[2026] JMSC CIV 143

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV00146

BETWEEN	**DORREL WILSON**	**CLAIMANT**
AND	**RORY PURCELL**	**1ST DEFENDANT**
AND	**JAMAICA URBAN TRANSIT COMPANY LIMITED**	**2ND DEFENDANT**

IN OPEN COURT

Mr. Sean Kinghorn instructed by Kinghorn & Kinghorn for and on behalf of the Claimant

Ms. Cavelle Johnston and Ms. Britney-Ann Douce instructed by The Law Office of Cavelle Johnston for and on behalf of the 2nd Defendant

Dates Heard: June 3 & 4, 2026 and October 20, 2026

CIVIL PRACTICE & PROCEDURE – Negligence – Motor vehicle accident – Duty of care – Breach of duty of care – Personal injury – Credibility of parties – Whether the Claimant was contributorily negligent – Quantum

PALMER HAMILTON J

BACKGROUND

[1] This is a claim which arose out of a collision which occurred along the Spanish Town Road on the 3rd day of February, 2017. The collision involved the Claimant's Isuzu motor truck licensed CL 3279 and the 2nd Defendant's bus licensed PE 9555 being driven by the 1st Defendant.

[2] The Claimant alleged that he was driving along the Spanish Town Road in the extreme left lane and after passing the stoplight at the intersection of Weymouth Drive and Spanish Town Road, the 1st Defendant made a sudden right swerve and collided into the right front side of his Isuzu motor truck. As a result, he sustained personal injuries and suffered loss and damage.

[3] The 2nd Defendant contended that the 1st Defendant overtook the Claimant and returned to the extreme left lane. It was further contended that after the 1st Defendant came to a complete stop at the bus stop and the doors of the bus opened for the passengers to disembark, that it was the Claimant who collided into the back left hand side of the 2nd Defendant's bus. The 2nd Defendant is also counterclaiming that it was the Claimant who was negligent and caused his motor truck to collide violently into the back of the 2nd Defendant's bus which was stationary and for damages.

[4] It is unclear from the record whether the 1st Defendant was personally served with the Claim Form and Particulars of Claim. I have not found an Affidavit of Service, Acknowledgment of Service or Defence filed by the 1st Defendant. His participation in the matter appears to arise from the fact that he was the driver of the 2nd Defendant's bus at the time of the collision.

THE CLAIMANT'S CASE

[5] The Claimant's Witness Statement was allowed to stand as his evidence-in-chief. He stated that on the 3rd day of February, 2017, at about 5:30 a.m., he was travelling along the Spanish Town Road in the parish of St. Catherine heading towards Three miles. He further stated that he was travelling in the extreme left lane.

[6] The Claimant averred that he passed the stoplight at the intersection of Weymouth Drive and Spanish Town Road when a yellow JUTC motor bus that was travelling in the centre lane suddenly and without signalling swerved into the extreme left lane and collided with his motor truck. The Claimant indicated that he stopped and

when he came out of his vehicle he observed that the right side of his vehicle was damaged, which includes the right front fender, bumper and door. The Claimant further indicated that his truck was disabled and he could not leave it because he was transporting goods. The Claimant stated that as a result of his vehicle being damaged, he lost the contract he had with Wisynco Limited as a Haulage Contractor and further that he has not had a steady job since then.

[7] The Claimant further averred that the 1st Defendant did not come to a complete stop and that the door of the 2nd Defendant's bus was not open for passengers to exit the bus. The Claimant maintained that he was in the extreme left lane and he was driving very slowly when the 1st Defendant suddenly swerved and collided with his motor truck.

[8] The Claimant stated that as a result of the collision, he sustained serious personal injury because he was jerked up and started to feel pain in his right shoulder, lower back and right leg. He stated further that he sought medical attention. The Claimant indicated that he still has pains in his lower back and that his right hand would cramp him and is swollen from time to time.

[9] In cross-examination the Claimant indicated that he was transporting cases of water that day in his motor truck and that the truck was full to capacity. He further indicated that he loaded the truck overnight and started his journey on the 3rd day of February, 2017 around 4:00 a.m. The Claimant agreed with Learned Counsel for the Defendant that the accident could not have happened the way he said it did in his Particulars of Claim. However, the Claimant did not agree that if someone says 'without signalling swerved into my extreme left lane and collided into my motor truck' is different from saying 'that a bus swerved into his lane causing him to crash into the side of the bus.' The Claimant then went on to agree with Learned Counsel for the Defendant that what he said in paragraph 5 of the Particulars of Claim is different from what he said in paragraph 4 of his Witness Statement. The Claimant however maintained that he was telling the truth and that the accident happened in the way he said it did in his Witness Statement.

[10] The Claimant stated that he finished packing the motor truck about 11:00 p.m., slept in the truck, woke up, and at 4:00 a.m. started his journey. He agreed with Learned Counsel for the Defendant that he was travelling slowly in traffic but disagreed that he was travelling a little more slowly than other vehicles. However, after thinking about it, the Claimant agreed with Learned Counsel for the Defendant that he was travelling more slowly than the other vehicles that morning. The Claimant indicated that he was really going slow that morning as he wanted to delay because the place he was going to would not be open until about 7:00 a.m. and that he was trying to delay on the drive.

[11] The Claimant stated that the JUTC bus being driven by the 1st Defendant was behind his truck in the extreme left lane and because he was moving slower the 1st Defendant decided to then overtake him. He did not agree that the JUTC bus passed him successfully, as upon reaching the light the 1st Defendant tried to overtake him at the light and it was after trying to pass him at the light that the 1st Defendant collided with his motor truck. The Claimant maintained under cross-examination that the 1st Defendant did not put on his indicator and that the JUTC bus did not come to a complete stop.

[12] The Claimant agreed with Learned Counsel for the Defendant that Exhibit 13D, represents how the vehicles were placed after the accident and he also agreed that his motor truck was on the soft shoulder of the roadway. The Claimant disagreed with Learned Counsel for the Defendant that he wasn't paying attention to the roadway and that is why he didn't observe that the JUTC bus was stationery, in time to avoid the accident and he also disagreed that he was travelling too closely behind the JUTC bus.

THE 2ND DEFENDANT'S CASE

Evidence of Rory Purcell

[13] The 1st Defendant was one of the witnesses for the Defendant and his Witness Statement was allowed to stand as his evidence-in-chief. The 1st Defendant

averred that approximately 6:00 a.m. he was driving along Spanish Town Road heading in the direction of Downtown Kingston. He observed a box truck travelling slowly in the left lane, he put on his indicator, overtook the vehicle and continued driving along. The 1st Defendant stated that upon reaching the Weymouth Drive area, a passenger rang the buzzer for a stop. The 1st Defendant further stated that he used his left indicator, pulled over and made a complete stop when it was safe to do so by the bus stop and then engaged the hand brake. The 1st Defendant stated that he was in the most left lane when he opened the door and the passenger began to walk towards the door to exit the bus.

[14] The 1st Defendant averred that the passenger had exited the bus, then he heard a screeching sound and felt an impact to the rear left side of the JUTC bus which he was operating. The 1st Defendant further averred that he immediately looked through the left rear view mirror and observed that the Claimant's motor truck collided with the left rear section of the bus. The 1st Defendant also observed that the left rear section of the JUTC bus was damaged and the right front section of the Claimant's motor truck was also damaged.

[15] The 1st Defendant indicated that at the time of the accident, the weather was clear, visibility was clear and road conditions were normal with no significant traffic congestion. He further indicated that the collision occurred solely as a result of the Claimant's colliding into the left rear of the parked JUTC bus.

[16] Under cross-examination, the 1st Defendant stated that he first noticed the Claimant's motor truck in the vicinity of Sealy, which is an area between Six Miles and the intersection of Weymouth Drive and Spanish Town Road. The 1st Defendant further stated that the first time he saw the Claimant's motor truck, the JUTC bus that he was operating was in the middle lane on Spanish Town Road and the Claimant was in the extreme left lane. The 1st Defendant indicated that he did not see the Claimant leave the extreme left lane before the accident and further that the JUTC bus that he was operating did not leave the middle lane before the accident.

[17] The 1st Defendant stated that he did not see the Claimant's motor truck drive through the intersection of Weymouth Drive and Spanish Town Road and that the last time he saw the Claimant before the accident was when he saw him at the stoplight.

[18] The 1st Defendant agreed with Learned Counsel for the Claimant that after passing the vicinity of Sealy, and after the passenger alerted him that they wished to disembark, he then proceeded to pass the Claimant's motor truck. The 1st Defendant indicated that he intended to stop at the bus stop which was after the stoplight at the intersection of Weymouth Drive and Spanish Town Road. He further indicated that the bus stop was about 20 car lengths or 8-10 feet away from the intersection of Weymouth Drive and Spanish Town Road. The 1st Defendant further indicated that where the Claimant's motor truck is in Exhibit 13B is exactly where the collision took place. He stated that he was the one who took the pictures (Exhibits 13A-D) and that he took them after the collision occurred but before the police arrived.

[19] The 1st Defendant maintained in cross-examination that he stopped at the bus stop, engaged his park brake, opened the doors of the JUTC bus, and then the passenger disembarked. The 1st Defendant estimated that from the time he stopped at the bus stop it was about 40 seconds to a minute before he heard the collision.

[20] The 1st Defendant disagreed that he cut across to the left lane into the path of the Claimant's motor truck and he also disagreed that he went into the left lane suddenly and without any signal. He also disagreed that it was when he cut into the left lane that both vehicles collided. The 1st Defendant however agreed that the collision occurred in the extreme left lane and in re-examination he clarified that he was in the most left lane and not that he did not leave the middle lane before the collision occurred.

[21] I asked the 1st Defendant at what point did he make the transition from the middle lane to the left lane on Spanish Town Road and he indicated that at the stoplight he was in the middle lane and the Claimant was in the left lane. He further indicated that when they were given the green light he drove off leaving the Claimant at the stop where he was because his vehicle was driving very slowly or crawling. The 1st Defendant stated that the broken white line ends at the stoplight and when you go over the junction the broken white line restarts. He further stated that was in the middle lane and at the area where the broken white line is over the intersection. The 1st Defendant indicated that he had already passed the Claimant and when he entered the broken white line it was then that he started to gently merge in the extreme left lane and when he merged into the extreme left lane he had around 3-4 more car lengths before he reached the bus stop. He further indicated that when he stopped at the bus stop, he did not open the doors immediately and after he opened the doors and the passenger disembarked that the heard the smashing sound. The 1st Defendant maintained that when he was merging from the middle to the left lane, he left the Claimant at the stoplight and that the Claimant was a far distance from him.

[22] The 1st Defendant said that he had to see the Claimant in his rear view mirror and further that the Claimant was, to the best of his knowledge, in the junction when he entered the broken white line. Learned Counsel for the Claimant asked the 1st Defendant if he saw the Claimant after seeing him in the junction and he stated that “some of the memory chop out,” and further that when he entered the broken white line his indicator was already on and he observed that the Claimant’s motor truck did not pass the white line as yet. The 1st Defendant indicated that when he came over in the extreme left lane he observed the Claimant in his left mirror in the junction. The 1st Defendant also indicated that sometimes there are vehicles behind the JUTC bus and you cannot see them in the rear view mirror.

Evidence of Oswald Daye

[23] Mr. Oswald Daye was the other witness for the 2nd Defendant and his Witness Statement was allowed to stand as his evidence-in-chief. At the material time, Mr. Daye was employed by the 2nd Defendant as an Acting Maintenance Supervisor and was part of a team responsible for the upkeep, repair and inspection of all buses in the 2nd Defendant's fleet. He was informed that one of the JUTC buses registered PE 9555 was involved in an accident on the 3rd day of February, 2017 along Spanish Town Road in the vicinity of Weymouth Drive in the parish of St. Andrew. Mr. Daye inspected the said JUTC bus and approved the Body Repair Estimate which revealed damage to the rear left corner of the bus, including deformation of the bumper assembly, lower body panels, minor alignment impact to the rear structure, and damage to the left indicator light and mudguard assembly.

[24] He also indicated from personal knowledge that the estimate was prepared using the 2nd Defendant's standard evaluation system as they have the facilities and expertise to conduct their own estimates as all repairs are typically done internally. He further indicated that the repairs were completed and the bus returned to service. Mr. Daye stated that the Body Repair Estimate was based on parts, materials, and labour time calculated from their internal maintenance schedule and supplier pricing database. He further stated that the total estimated cost of repairs was $263,959.55.

[25] In cross-examination Mr. Daye indicated that the distance between the left rear wheel and the rear bumper of the bus is about 4 feet and that after the rear wheel arch you have one (1) panel and then the bumper section. He agreed with Learned Counsel for the Claimant that the major damage to the JUTC bus was to the left side of the bus and he further stated that the damage to the rear structure of the said bus was minor. He went on to describe minor as meaning not significant damage and would not take a lot of repairs. Mr. Daye also agreed with Learned Counsel for the Claimant that there is nothing independent of JUTC in the

Estimated Cost of Repairs. However, he went on to say that they do in-house repairs and every repair is carried out at JUTC.

Exhibit 12

[26] By way of agreement, a statement signed by D. Morrison was tendered into evidence as Exhibit 12. That statement states that D. Morrison was a passenger on the said JUTC bus that was involved in the collision on the 3rd day of February, 2017. It was further stated that there was a box truck in the extreme left lane that was moving very slowly and the driver of the JUTC bus overtook the said truck before he reached the stoplight. The driver of the JUTC bus pulled over to let off a passenger and as the passenger was exiting the bus, D. Morrison heard a bang in the side of the bus. D. Morrison indicated that he saw the truck that they had passed down the road in the left side of the bus and he was, *"wondering if the driver of the box body truck fall asleep or what."*

ISSUES

[27] The main issues to be determined on a balance of probabilities are:

(1) Whether the Defendants were negligent thereby causing the collision and liable to the Claimant for injury and damage;

(2) Whether the Claimant by his own action was contributorily negligent;

(3) Whether the Claimant was negligent thereby causing the collision and liable to the 2nd Defendant for injury and damage; and

(4) What is the quantum of damages, if any, to be awarded?

[28] In addition to the abovementioned issues, the question of the credibility of the parties is also an issue to be considered.

LAW & ANALYSIS

[29] It is not in dispute that a collision took place on the date stated and that it involved the Claimant's Isuzu motor truck and the 2nd Defendant's bus that was being driven by the 1st Defendant. However, there are two diametrically opposed accounts as to how the said collision took place. The Claimant bears the burden of proving, on a balance of probabilities, that the Defendants were negligent. The Defendants bear the same burden on their counterclaim.

[30] One of the issues to be determined is the credibility of the parties. I am guided by the words of McDonald-Bishop J (as she then was) who stated in **Alvan Hutchinson v Imperial Optical Limited and Hugh Foreman** (unreported), Supreme Court, Jamaica, Suit No. C.L. H 035 of 1999 judgment delivered on the 16th day of September, 2005 that:

> *It is the Claimant who must satisfy the Court on a balance of probabilities that they have proven the allegation of negligence against the Defendants. It has to determine which of the accounts put forward by the Claimant and the Defendant is more believable. Credibility plays a pivotal role in this exercise, and the Court in assessing credibility will have due regard to the demeanour of the witnesses.*

[31] I also adopt the dictum of Anderson J in the case of **Continental Petroleum Products Ltd. v Scotia DBG Investments Ltd** [2016] JMSC Civ. 219 where at paragraph 57 he stated:

> *In assessing credibility, as between two (2) witnesses, one of whom is telling the truth in important respects and the other witness, who is not doing so, as regards those same matters, it is always important for the court of first instance to consider contemporaneous documents, probabilities and possible motives, in a case involving disputed facts. The Privy Council made this clear, in the case: Villenueve and another v Gaillard and another – [2011] UKPC 1, per Ld. Walker, at paragraph 67. See also: Armagas v Mundogas SA (The Ocean Frost) – [1986] 1 AC 717, at page 757, per Dunn, L.J."*

A. *Whether the Defendants were negligent thereby causing the collision and liable to the Claimant for injury and damage*

[32] It is trite law that to establish negligence there must be evidence that the Defendants owed the Claimant a duty of care, that the Defendants breached that duty, and that the Claimant sustained damage as a result of that breach. The principles in relation to the law of negligence were laid down by Lord Atkin in **Donoghue v Stevenson** [1932] A.C. 562, where he stated that:

> *You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be- persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question.*

[33] The Road Traffic Act imposes a general duty on all motorists to drive with due care and attention and reasonable consideration for all other road users or he shall be guilty of an offence. The authorities establish that road users owe each other a common law duty to exercise reasonable care to avoid causing injury or damage where there is a reasonably foreseeable risk of collision. The standard is that of an ordinarily skilful road user in the circumstances**,** which includes keeping a proper lookout, observing traffic rules and signals, and avoiding excessive speed. The duty is not limited to drivers; pedestrians and other road users may also owe a duty of care to those with whom they are in a position to collide. (see sections 32(1) and 51(2) of the **Road Traffic Act**; **The Administrator General of Jamaica v National Commercial Bank and Dionne Ellis** [2022] JMSC Civ 69; **Nance v British Columbia Electric Railway Company Ltd** [1961] A.C. 601; and **Bourhill v James Young** 1941 S.C. 395, 429).

[34] The parties are *ad idem* that each owed the other a duty of care. The real question is whether either breached it, and that turns on how the collision occurred. The central issue for determination is whether, as the Claimant alleges, the 1st Defendant, travelling in the middle lane, suddenly and without signalling moved into the extreme left lane and collided with the Claimant's motor truck. Or, as the

Defendants contend, the 1st Defendant had overtaken the Claimant, moved into the extreme left lane, and stopped at the bus stop before the Claimant's motor truck collided with the rear of the stationary bus.

[35] I have considered the evidence of the Claimant and the 1st Defendant against the photographs and the evidence concerning the damage sustained by the respective vehicles. Having done so, at the outset I must say that I prefer the evidence of the 1st Defendant as to the circumstances in which the collision occurred.

[36] The Claimant's evidence was unreliable on the central matter in the case, which is how the collision happened. He accepted in cross-examination that the collision could not have occurred as pleaded in his Particulars of Claim, and that the account in his Witness Statement is different from the pleaded account. I do not treat this as a minor discrepancy in detail. The Claimant gave two materially different versions of the very event on which his claim depends, and there was no explanation for the difference. The Claimant however maintained that his Witness Statement was true. His evidence about his speed also shifted. He first disagreed that he was travelling more slowly than other vehicles, then, after reflection, agreed that he was. He then explained that he was deliberately delaying because where he was heading to that morning would not open until about 7:00.

[37] There were also some inconsistencies in the 1st Defendant's evidence. In cross-examination he said that the bus did not leave the middle lane before the accident but he also agreed that the accident occurred in the extreme left lane. However, in re-examination he clarified that he meant that he was in the extreme left lane at the time of the collision and had not remained in the middle lane. Other than this, the 1st Defendant's account of how the collision occurred remained the same throughout. Another inconsistency is where he described the bus stop as "about 20 car lengths" or "8-10 feet" from the intersection of Spanish Town Road and Weymouth Drive. This inconsistency is not material in my view, as the evidence establishes that there is some distance between the bus stop and the intersection, which was also accepted by the Claimant. The 1st Defendant was honest and

forthright with the Court that “some of his memory chop out” when he tried to remember whether he continued to see the Claimant’s motor truck after observing him in the junction. In my view, the 1st Defendant’s account of the sequence was coherent and consistent and he conceded what he could not say.

[38] The 1st Defendant said that when he first saw the Claimant's motor truck, the JUTC bus was in the middle lane and the truck was in the extreme left lane. He said that when the light turned green he drove off, leaving the Claimant, whose truck was moving slowly or crawling. By the time he reached the broken white line beyond the intersection he had passed the Claimant. He then, with his indicator on, gently merged into the extreme left lane, with about three to four car lengths to go before the bus stop. He indicated that before he merged into the extreme left lane he saw the Claimant in his mirror, still in the junction and a considerable distance behind. I accept that evidence. It directly contradicts the Claimant's assertion that the JUTC bus never successfully overtook him.

[39] In cross-examination it was established that the 1st Defendant could not say where the Claimant’s motor truck was after he merged, and that vehicles behind the bus are sometimes not visible in the rear view mirror. That does not undermine his evidence. The 1st Defendant’s inability to watch the truck continuously after merging is not inconsistent with his evidence that when he merged the Claimant was still behind him in the junction. I also accept his evidence about what he did observe recognising that he cannot speak to the precise movement of the Claimant's motor truck immediately before impact.

[40] The 1st Defendant said that he went to the bus stop, stopped, engaged the hand brake and opened the doors for a passenger to disembark. He estimated that about 40 seconds to a minute passed between stopping and hearing the collision. I accept that he stopped at the bus stop before the collision. I place no undue weight on his estimate of the precise duration, but his evidence that he stopped is consistent with the sequence he described and with Exhibit 12. The Claimant's assertion that the bus did not stop is not supported by any other evidence.

[41] Both the Claimant and the 1st Defendant accepted that Exhibits 13A-D depict the vehicles as they were after the collision. However, the Claimant did not agree that Exhibit 13C showed the point of impact of the motor vehicles. Exhibit 13B shows the truck partly on the soft shoulder and partly on the roadway. Exhibit 13C, taken from the front of the bus, shows the truck in substantially the same position, with the vehicles in contact. Exhibit 13D shows the same position from the rear. The 1st Defendant said that neither vehicle was moved before the photographs were taken, and that the motor truck's position in Exhibit 13B is where the collision occurred. I accept the 1st Defendant's evidence that the vehicles were not moved.

[42] The photographs show the bus substantially straight and it appears to me that it is in the extreme left lane. I accept that photographs taken after the event cannot establish the precise movement of the vehicles immediately before impact. They are nevertheless relevant to the assessment of the competing accounts. The position of the JUTC bus is consistent with the 1st Defendant's evidence that he had completed his manoeuvre into the extreme left lane and had stopped at the bus stop before the collision. If the Claimant's account were true, and the JUTC bus was still moving across from the middle lane in front of his truck, having failed to complete the overtake, I would expect the vehicles to be found in a position which reflects that. I would expect the bus to be at an angle, or straddling the line, or in a position showing it was still mid-manoeuvre.

[43] The Claimant has not offered any alternative explanation for how the vehicles came to rest in that position if the JUTC bus had not successfully overtaken him. He bears the burden on his claim, and I do not decide this point by asking him to disprove the Defendants' case. However, when considered together with the evidence that the Claimant was travelling slowly, the 1st Defendant's evidence that he had already passed the Claimant and merged into the extreme left lane, and the damage sustained to the respective vehicles, the photographs provide support for the 1st Defendant's account. The Claimant's truck sustained damage to its right front portion, while the bus sustained damage principally to its left rear corner, including the rear bumper, mudguard and indicator. This configuration is consistent

with the Claimant's motor truck coming into contact with the rear left portion of the JUTC bus after the bus had entered the extreme left lane.

[44] The Claimant said that he moved onto the soft shoulder to avoid the collision, and the motor truck's final position is consistent with that. I accept that he may have steered toward the shoulder in an attempt to avoid the collision. In my view, that shows only that he reacted to something, not what it was. It does not establish that the bus suddenly moved into his path. Given my findings that the bus was already stationary in the extreme left lane, it is more consistent that the Claimant attempted to avoid the JUTC bus after it had stopped than with the bus having suddenly moved into the path of the Claimant's truck.

[45] The fact that the Claimant accepted that he was deliberately travelling very slowly that morning does not of itself establish negligence. It does make it more plausible that a bus could have overtaken him, which is consistent with the 1st Defendant's description of the truck as moving slowly or crawling.

[46] The Claimant relied on what he described as glass or debris on the roadway. I cannot tell from the photographs what the material is. The burden is on the Claimant to establish the facts on which he relies, and I will not speculate as to its nature or significance. I place no weight on this evidence.

[47] D. Morrison's signed statement was tendered by agreement. It is not a witness statement, the maker was not called, and its contents were not tested in cross-examination, so I approach it with caution. It is also ambiguous as it says the bus overtook the truck *"before he reached the stoplight",* and it is unclear whether *"he"* is the bus driver or the truck driver. I therefore do not rely on it to fix the point at which the overtaking occurred. But the statement does describe the truck as moving very slowly, the JUTC bus as overtaking it and pulling over to let a passenger off, and a bang being heard thereafter, with the truck seen on the left side of the bus. D. Morrison's remark, wondering whether the truck driver had fallen asleep, suggests that he heard the truck strike a bus that was stationary. I attach

some weight to the statement as corroborating the general sequence of events, while recognising that it cannot safely be relied on for the precise mechanics or timing.

[48] Considering the evidence as a whole, I find the 1st Defendant's account more probable and I reject the Claimant's. I find that:

(a) the 1st Defendant did not suddenly swerve from the middle lane into the path of the Claimant's truck while attempting to overtake him;

(b) the 1st Defendant passed the Claimant after the traffic light, saw the Claimant behind him in the junction, merged into the extreme left lane, and stopped at the bus stop; and

(c) the collision thereafter occurred when the front right of the Claimant's truck struck the left rear of the JUTC bus while it was stopped at the bus stop.

[49] The Claimant has therefore failed to establish on a balance of probabilities that the Defendants breached the duty of care owed to him and his claim therefore fails.

B. *Whether the Claimant by his own action was contributorily negligent*

[50] Contributory negligence arises only where a defendant is shown to have been negligent and the claimant's own want of care contributed to the damage. Having found that the 1st Defendant was not negligent, this issue does not arise.

C. *Whether the Claimant was negligent thereby causing the collision and liable to the 2nd Defendant for injury and damage*

[51] A driver who collides with the rear of a vehicle that is stationary in his lane faces an obvious difficulty in explaining how that happened without a want of care on his part. The standard is that of an ordinarily skilful driver, who keeps a proper lookout, maintains a safe distance, and drives at a speed and in a manner that allows him to stop.

[52] The Claimant denied that he was inattentive or following too closely. While I can accept that he may not have been following too closely. A driver who was keeping a proper lookout at a slow speed in clear conditions would have seen a stationary bus ahead of him in time to stop. I find that the Claimant failed to keep a proper lookout and failed to drive in a manner that allowed him to avoid a stationary vehicle. I make no finding on whether fatigue played a part, as there was no evidence on which I could do so. I therefore find that the Claimant's negligence was the cause of the collision, and the 2nd Defendant has therefore established liability on its counterclaim.

D. *What is the quantum of damages, if any, to be awarded?*

[53] Having found that the Claimant has failed to establish negligence on the part of the 1st Defendant, the Claimant's claim for damages cannot succeed. There is therefore no award of general or special damages in favour of the Claimant.

[54] I turn now to the Counterclaim of the 2nd Defendant. The 2nd Defendant claims the sum of $263,959.55 as the cost of repairing the JUTC bus. Mr. Daye inspected the bus following the collision and approved the Body Repair Estimate. Although the document itself is not titled “Body Repair Estimate”, it was referred to as the Body Repair Estimate by Mr. Daye in his evidence and was similarly referred to by Learned Counsel for the Defence. I therefore accept and refer to the document as an estimate for the purposes of this assessment.

[55] Mr. Daye explained that the estimate was prepared using the JUTC's standard evaluation system and was based on the parts and materials required, the labour time calculated from its internal maintenance schedule and supplier pricing information. He confirmed that the repairs were subsequently carried out and that the bus was returned to service. It was submitted on behalf of the Claimant that the estimate did not constitute proof of the actual cost incurred and that the 2nd Defendant ought to have produced the job card and other repair records. I have considered that submission. Mr. Daye, however, explained that the job card does

not contain prices and that the work recorded on the job card would not ordinarily differ from the repairs identified in the Body Repair Estimate. The absence of the job card therefore does not, in my view, undermine the monetary value attributed to the repairs in the estimate. It would have shown when the repairs were carried out and when the bus was returned to service. It does not, on the evidence before me, cast doubt on the extent of the repairs or the cost of the labour and parts.

[56] The evidence establishes not merely that the bus was damaged, but that the repairs identified in the Body Repair Estimate were undertaken. Mr. Daye provided evidence as to the basis upon which the estimate was prepared, including the parts, materials and labour required.

[57] The 2nd Defendant also claimed the sum of $140,000.00 for loss of use of the bus for a period of four (4) days. Although this loss was pleaded in the counterclaim, I am not satisfied that it has been proved. There is an affidavit of Barrington Brown which addresses the alleged loss of use. However, Mr. Brown was not called as a witness and the affidavit was neither agreed nor tendered into evidence. I therefore cannot rely upon its contents in determining this aspect of the Counterclaim. Mr. Daye was also unable to say how long the bus was out of service, when the repairs were carried out, or when the bus was returned to service. In the absence of evidence establishing the period for which the bus was actually unavailable for use, I am unable to find that it was out of service for the four days pleaded or to assess the loss claimed. The 2nd Defendant has therefore failed to prove its claim for loss of use in the sum of $140,000.00, and that aspect of the Counterclaim is dismissed.

[58] I am therefore satisfied, on a balance of probabilities, that the sum of $263,959.55 represents the cost attributable to the repairs undertaken to the bus. I accordingly find that the 2nd Defendant has proved its claim for special damages in that amount.

ORDERS & DISPOSITION

[59] In light of the forgoing, these are my Orders:

(1) The Claimant's claim against the Defendants is dismissed.

(2) Judgment for the 2nd Defendant on the counterclaim.

(3) The 2nd Defendant is awarded the sum of $263,959.55 with interest at a rate of 3% per annum on the counterclaim, from the 15th day of March, 2018 to the 20th day of October, 2026.

(4) Costs to the 2nd Defendant to be taxed if not agreed.

(5) 2nd Defendant's Attorneys-at-Law to prepare, file and serve orders made herein.