



[2026] JMSC Civ.90

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV02218

BETWEEN NICOLE LEWIS CLAIMANT
A N D DAPHNE BARBEE-WOOTEN DEFENDANT

IN OPEN COURT (Hybrid)

Mrs. Ashley Campbell instructed by Georgia Hamilton & Co. for the Claimant
Mr. John Givans instructed by Givans & Co. for the Defendant

HEARD: June 22, 2026

DELIVERED: July 10, 2026

TORT – NEGLIGENCE – MOTOR VEHICLE COLLISION – CLAIMANT ASLEEP DURING INCIDENT – CLAIMANT’S PLEADINGS ASSERT NEGLIGENCE ON PART OF DEFENDANT – WHETHER CLAIMANT HAS PROVEN HER PLEADED CASE IN CIRCUMSTANCES WHERE SHE DID NOT SEE WHAT HAPPENED.

TORT – NEGLIGENCE – *RES IPSA LOQUITUR* – WHETHER A CLAIMANT CAN RELY ON *RES IPSA* WHEN THEY PLEAD HOW THE INCIDENT HAPPENED – WHETHER *RES IPSA* ARISES IN THIS CASE – WHETHER *RES IPSA* NEEDS TO BE PLEADED FOR A CLAIMANT TO RELY ON SAME – WHETHER THE DEFENDANT HAS REBUTTED PRESUMPTION OF NEGLIGENCE IF *RES IPSA* ARISES.

TORT – NEGLIGENCE – INEVITABLE ACCIDENT – WHETHER DEFENDANT HAS GIVEN EVIDENCE FOR COURT TO FIND INEVITABLE ACCIDENT.

DALE STAPLE J

STATEMENT OF ISSUE AND RESOLUTION

[1] A collision happened on July 8, 2017, involving the Claimant passenger and the Defendant driver. The Claimant did not see how the collision happened, but pleaded that it was caused by the Defendant causing the vehicle to veer off the road. I am to decide whether the Claimant has proven her case. As the Claimant

has given no evidence to support her pleaded case of how the collision happened, judgment is entered for the Defendant.

BACKGROUND

- [2]** There was a collision involving the Claimant and the Defendant on the 8th July 2017. The Claimant was travelling as a passenger in a motor vehicle – a Suzuki Vitara – being driven by the Defendant. The Defendant’s husband was travelling as a passenger in the front seat and the Claimant was seated in the rear of the vehicle.
- [3]** The Claimant’s pleading states that along the journey, whilst they were driving along Main Street in Oracabsessa in St. Mary, the Defendant caused the motor vehicle to veer off the roadway, collide with a tree and overturn twice. Particulars of negligence followed. Importantly, the Claimant did not plead *res ipsa loquitur*. The Claimant asserts she was seriously injured as a consequence and incurred losses and expenses.
- [4]** The Defendant’s defence is that whilst negotiating a corner, her driver’s side airbag deployed unexpectedly and without any action on her part and it caused her to lose control over the vehicle, resulting in it flipping, going off the road and landing upside down.
- [5]** The Court is now to decide whether or not, on the balance of probabilities, the Claimant has proven her pleaded case. The Court received initial submissions from the parties as well as further submissions after evidence was concluded. I am grateful for those submissions and wish to assure the parties that they were carefully considered.
- [6]** I am also grateful to my judicial counsel, Ms. Collins, for her usual excellent assistance.

NEGLIGENCE IN THE CONTEXT OF MOTOR VEHICLE COLLISIONS

[7] I remind myself that it is the Claimant who must satisfy me that it was more likely than not that the Defendant owed her a duty of care and that the collision and consequent injury was the consequence of the Defendant's breach of that duty to her.

[8] Lord Griffiths, in the case of **Ng Chun Pui and Ng Wang King v Lee Chuen Tat et al**¹ reminds us of the burden and standard of proof in a negligence matter. He stated at pages 3 and 4 of his judgment that:

"The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred..... it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established."

[9] Negligence is proven by establishing that the Defendant owed the Claimant a duty of care; that the Defendant breached that duty; and that the breach led to loss, injury or damage to the Claimant that was foreseeable².

[10] In establishing this duty of care, the damage to the Claimant caused by the Defendant's negligent act must have been foreseeable and there must exist a sufficient proximate relationship between the Claimant and the Defendant to make it just to impose this duty of care on the Defendant to the Claimant.

¹ [1988] UK PC 7

² See the case of *Glenford Anderson v George Welch* [2012] JMCA Civ 43 at para 26.

- [11] In Jamaica, the legislation governing driving on the road at the time of this collision was the **Road Traffic Act (1938)**. Specifically, section 51. Section 51(2) provided essentially that all drivers have a duty to take such action as is necessary to avoid an accident.

Res Ipsa Loquitur – What is it and Did it Arise in this Case?

- [12] In this case, the evidence has revealed that the Claimant herself did not see how the incident unfolded. However, she has pleaded that the collision was caused by the Defendant causing the vehicle to veer off the road. She particularized the Defendant's negligence in full. In my view, as a consequence of this pleading, *res ipsa* did not arise and the Claimant cannot rely on same to infer negligence.
- [13] *Res Ipsa Loquitur* is a principle by which the Court is invited to draw inferences, from the evidence presented, that the incident complained of must have resulted from the Defendant's negligence in all the circumstances.
- [14] The decision of the Caribbean Court of Justice in ***Sandy Lane Hotel Co. Ltd v Sonia Eversley***³ set out the requirements for the principle to apply at paragraph 26 of the judgment:

“At the present time, there is more or less general agreement on the conditions that must be shown to bring res ipsa loquitur into operation. These are: (1) the accident must be of the type which does not ordinarily occur in the absence of someone's negligence; (2) the accident must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) there must be no evidence as to why or how the occurrence took place.”

³ [2025] CCJ 5 (AJ) BB

[15] According to the case of **Ng Chun Pui and Ng Wang King v Lee Chuen Tat et al**⁴ the effect of the application of *res ipsa loquitur* is that,

“...in an appropriate case the plaintiff establishes a prima facie case by relying upon the fact of the accident. If the defendant adduces no evidence there is nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident.”

[16] It is now well established that the Claimant does not have to plead *res ipsa loquitur* in order to rely on the principle. Barrow JCCJ, delivering the judgment for the CCJ in **Sandy Lane**, said as follows⁵:

“What emerges from the foregoing statements is that, while res ipsa loquitur may ameliorate the difficulties that arise from a lack of evidence as to the specific cause of an accident, the inference to which it gives rise is merely a conclusion that is derived by the trier of fact from all the circumstances of the occurrence. In our opinion, it is this which is at the bottom of the principle enunciated in Bennett v Chemical Construction (GB) Ltd that a claimant may rely on res ipsa loquitur even though he or she has not pleaded it.”

[17] It is a pivotal part of the principle that there must be no evidence of *how* the incident happened. This raises a question as to whether *res ipsa* can apply where the Claimant expressly pleads, in her particulars of claim, how the collision arises.

[18] In the case of **Coke v Rhooms et al**⁶ the Court of Appeal seems to suggest that if there is a pleading of how the collision happened, then the doctrine would not apply.

[19] In that case, a passenger in a motor vehicle was involved in a collision involving two vehicles. He pleaded negligence against both sets of drivers and set out

⁴ N1 supra at page 3

⁵ N3 at paragraph 33

⁶ [2014] JMCA Civ 54

particulars of negligence against both of them. He also testified as to what he saw. The learned trial judge exonerated both drivers on the basis that the Claimant did not satisfy him that either set of drivers were liable. The matter went to the Court of Appeal.

- [20]** It was argued before the Court of Appeal that in the circumstances where the Claimant was a passenger, the doctrine would have to arise as each driver sought to blame the other. The Court of Appeal rejected that contention. At paragraph 20, the Court of Appeal said as follows:

It is fair to say, based on the highlighted portion of that extract, that the present case is not one where there is “no evidence as to why or how the [collision] took place”. Constable Coke both pleaded in his particulars of claim and testified as to what occurred. Res ipsa loquitur, therefore, does not apply in this case.

- [21]** The logic of this is inescapable. In my view, a Claimant cannot set up a case of negligence, fully particularized, with allegations of how the Defendant caused the accident, and then, when they fail to prove that case, seek to fall back on *res ipsa loquitur*. Its either you know how it happened and give your evidence in proof, or you don't know what happened and rely the inference through *res ipsa*.

- [22]** In the case at bar, the Claimant pleaded at paragraph 3 of the Particulars of Claim that the Defendant caused the vehicle to veer off the road, collide into a tree, and overturn twice causing her injuries.

- [23]** In her Amended Reply to Defence filed on May 10, 2024, the Claimant, at paragraph 3 said as follows:

“In further response to paragraph 3 [of the defence], the Claimant will say that she heard the Defendant exclaim just prior to motor vehicle registered 0353GU colliding with the tree, and at that time, the airbag had not deployed. For the avoidance of doubt, the Claimant will say that the airbag deployed as a result of the Defendant losing control of the said motor vehicle and causing it to collide with the tree.”

[24] This is the state of the Claimant's pleadings. She is bound by them and must therefore prove them. It could not be more pellucid that the Claimant is not relying on *res ipsa*. Indeed, nowhere in her submissions (either of them) has the Claimant submitted on *res ipsa*.

[25] In my view then, the Claimant's case stands or falls on her evidence.

THE EVIDENCE AND ANALYSIS

[26] In this matter, evidence came from all three occupants of the car on the day of the accident. Firstly, the witness statement of the Claimant dated June 25, 2025, was permitted to stand as her evidence in chief. This evidence details her account of the accident, being that she was asleep and she was awakened by the screams of the Defendant and her husband. She documented that she heard a series of loud noises and could feel that the car collided forcefully with something. She stated that she felt three impacts, including a tremendously painful "boom" as if something rammed into them or the car ran into something. She then felt another impact as if landing from being in the air, and another as if they were flipping over.

[27] The Claimant stated that she screamed before losing consciousness and when she woke up the vehicle was turned on its side; she was confused and tried to move but couldn't. She stated that she cried for help and eventually received assistance to exit the vehicle.

[28] On cross-examination, the following exchanges were found to be interesting:

1. Q: *You were asleep?*

A: *Yes. Before the impact.*

2. Q: *What awakened you was the screaming and the feeling of the impact?*

A: *I was awakened before the impact. Daphne screamed and Andre Screamed.*

3. S: *You were awakened by the screams and the impact.*

A: *We had not hit anything as yet when I heard the screams.*

4. Q: *You gave no evidence at all in paragraph 7 about what you saw with your*

eyes?

A: At the second sentence, I said, "I did not see the airbag deployed".

5. Q: In your claim form, you said the vehicle hit a tree. In your Particulars of Claim, at paragraph 3, 3rd line you said the vehicle collided with a tree. In your amended reply filed on your behalf in paragraphs 2 and 3, the allegation again was made that the vehicle collided with a tree. Having said that, no where in your witness statement is there any reference to this alleged collision with a tree. Agree?

A: Yes.

6. Q: Again Dr. Lewis, in your Claim Form, beside the allegation about the tree, you said the vehicle overturned twice. In the same paragraph 3 of the Particulars of Claim, you repeat the allegation that the vehicle overturned twice. But again, no where in your witness statement do you state that the vehicle overturned twice. Agree?

A: I said it, but in different words.

7. S: You did not see at all how the accident occurred?

A: I agree. I did not see what happened before or what caused it.

...

11. Q: So when you said at paragraph 3 of your particulars of claim that the vehicle collided into a tree, that was not true as you did not see that?

A: I agree.

...

15. Q: Do you agree that several times on the way from Montego Bay to St. Mary that you dozed off several times?

A: I don't know if it was many times. Maybe just like twice.

...

30. Q: When you said in paragraph 7, that you could feel the car collided with something forcefully, you just felt, you didn't see.

A: Yes.

...

37. S: *The airbag deployed and the vehicle turned over without anything being done to cause it by Mrs. Barbee-Wooten?*

A: *I disagree. She said there were rocks in the road. So if she was driving safely she could have avoided it.*

38. Q: *This rock in the road thing, is it in paragraph 7 of your witness statement?*

A: *No.*

[29] What is apparent from this exchange is that the Claimant really did not see anything leading up to the eventual collision as she was asleep. Therefore, she has no idea how the vehicle came to be off the road.

[30] In her submissions filed on the 3rd July 2026, counsel for the Claimant submits that the Claimant is a credible witness. She reminded the Court that the Claimant's evidence in cross-examination is that she was awakened by the screaming of the Defendant and her husband before there was any impact. She testified that she was able to see the sky whilst the vehicle was airborne and she was able to see the sky because she did not see the airbag deployed at this time.

[31] The Claimant said at paragraph 7 of her evidence in chief,

"I fell asleep and was awakened by screams of panic from Daphne and her husband. I did not see any airbag deployed at the time. The screams sounded as if something horrible was about to happen. Daphne's husband screamed again in horror, and then there was a quick series of extremely loud noises – "boom boom kapow" type sounds. I could feel that the car collided forcefully with something. I felt three impacts including a tremendous and painful "boom", as if something rammed into us or the car ran into something. I then felt another impactful force as if we were landing from being in the air and another impact, as if we were flipping over."

[32] The Claimant said that there were a total of about 3 impacts – three impacts with one being as if something rammed into them or the car rammed into something; then another impact as if they landed from being in the air; and then a final impact as if they were flipping over. I recall that in her pleadings, she said the car collided with a tree and then overturned twice. In my view, that would result in 3 impacts.

[33] There was no evidence from the Claimant about the tree in her witness statement. She never testified to seeing a tree at any point before the collision with same. Even after exiting the vehicle, she described what she saw, but never mentioned the tree or seeing the vehicle near to the tree. In fact, her evidence is that when she exited the vehicle, she was put to sit on the ground beside the vehicle on the street. Still no tree.

[34] The Claimant, in her second set of submissions, asks the Court to examine the report from the loss adjuster and the photographs attached. She submitted that the picture shows the entire front of the vehicle, the undercarriage crushed. Having examined the photographs, it does show very serious damage to the left front of the vehicle with a major depression suggesting an impact right at that spot. But an impact with what? There is no evidence of this.

[35] The Claimant emphasized in cross-examination that she saw the sky when the vehicle was airborne and she was able to see the sky as she was sitting behind the driver on the right side of the vehicle and the airbag had not yet deployed. Yet, there was no evidence of the tree, even though she could see the sky.

[36] The following exchange took place in cross-examination:

28 Q: *Is it correct that even after the screams and sounds, you could not see anything?*

A: *No. that is not true. When they screamed, I woke up and sat up and I saw the sky.*

29 Q: *In your witness statement you said that after the screams you saw no airbag deploy. I am suggesting you did not see anything at all?*

A: *I did see the sky.*

30 Q: *So all you saw was the sky and the non-deployed airbag?*

A: *It was quick. Everything happened fast.*

31 Q: *When you said in paragraph 7, that you could feel the car collided with something forcefully, you just felt, you didn't see.*

A: Yes.

32 Q: *So why did you feel the impact as opposed to seeing with what there was an impact?*

A: *It was quick. I could not tell what it was.*

33 Q: *You said three impacts? Why didn't you see it?*

A: *The car was flipping over. I felt us land on the ground.*

34 Q: *You heard a boom. What caused that?*

A: *Whatever we hit.*

35 Q: *Then you heard Boom Boom Kapow. Did you see what caused that?*

A: *It was very traumatic.*

36 S: *In the same way you could see no impact, you could not see whether the airbag deployed or not?*

A: *I was seeing the sky. If the airbag had been deployed, I would have seen it.*

[37] I find it very curious and unlikely that the Claimant was able to speak so definitively to the non-deployment of the airbag, yet could not at all recall with what the vehicle collided. The Claimant's claim is premised on the collision with the tree. It was this collision with the tree that she asserted led to the deployment of the airbags and the flipping of the car. The Claimant does not deny that the airbags were deployed. Her case is that it was the collision with the tree that triggered the deployment.

[38] I find her evidence that she saw the non-deployment of the airbag and the sky, but not with what the vehicle collided to be highly incredible. It is my view that she fabricated the evidence of seeing no deployment of the airbag before the collision.

[39] In my view then, the Claimant has failed to prove that there was a collision with a tree as she pleaded both in her Particulars of Claim and in her Amended Reply to Defence.

[40] What is more, there is no evidence to support her pleaded Particulars of Negligence. This is what she said in her Particulars of Negligence to support her

primary allegation that the Defendant veered off the road, collided with a tree and caused the car to flip twice:

- (a) Losing control of the said motor vehicle causing it to collide with a tree;
- (b) Causing the said motor vehicle to violently overturn;
- (c) Failing to keep any or any proper and effective control of the said motor vehicle at the material time;
- (d) Driving in a dangerous and reckless manner;
- (e) Failing to apply her brakes within a sufficient time or at all;
- (f) Failing to keep any or any proper look-out;
- (g) Failing to have any or any sufficient regard for the Claimant's safety;
- (h) Driving the said motor vehicle as she did;
- (i) Driving too fast in the circumstances; and
- (j) Failing to stop, slow down, to swerve or in any other way so as to manage or control the said motor vehicle so as to avoid the collision.

[41] None of these allegations of negligence have been proven. The Claimant did not see what transpired before the collision so as to say that the Claimant drove in a reckless and dangerous manner before the collision; she did not see what happened to know whether the Defendant failed to apply her brakes; or failed to keep a proper lookout. There is no reliable evidence that the Defendant was, at the time of the collision, driving the vehicle too fast.

[42] In cross-examination, there was this exchange:

S: The Defendant's driving all the way from St. James, then through Trelawny, then through St. Ann, then to the accident scene in St. Mary, was careful?

A: The driving in general was different from what I was used to. I guess she was driving like everyone else which was wild to me. Everybody was driving fast. It just seemed fast to me.

[43] Later, it was suggested to her that the Defendant had not been driving fast and the Claimant's response was that she did not know the speed limit, but it seemed fast to her.

[44] There is no evidence from an accident reconstruction expert to tell us the likely speed at which a vehicle would have to be travelling to produce the impacts seen in the photographs. It is therefore hard to say for certain that at the time of the collision, the Defendant had been travelling at an excessive speed in all the circumstances.

[45] As I have said earlier, in this case, the Claimant's pleadings have made it such that *res ipsa* is not applicable. She has set up a case, but has not produced any evidence to support the claim pleaded.

The Defendant's Case

[46] In any event, even if I was wrong to take this stance, I reviewed the case presented by the Defendant and I was satisfied that she had put sufficient evidence before the Court to rebut negligence on her part. I accepted her evidence that she had been driving carefully and that the airbag spontaneously deployed whilst she was executing the turn causing her to lose control over the vehicle. I did not find, contrary to the submissions of the Claimant, that she was discredited.

[47] I found her answers to be reasonable and she gave her evidence in a forthright and credible manner. I also found her witness to be a credible and forthright witness. I did not find his evidence to be given solely for the support of the Defendant, his wife.

[48] Unlike the Claimant's attorney, I did not find that the Defendant was tired from her journey. She had sufficient rest for an hour after arrival, she also rested for about 45 minutes in St. Ann. This, I find, was sufficient to allow her to recover to be able to drive safely. The evidence does not suggest that she was travelling continuously before arriving in Jamaica.

[49] I found the evidence of her expert to be credible, reliable and acceptable. He said that it was possible for an airbag to deploy without there being a collision or any intervention on the part of the driver and cited several illustrations of this happening

in several vehicles. I therefore find that it is possible for an airbag to deploy without any collision or intervention by the driver.

[50] Though the expert did say, in answer to a question posed by the Claimant, that he did not hear of such a phenomenon in a Suzuki Vitara, it is my finding that the mechanism of the deployment of an airbag is likely the same across motor vehicles. Therefore, it is still possible for it to happen in a Suzuki Vitara, even if he did not hear of any such incidents.

[51] I do not accept the Claimant's submissions that the Defendant's response to the question regarding being able to stop the vehicle after the airbag was deployed in her face to be unreasonable. In my view, her inability to control the vehicle was perfectly understandable. She said, and I accept, that she was already in the process of turning when the airbag flew into her face. I find it likely then that this led to her losing control of the vehicle at this point as the airbag's deployment forced her hands off the steering wheel and likely led to the car going off the road as she stated. In the agony of the moment, and given the manoeuvre she was executing, it is understandable that she may not have had the time to do anything before the vehicle went off the road and overturned. I found her driving in the circumstances to have been as reasonably competent as could have been expected.

[52] There is no expert evidence from the Claimant that would say that it is impossible or unlikely that a vehicle can overturn if it is going at less than 20 mph.

CONCLUSION

[53] For the reasons set out above, I am not satisfied, on the balance of probabilities, that the Claimant has proven her pleaded claim.

[54] She did not see how the collision happened; she did not see with what the vehicle collided or how it came to collide with the said object before the vehicle flipped;

she did not note any reckless driving on the part of the Defendant prior to the collision that would lead to an inference that she was reckless just prior to the collision; and there is no evidence of any speeding on the part of the Defendant.

[55] In all the circumstances, the Claimant has failed to prove her case against the Defendant.

DISPOSITION

- 1 Judgment for the Defendant
- 2 Costs to the Defendant to be taxed if not agreed.

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Dale Staple
Puisne Judge