 and 12 as expressive of the law on negligence in these terms;

*In **Glenford Anderson v George Welsh** [2012] JMSC Civ 43 at paragraph 26 Harris JA stated the relevant principle that is applicable in a claim of negligence in these terms:*

It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty. It is also well settled that where a claimant alleges that he or she has suffered damage resulting from an object or thing under the defendant's care or control, a burden of proof is cast on him or her to prove his case on the balance of probabilities.

There is no dispute as to the applicable law.

[3] It is therefore for the claimant to prove by evidence that a duty owed to him by this defendant has been breached by the defendant. It is a question of fact in the matter at Bar and the credibility of the witnesses is pivotal in the determination of the facts proved.

Finding of Fact

- That both the claimant and the defendant were at the locus in quo and only the motor vehicle and the bicycle driven by the defendant and claimant respectively were present.
- That the defendant drove unto the soft-shoulder of the road, stopped, was confronted by the claimant and saw the claimant's bicycle laying on the ground 4 – 5 feet in front of his car.

- That the defendant had a conversation with the claimant, gave him information regarding his reasons for being at the location, his telephone number and promised to repair the bicycle and cover medical expenses. There is no other explanation as to how the claimant knew these details. This smacks of an admission of involvement in the accident that resulted in the claimant sustaining personal damage and damage to his bicycle.
- That the defendant did not see the claimant until he was approached by the claimant but that does not prove that the motor vehicle he was driving did not collide with the claimant's cycle.
- That the defendant owed a duty to the claimant to manage and operate his motor vehicle so as not to cause him harm or damage as a user of the road.
- That the defendant's motor vehicle struck the claimant's bicycle damaging it and causing the claimant to fall, injuring his legs.
- Evidence that his back was turned is not inconsistent with how the claimant described how the accident unfolded. He was seated on the bicycle, saw the defendant's car make a U-turn and so was behind him and then struck him. The evidence that the defendant turned as opposed to a u-turn into Sydenham was only introduced in viva-voce evidence and seems to be of recent vintage.
- Therefore, the court rejects the account given by the defendant that he did not strike the claimant's cycle and says that the fact that he did not see a big bicycle on the soft shoulder speaks to the negligent manner he was operating his motor vehicle without due regard to other users of the roadway.
- The defendant was evasive in his answers and even suggested that part of his witness was a mis-communication between him and his attorney. I did not believe him.

[4] There is therefore judgement for the claimant.

Damages

[5] The medical evidence suggests that the claimant sustained the following injuries;

- 4 x 4 abrasion to the shin
- Swollen left knee with limitation of movement
- Sprain to the left knee
- Soft tissue injuries to the lower limbs
- Blunt injury to both knees with patellar tendonitis to the left knee

General Damages

- [6] The claimant relied on **Katheen Harrison v Orville Oakley** [2019] JMSC Civ 43 where an award of \$1,200,000 which gross up today to \$1,686,000.00 in which the claimant suffered blunt trauma to the head, mandible shoulder, hip and knee with extensive bruising, swelling and tenderness. The claimant submits an award of \$2,000,000.00 should be made.
- [7] On the other hand, the defendant relying on **Tamah South v George Ergos** to be found at Khan Vol. 4 at page 215 where the claimant suffered a swollen knee, tenderness over the tibial condyle with superficial hematoma and an award which grosses up today to \$517,177.91 was made.
- [8] Reference was also made to **Stafford Hamilton v Deward Singh et al** to be found in Harrison's Assessment of Damages at page 380 where multiple bruises and laceration attracted an award which grosses up today to \$665,526.29.
- [9] Based on the injuries sustained in the case at Bar and guidance from the authorities cited, which represent more serious injuries in the cases cited by the claimant and less serious injuries in the cases cited by the defendant, an award of \$1,300,000.00 is made for General Damages with interest at a rate of 3% from the 22nd January, 2012 to the date of judgement.

Special Damages

- [10] Regarding the claim for loss of earnings at \$25,000.00 per week for 9 months. The defendant took issue with the absence of records or testimonials in support

of this level of income. In fact, there is a dirt of evidence to support this claim and no award will be made.

[11] The following award for special damages is made:

- Medical expenses \$81,700.00 with interest at a rate of 3% from January 9, 2011 to the date of judgement.

Order

1. Judgement for the claimant
2. General damages of \$1,300,000.00 with interest @ 3% from January 22, 2012 to the date of judgement
3. Special Damages of \$81,700.00 with interest @ 3% from January 9, 2011 to the date of judgement.

Judith Pusey
Puisne Judge