

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0365

BETWEEN:

HINKSON SEXIUS

Claimant

And

JOHN DWITE JOSEPH

Defendant

APPEARANCES:

Mr Henry Joseph for the Claimant

Ms Marie-Ange Symmonds and Ms Ann-Alicia Fagan for Defendant

2021: October 19 & 26 (written closing submissions);
2026: March 27

JUDGMENT

[1] **PHILLIP, J:** This is a claim by Mr Hinkson Sexius (“the claimant”) against Mr John Dwite Joseph (“the defendant”), for damages arising from a road traffic accident that occurred along the Corinth–Grande Riviere Road (“the road”). The claimant, then 23 years of age, alleges that the accident was caused by the defendant’s negligent driving. The defendant denied responsibility for the accident. He pleaded that the claimant caused or contributed to the collision and the resulting injuries, loss and damage by negligently crossing the road when it was unsafe to do so.

The Claimant’s Case

[2] By a re-amended claim and statement of claim¹ the claimant alleges that at about 7:45 pm on 21st March 2019, he was struck by a motor vehicle, bearing registration number PJ100, driven by the defendant. At the time of the incident, the claimant was crossing the road from the side of the bus stop and was approximately one foot from the curb of TJ’s Supermarket. He avers that the defendant was negligent in the operation of his vehicle in that he:

¹ Filed on 22nd July 2020.

- (1) Drove his vehicle at a speed which was too fast in the circumstances;
- (2) Failed to keep any or any proper lookout or to have any or any sufficient regard for pedestrians crossing the road;
- (3) Failed to see the claimant in sufficient time to avoid colliding with him or at all;
- (4) Failed to give any or any adequate warning of his approach; and
- (5) Failed to stop, to slow down, to swerve or to manage or control his motor vehicle in any other way so as to avoid colliding with the claimant.

[3] The claimant alleges that he was thrown approximately 4.42 metres into the parking lot of TJ's Supermarket because of the collision, and that he thereby suffered physical injury, loss and damage. His injuries were particularised as follows:

- (1) Fracture to the spinous process of C3 and C4 vertebrae;
- (2) Whiplash-associated disorder – grade 2;
- (3) Numbness to the right ankle and foot; and
- (4) Pain to the lower limbs, lower back, neck and waist.

[4] The claimant further avers that, as a consequence of the accident, he was unable to resume his employment as a Warehouse Clerk at Massy Stores and that his employment was terminated with effect from 12th December 2019.² He therefore seeks the following relief:

- (1) Special damages in the sum of EC \$27,738.67.
- (2) Loss of future earnings in the sum of EC \$461,109.09.
- (3) General damages for the injuries and losses sustained by him.
- (4) Interest on the special and general damages at the statutory rate of 6% per annum.
- (5) Costs.
- (6) Such further and other relief as may be just.

[5] The claimant's case was supported by his own evidence and that of his wife, Mrs Ayisha Sexius.

² See termination letter dated 19th December 2019 exhibited as HS/3.

Defendant's Case

- [6] In his defence to the re-amended statement of claim,³ the defendant denies negligence in operating his vehicle. He contends that the claimant negligently crossed the road from behind a stationary bus without due care or attention. The defendant asserts that he was driving along the road towards the Gros Islet Highway at a reasonable and safe speed in an area well-lit by surrounding lighting and the vehicles' headlights. A bus was stationary in the opposite lane – neither at a designated bus stop nor pulled off the roadway and as he approached and drew parallel with the bus, he slowed down. The claimant immediately, without warning, darted out from behind the bus and ran across the road, leaving the defendant insufficient time to take effective evasive action. He avers that he applied his brakes immediately upon seeing the claimant, but was unable to avoid all contact with him.
- [7] In relation to the injuries alleged by the claimant, the defendant denies that they were caused by his negligence. He specifically disputes the existence of fractures to the claimant's cervical spine, relying on subsequent medical imaging which revealed no fracture or dislocation, and characterises several of the claimant's injuries as subjective and unsupported by medical evidence. Further, the defendant puts the claimant to strict proof of special damages claimed and denies any claim for loss of future earnings. He pleads that any loss or damage claimed was caused solely or alternatively was contributed to by the claimant's negligence.
- [8] The defendant gave evidence on his own behalf and called Mr Kingson Jean as a witness. Dr N. A. Dagbue, a consultant orthopaedic surgeon and traumatologist, who the claimant consulted after the incident, was called as an expert witness by the defence.

Issues

- [9] The issues for the court's determination may be summed up as follows:
- (1) Whether the collision was caused by the defendant's negligence in driving his motor vehicle.
 - (2) Whether the claimant caused or contributed to the collision through the manner in which he crossed the road, and if he did, the extent to which liability should be allocated.
 - (3) Whether the claimant is entitled to damages and the appropriate quantum of damages to be awarded to him.

³ Filed on 10th August 2020.

[10] Issues (1) and (2) will be dealt with together, as both concern liability for the collision.

Liability for the Collision

Legal Framework

[11] In this jurisdiction, the starting point for determining liability is the relevant articles of the **Civil Code of St. Lucia**⁴, which states as follows:

“985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.

986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.”

....

“989D:

(1) In this article,—

...

“**fault**” means negligence, breach of statutory duty or other duty or other act or omission which gives rise to a liability in tort or would, apart from this article, give rise to the defence of contributory negligence.

(2) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage.

....”

[12] The duties of road users were set out in **Halsbury Laws of England**⁵ in the following terms:

“When two persons on the highway are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. ... The duty is to use such care as is reasonable, and where a driver is faced with the sudden emergency he can only be expected to do that which an ordinary reasonable man would do. The duty is owed only to such persons as are within the area of potential danger and to whom the defendant could reasonably foresee the risk of injury if he or his employee failed to exercise care.”

⁴ Chapter 4:01 of the Revised Laws of Saint Lucia.

⁵ 4th Ed. Vol. 34 para. 44

[13] In a similar vein, Rawlins, J. (as he then was), remarked in **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**⁶ that:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. ... They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

The Evidence

[14] The court must therefore review the factual circumstances of the accident to determine whether the defendant, the claimant, or both, failed in their duty of care, and whether such failure caused the collision. The relevant evidence on this issue comes from the claimant, the defendant, and Mr Kingson Jean (“Mr Jean”), whose testimony will be presented in turn.

Mr Hinkson Sexius (“the claimant”)

[15] The claimant, in his witness statement, stated:

- “3. That on Thursday 21st March 2019 at approximately 7.45 pm I was a passenger on an omnibus travelling along the Corinth Road, Gros Islet in the direction of Grande Riviere. I disembarked the omnibus at the bus stop opposite TJ’s Supermarket.
4. Upon disembarking, I proceeded to the rear of the bus, stopped and allowed the vehicles coming from Marisule, to my right, to stop. I then looked to my left to ensure there were no vehicle close and it was safe to cross. I proceeded to cross, having got across the road and just about to step over the shallow gutter adjacent to TJ’s Supermarket a vehicle hit me tossing me into the parking lot. On landing I remained fully conscious was unable to move and in a lot of pain.
5. I describe the conditions as being dusk and dry. The area is illuminated by a street light at the bus stop. All vehicles on the road had the lights on and visibility was clear and good. I at no time heard any horn or screeching of tyres. After hitting me the vehicle continued alone [sic along] the road for some distance before coming to a stop.
6.
20. On Saturday 13 April 2019 I attended the scene of the accident with the Defendant, witnesses and PC 555 Joseph. PC Joseph took measurements of the area which was agreed by both the defendant and myself by signing his pocketbook. PC Joseph produced a report dated 10th July 2019”⁷ [footnote added]

⁶ Claim No. ANUHCv1998/0168 at paragraph [17]

⁷ See accident report exhibited as HS/5.

[16] During cross-examination, the claimant made several concessions relevant to this issue. He accepted that the police report concluded that he crossed the road “injudiciously”, though he disagreed with that conclusion. He acknowledged that the bus remained stationary after he disembarked and was positioned in the middle of the road, which was a long, straight stretch of road. He also accepted that when he looked to his left, he observed lights from an oncoming vehicle. He maintained, however, that he was able to appreciate the speed and distance of the oncoming vehicle whilst crossing and disagreed that he ought to have waited until there was no vehicle approaching. The claimant denied that he took a chance when he dashed across the road, asserting that he had sufficient time to cross and that he had, in fact, made it across when he was struck by the defendant’s vehicle. He accepted that the junction was a busy one and that there was no designated pedestrian crossing.

Traffic Accident Report

[17] PC Joseph was not called to testify. Still, the claimant entered his traffic accident report into evidence without objection from the defendant. It was a typical accident report comprising the measurements taken at the scene and the particulars of the motor vehicle involved in the collision. The salient information in relation to measurements is summarised below:

1. Width of road at point of impact: 5.51m
2. Point of impact to the left side of the road facing west: 0.20m
3. Point of impact to the right side of the road facing west: 5.44m
4. Distance pedestrian fell from point of impact: 4.42m
5. Distance pedestrian noticed motor/SUV PJ100 approaching to point of impact: 20.26m
6. Distance motor/SUV PJ100 stopped from point of impact: 30m
7. Distance driver of motor/SUV PJ100 noticed pedestrian in the middle of the road to point of impact: 7.56m
8. Motor/SUV PJ100 was 4.03m in length and 1.82m in width

Mr John Dwite Joseph (“the defendant”)

[18] The defendant, in his witness statement, states that:

- “4. I am a licensed driver having held a driver's license since 14 March 2008 and have been driving motor vehicles regularly since 2008....
5. I am the owner of a 2006 Suzuki Grand Vitara bearing registration number 'PJ100.
6. On Thursday 21 March 2019 at about 7:45 pm I was driving along the Corinth Road in a westerly direction with the intention of turning left onto the Gros-Islet Castries Highway to pick up my girlfriend at Sandals Halcyon. Driving at approximately 30 miles per hour,

- I approached the Corinth Junction and opposite TJ's Ultra Mart, I observed an omnibus stopped in the road with a couple of cars behind it....
7. As I approached the supermarket and the bus, I slowed down but continued driving.
 8. As I was adjacent to the omnibus I saw a flash as if someone had run across the road from behind the bus and in front of my car. I wasn't exactly sure what had happened as there were car lights in my eyes, but I did notice darkness passed in front of the light.
 9. I realized that the Claimant had run into my vehicle and I stopped my vehicle. I then got out of the car and checked on the Claimant. The Claimant was laying on the ground on his stomach. Two people who were outside of the supermarket were assisting him and telling him not to move. I called the Police and the Ambulance to the scene of the accident.
 10. Once seeing the Claimant, I was in shock and shaking as it hit me that I was involved in an accident with a pedestrian.
 11.
 17. Thereafter I inspected my car and observed that the left headlight was broken and there was slight damage to the left side of my bonnet....⁸
 18. The day after the accident, I gave a report to my insurance about the accident....⁹
 19. I made a formal report of the accident at the Gros Islet Police Station the week following the accident and thereafter continued to follow up with PC Joseph with regard to the report.
 20. In June 2019, the Claimant, the Claimant's wife, the Claimant's mother, the Claimant's attorney, PC Joseph and myself met at the scene of the accident. PC Joseph took measurements and did small markings on the road. I am also aware that at this time the Claimant gave his first statement to the police about the accident." [footnotes added]

[19] In cross-examination, the defendant agreed that there were no road markings, that his light was on, and that the lights of other vehicles were on. He could not recall whether it was raining at the time of the accident, but he knew it was drizzling afterwards, as he had to go to the side to give a statement to the police. He accepted that at 7:45 pm, the area was dry and well-lit, with lamp posts on the sides. He could not recall if there was a pick-up turning into the Corinth Gap ahead of him – he said, "*I really can't recall all that happened*".

[20] The defendant accepted that there were no impression marks on the road, which he attributed to not travelling at a speed sufficient to create braking marks. He agreed that his vehicle was equipped with ABS (anti-braking system), but could not say whether the system was functioning. He estimated that when he first saw the claimant, he (the defendant) was parallel with the bus and driving in the middle of his lane, about four feet from the bus and approximately two and a half feet from the left edge of the road. He continued driving straight with no deviation to either side. The

⁸ See exhibit JDJ.4 (Photographs of damage).

⁹ See exhibit JDJ.5 (Motor vehicle accident/loss report).

defendant acknowledged that the damage to his vehicle was on the left side, but disagreed with the suggestion that the claimant was on the side of the road when struck.

[21] The defendant accepted that certain parts of his defence contained errors, including paragraph 4(h), which stated that he immediately applied the brakes to avoid contact with the claimant. He agreed that, according to the measurements of PC Joseph, the point of impact was approximately six inches from the edge of the tarmac (paved road), indicating that the claimant had nearly completed the crossing, and that he stopped approximately three car lengths, or about 96 feet, from the point of impact.

[22] The defendant gave varying accounts of his speed, alternately stating that he was travelling at 30 – 35 mph, approximately 20 mph, or significantly slower, but insisted that he did slow down. He agreed that he did not take evasive action to avoid the collision and that he did not come to a complete stop immediately after the collision, contrary to paragraph 9 of his witness statement. The defendant also confirmed that he told the police officer he had seen the claimant in the middle of the road, about 24.8 feet from the point of impact. He accepted that there were inconsistencies with his evidence-in-chief and that paragraph 9 of his witness statement was a mistake.

Mr Kingson Jean ("Mr Jean")

[23] Mr Jean, an eyewitness to the accident, stated in his witness statement that:

- "1. My name is Kingson Jean of Grand Riviere, Gros Islet. I am 46 years old and I am a driving instructor of Jean's Driving School.
2.
3. I have been driving since 1992 and drive regularly as I am a driving instructor.
4. On Thursday 21st March 2019 around 7:45 pm, I was driving a Blue Mazda Registration No. PD 606 heading in an easterly direction towards Grand Riviere and it was raining.
5. As I approached TJ's Supermarket on my right-hand side, I noticed a mini bus two vehicles ahead of me. I also noticed a silver pick-up truck driving in a westerly direction. The pick-up truck put on his right indicator so as to go from Grand Riviere to Corinth. As the pick-up truck turned right, I noticed a grey Suzuki Jeep behind it ("the Suzuki Jeep"). The Suzuki Jeep continued along the Corinth Road heading in a westerly direction and did not turn right as the pick-up truck did.
6. Thereafter I noticed a male pedestrian dash across the road from behind the mini bus while the Suzuki Jeep continued going in a westerly direction. The pedestrian ran in front of the Suzuki Jeep and was hit by its left fender and he consequently fell.
7. At that time the road was well lit, but it was difficult to see because of the rain.
8. The pick-up truck that was turning obscured my sight of the oncoming traffic as well as the pedestrian's sight, so he thought he had enough time to run across the road.
9. It was raining and the pedestrian ran across the road. It is difficult to gauge the speed and distance of cars in the night, specifically when it is raining. As an experienced driver,

if I was in the same circumstances of the pedestrian, I would have waited to make sure that there were no vehicles coming before I crossed the road.

10. Since I saw the accident take place, I decided to stop to see what was going on. I first went to the pedestrian to check on him. I then went to the driver of the Suzuki Jeep and told him that I would be happy to give him a statement afterwards as I saw how the accident transpired.
11. I believe the Claimant should not have crossed when he did given that it was dark, raining and he could see that cars were therefore making it unsafe to cross. In so doing, I believe the Claimant acted negligently and without due care and attention. The driver of the Suzuki Jeep could not have done anything to avoid the collision with the pedestrian. From my vantage point, the pedestrian caused the accident.”

[24] Under cross-examination, Mr Jean accepted that weather conditions required drivers to exercise greater caution and that rain affects both visibility and stopping distance. He agreed that, because of the rain from the Marisule side and the lights of oncoming traffic, his perspective or view would have been affected, but not his judgment. He further accepted that his view may have been partially obstructed by the vehicles ahead of him. He acknowledged that pedestrians commonly disembark at the bus stop in question and that the presence of a bus stop at a major junction requires drivers to exercise additional caution due to the likelihood of pedestrian activity.

[25] Mr Jean explained that, under the Highway Code (which both sides agreed applied in Saint Lucia), stopping distance includes thinking distance and braking distance, both of which increase in wet conditions, requiring drivers to slow down accordingly. He agreed that at about 30 or 35 mph, the stopping distance in an emergency is 75 feet, with a braking distance of 45 feet.

Submissions and Discussion

[26] It was undisputed between the parties that the driver of a motor vehicle owed a duty of care to all other road users. The claimant submitted that the collision resulted from the defendant’s negligent driving of his motor vehicle and that his duty of care to all other road users, including pedestrians, required him to take reasonable care to avoid causing damage to them. Citing **London Passenger Transport Board v Upson**,¹⁰ the claimant argued that motorists must anticipate the possibility of unexpected conduct by others on the road, given the presence of a bus stop (particularly one in close proximity to a supermarket) and the fact that it was a residential area. Accordingly, the defendant was under a heightened duty to proceed cautiously, as rules 152 and 206 of the Highway

¹⁰ [1949] AC 155 at 1731.

Code¹¹ require drivers to show consideration for pedestrians by driving carefully and slowly when they are about, especially in residential areas or when approaching bus stops.

- [27] The claimant argued that the defendant breached his duty by failing to follow the Highway Code, as specifically alleged in his amended statement of claim mentioned at para [2] above. The defendant did not act in accordance with the standard expected of a competent driver. He relied on the defendant's testimony during cross-examination that he first saw the claimant when he was in the middle of the road from a distance of about 24 feet, and submitted that the defendant had enough time to take, or at least attempt, evasive action to avoid colliding with the claimant. Emphasis was placed on inconsistencies between the defendant's oral evidence and the police accident report, especially regarding the distance at which the defendant first observed the claimant and the distance from the point of impact at which the defendant eventually stopped, arguing that these inconsistencies undermine the defendant's credibility and support a finding that the defendant failed to react as a reasonably competent driver would have in the circumstances.
- [28] Conversely, the defence submitted that the defendant met the standard of a reasonably competent and experienced driver and was not negligent in his driving of the motor vehicle. They contended that, based on the Traffic Accident Report, the defendant first saw the claimant approximately 24 feet before impact while travelling at about 30 miles per hour, at which speed the stopping distance was approximately 75 feet, comprising both thinking distance and braking distance. On that basis, they argued that the defendant did not have sufficient time to perceive the hazard and stop, rendering the accident unavoidable. In support of this proposition, the defence cited **Phillip Eric Paston Bacon et al v Stephen King et al**¹² where the court held that the collision was unavoidable and the defendant was not liable.
- [29] Furthermore, the defence submitted that the claimant deliberately crossed the road from behind the bus despite seeing the oncoming lights, and that such conduct was not reasonably foreseeable by the defendant and would be too remote to establish liability. Accordingly, no criminal prosecution was brought against the defendant for careless or dangerous driving. Additionally, the defence argued that, even as a pedestrian, the claimant owed a corresponding duty of care to other road

¹¹ Updated 14/9/21.

¹² SLUHCV2017/0469 (25th August 2020, unreported).

users to exercise reasonable caution for his own safety before crossing the roadway. They cited **Nance v British Columbia Electric Railway Co Ltd**¹³ in support of this position.

- [30] The defence also relied on rule 32 of the Highway Code, which advises pedestrians, among other things, not to cross the road directly in front of or behind a bus, and to wait until it has moved off and visibility in both directions is clear. They argued that the claimant breached that duty by crossing the road from behind a stationary bus when it was unsafe to do so. The claimant observed vehicles stopped on his right and also saw oncoming vehicle lights to his left, yet he deliberately ran across the road into the path of the defendant's vehicle. The defence contended that crossing from behind the bus concealed the claimant from approaching traffic and prevented the defendant from reacting in time, and that the claimant ought to have remained at the roadside until the bus moved off and visibility was clear.
- [31] Consequently, the defence argued that the claimant's injuries resulted from his own breach of duty and that the risk of injury from running across a roadway in the presence of oncoming traffic was reasonably foreseeable to him. Therefore, relying on **Sabir v Osei-Kwabena**¹⁴ in relation to deliberate risk-taking by pedestrians, and **Bacon**, where a pedestrian who ran across the road after disembarking from a bus was held solely responsible for the accident, the defence contended that the present case similarly involved deliberate risk-taking by the claimant and that the claimant should be held wholly liable for the collision.
- [32] The law is clear that the defendant, as the driver of a motor vehicle, owed a duty of care to the claimant as a fellow road user, and the claimant, as a pedestrian, owed a corresponding duty to take reasonable care for his own safety.
- [33] Although the defendant did not appear evasive and readily acknowledged errors when confronted, the inconsistencies highlighted in his testimony significantly undermine the reliability of his account of the accident, particularly regarding speed, reaction time, and his opportunity to avoid the collision. Therefore, the court prefers the claimant's evidence over his. Additionally, the court accepts that Mr Jean's evidence was not seriously challenged, but his opinion that the collision was unavoidable does not bind this court, and it is rejected, especially as he admitted during cross-

¹³ [1951] AC 601 at 611.

¹⁴ [2015] EWCA Civ 1213.

examination that, due to the rain from the Marisule side and the lights of oncoming traffic, his perspective or view would have been affected.

[34] The court finds the inconsistency in the defendant's evidence about when he first saw the claimant important, as the two accounts cannot both be accurate. However, whether the court accepts that the defendant only saw the claimant when his vehicle was alongside the bus or that he saw the claimant about 24 feet away, both versions raise doubts about the adequacy of the defendant's lookout and his ability to react in time to prevent the collision. Accordingly, the court accepts the claimant's submission that the defendant's driving was inadequate for the situation that presented: He drove his vehicle at a speed which was either too fast in the circumstances, and or he was not paying enough attention to the road and to those who might have been using it at that time, which prevented him from successfully avoiding the collision.

[35] Moreover, even if the court accepts that the defendant could not have stopped within the short distance available after first observing the claimant, the question remains whether he approached the scene with reasonable care, given the prevailing conditions.¹⁵ The facts are that the accident occurred at approximately 7:45 pm, with a stationary bus in the road, and passengers disembarking near a bus stop in the traffic lane opposite TJ's Supermarket. This was at a junction with traffic described as partially busy - not to have a traffic jam, but sufficient that vehicles should travel at a moderate speed. The claimant disembarked from the bus and crossed from behind it in an area without a pedestrian crossing to the opposite side of the road, where he was struck by the defendant's vehicle, which was approaching in the opposite traffic lane about six inches from the edge of the road on the far side. There was rain from the Marisule direction (or at least drizzle), and the headlights of other vehicles were obscuring visibility.

[36] These were conditions in which a reasonably competent driver would have expected pedestrians to appear and would have adjusted their speed accordingly. Pedestrian activity at a bus stop, including careless or hurried crossings, is neither unusual nor unpredictable, especially in rainy or drizzly weather. Indeed, it is a foreseeable risk that drivers should anticipate. Had the defendant approached the collision scene at a lower speed, in line with the necessary level of caution, he

¹⁵ Lisa Vernita Alexander v Neil Noel, SLUHCVP2024/0012 (10th March 2025, unreported) – "In deciding a case of negligent driving, a court must consider all aspects of a driver's driving leading up to and at the time of the collision in determining whether aspects of his/her driving was below the standard of a prudent driver in the circumstances, and therefore, in breach of their duty of care to other road users".

would have had a better chance of stopping, manoeuvring, or otherwise avoiding the collision, or at least reducing its severity.

[37] The defendant's own evidence shows that he continued driving straight past the bus without deviation or adequate reduction in speed, and that he could not recall if there was a pick-up turning into the Corinth Gap ahead of him – he said, "*I really can't recall all that happened*". This supports the conclusion that he was negligent in these circumstances, and accords with the position held in **Gailius Mathurin v Andrew Paul**¹⁶ which followed **Tart v GW Chitty & Company Ltd**¹⁷ (both of which the defence relied on in their submissions), where the dicta of Rowlatt and McCardie JJ. in *Page v Richards and Draper* (1920) 149 LT 263 was cited with approval, thus:

"Rowlatt J. in that case said: "... It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of his seeing, as, for example, a fog, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better lookout the probability is that the accident would never have happened." McCardie J. said: "... I cannot see how the defendant, Draper, can avoid the dilemma in which he is put by law. Either he did not keep a good look-out, in which case he was negligent, or if he did keep a good look-out then he failed to drive the car at such a speed or under such control as to enable him to avoid the plaintiff's body. There is no escape from the dilemma. ..."

[38] The measurements taken of the scene and the traffic accident report provide valuable context and are instructive:

1. The defendant's vehicle travelled 30 metres from the point of impact to where it eventually stopped. This distance is inconsistent with immediate and effective braking before impact and indicates that the vehicle retained significant momentum at the moment of collision.
2. The point of impact was located 0.20 metres from the left side of the road and 5.44 metres from the right side (facing west), placing it near the left end of the roadway. This supports the claimant's assertion that he had reached the other side and was almost finished crossing the road (just crossing the shallow gutter) when he was hit by the defendant's vehicle. It also counters the suggestion that the collision happened suddenly in the middle of the lane, with

¹⁶ SLUHCv2002/0867 (13th July 2004, unreported).

¹⁷ [1933] 2 KB 453, 457.

no chance to avoid it. If the defendant was indeed driving in the centre of his lane without deviation, about 2.5 feet (0.762 metres) from the edge of the road, as he testified, the point of impact would most likely have been nearer to the centre or middle of the lane.

3. The damage to the defendant's vehicle further supports the claimant's case. First, the extent of the damage indicates that the defendant was driving at excessive speed to cause such damage to his vehicle, having collided with a nearly stationary individual, and propelling him 4.42 metres from the point of impact. Secondly, it suggests a side collision rather than a frontal or direct impact. This type of damage aligns with the claimant's assertion that the left side of the vehicle contacted his body while he was at the edge of the roadway.

[39] Finally, the fact that no criminal prosecution was brought against the defendant is no indication of his lack of fault or negligence.¹⁸

[40] There remains, however, the defence's contention that the claimant was wholly or partially responsible for the damage he suffered due to his own negligence with respect to the manner in which he crossed the road.

[41] There was common ground between the parties as to the principles of contributory negligence.¹⁹ The test to be applied with regard to making a finding of contributory negligence was succinctly stated in **Melvina Frett-Henry v Tortola Concrete Limited et al**²⁰, where our Court of Appeal held (para 2 of the headnote) that:

"Generally, a person is guilty of contributory negligence where that person fails to take reasonable care of himself/herself in circumstances where that person ought reasonably to have foreseen that if he/she did not act as a reasonable prudent person, he/she might be hurt; and in such reckonings he/she must take into account the possibility of others being careless. The primary question therefore for the trial judge, in relation to the skid and contributory negligence, would be whether Mrs. Frett-Henry had, by her evidence, established on a balance of probabilities that: (i) she did foresee harm to herself; and (ii) she acted as a reasonable prudent person for her own safety and guarded herself against the negligence of Mr. Smithen. The primary focus would be on the foreseeability of harm to herself apart from her duty to other road users...."

¹⁸ See *Harold Malone v Kirk Phillips*, BVIHCV2015/0004 per Ellis J. (as she then was) at para [16].

¹⁹ See paras 38 and 39 of the claimant's submissions, and paras 5.17 to 5.19 of the defence submissions.

²⁰ BVIHCVAP2008/024 (21st November 2011, unreported).

- [42] The facts show that the claimant was nearly finished crossing before the impact, indicating that but for the defendant's negligent driving, the claimant would have reached the other side safely and the accident would have been avoided. However, this does not negate the fact that the claimant (23 years old), having seen oncoming traffic that had not stopped for him to pass safely, risked himself by emerging from behind a stationary bus, which obstructed the view of oncoming drivers, and crossing to the opposite side. According to the police traffic accident report, the claimant saw the defendant's vehicle 20.26 metres from the point of impact. Therefore, the vehicle's close proximity clearly posed a foreseeable danger, making it unsafe for the claimant to cross the road. The prudent action would have been for the claimant to wait until the bus had moved off, ensuring he had a clear view of the traffic and that drivers had a clear view of him before attempting to cross.
- [43] The claimant argued that the defendant presented no evidence to rebut his case on causation or to establish his contributory negligence. The court does not accept this submission and finds that the claimant failed to act as a prudent and fair-minded adult should have, and that this failure contributed to the damage caused. Now, the court must determine the respective shares of responsibility for the damage.
- [44] Once again, in **Melvina Frett-Henry**, our Court of Appeal held (para 7 of the headnote) that:
- “In carrying out the exercise of an apportionment of blame as between a negligent defendant and a claimant who is found to have contributed to the damage he/she suffered, the trial judge would be concerned with the blameworthiness of each party as well as the relative importance of the acts causing the damage.”
- [45] Still, the defence argued that the claimant was the author of his own misfortune and should bear the greater share of the responsibility for it. The defence referred the court to several authorities²¹ (which the court considered but deemed unnecessary to detail here) supporting the view that the claimant should bear greater blame for the damage caused.
- [46] In this case, the damage resulted from the claimant's lack of care when crossing the road and the defendant's driving at an excessive speed without maintaining a proper lookout as he approached an area of foreseeable pedestrian activity. Considering the point of impact, which was 0.20 metres from the edge of the roadway, the court concludes that the defendant's failure to keep a proper lookout and reduce his speed was the primary cause of the claimant's damage.

²¹ *Eagle v Chambers* [2004] EWCA Civ 1033; *Gailius Mathurin et al v Andrew Paul* SLUHCv2002/0867; *Cheryl Edwards v Ethel Mills* [2002] ECSC No.78; *Williams v De Roche* 2012] ECSCJ No. 47; *Belka v Prosperini* [2011] EWCA Civ 623; and *Lunt v Khelifa* [2002] EWCA Civ 801

- [47] The court also noted Lady Hale's observations in **Eagle v Chambers**²² that: a car can cause much more damage to a person than a person can typically inflict on a car; it is indeed rare for a pedestrian to be deemed more responsible than a driver unless the pedestrian suddenly steps into the path of an oncoming vehicle (which is not the case here as he had nearly finished crossing to the opposite side); and the court has consistently placed a high burden on car drivers, recognising that a car can be a potentially dangerous weapon. Accordingly, the court apportions responsibility for the damage caused 75% to the defendant and 25% to the claimant.

Damages

- [48] This issue involves two aspects: causation (liability for damages) and the quantum of damages; however, the first aspect needs little discussion.

Causation

- [49] Causation in negligence requires proof, on a balance of probabilities, that the breach of a duty of care caused the damage and that the damage was not too remote. It is sufficient for a claimant to establish that the defendant's breach materially contributed to the damage suffered, and need not be shown that the breach was the sole or dominant cause.²³
- [50] The medical evidence is that the claimant sustained injuries as a result of the collision. The hospital report of Dr C Thierens²⁴ and the expert report of Dr N. A. Dagbue²⁵ confirm that the claimant suffered cervical trauma and soft tissue injuries to the neck, lower back, shoulders and right wrist attributable to a road traffic accident. Although subsequent imaging clarified that the initial findings of fractures and subluxation were not fully confirmed, the medical evidence consistently supports the conclusion that the claimant sustained soft tissue injuries causally linked to the collision. There is no evidence of any alternative intervening cause for these injuries, so the court is satisfied that there can be no doubt that these injuries (damage) resulted from the collision.

²² [2003] EWCA Civ 1107, paras 15 and 16.

²³ See *Bonnington Casting Ltd v Wardlaw*, [1956] AC 613.

²⁴ See the claimant's exhibit HS/1, dated 9th May 2019.

²⁵ See Expert Report of Dr N. A. Dagbue dated 15th September 2020 exhibited as "NAD1".

[51] Consequently, the claimant is entitled to damages for the injuries and loss because Articles 985, 986 and 989D of the **Civil Code of St. Lucia**, quoted above, clearly state that the responsible parties, including a claimant, will be liable for the damages, and the court has already established that both the defendant and the claimant were responsible for the damage to the claimant, with apportionments of 75% and 25%, respectively.

Quantum of Damages

[52] The claimant claimed special damages of \$27,738.67, loss of future earnings of \$461,109.09, and general damages for the injuries and losses he sustained, which will now be addressed in turn.

Special Damages

[53] It is now trite that special damages comprise the monetary loss which the claimant would have incurred up to the date of trial, hence the rule that these damages must be specifically pleaded, particularised and proved.²⁶

[54] In the statement of claim, the claimant claimed special damages in the sum of \$27,738.67, particularised as follows:

(1) MRI of cervical spine	\$ 2,000.00
(2) CT scan	\$ 1,200.00
(3) Post accident medical consultations (x6)	\$ 1,500.00
(4) Hospital fees	\$ 225.00
(5) Cervical spine flexion	\$ 180.00
(6) Medical report (x2)	\$ 250.00
(7) Transfer for CT scan	\$ 100.00
(8) Medication	\$ 404.57
(9) Clinic	\$ 15.00
(10)Physiotherapy	\$ 2,040.00
(11)Cost of care (x8 months @ \$2,050 per month)	\$16,400.00
(12)Recliner chair	\$ 1,034.10
(13)Taxi to hospital (x15)	<u>\$ 2,390.00</u>
TOTAL	<u>\$27,738.67</u>

²⁶ See *Ilkiw v Samuels and Others*, [1963] 1 WLR 991 at 1006.

[55] The claimant submitted that the claim for special damages was proved and that the computations should be accepted, since they were not challenged, either in whole or in part, during the trial. However, although the calculations were not disputed during the trial, the defence in their written submissions argued that the claimant provided receipts totalling only \$17,005.21 and objected to the award concerning item (11) – cost of care of \$16,400.00, item (12) – cost of a recliner chair of \$1,034.10, and item (13) – cost of taxi transportation to the hospital of \$2,390.00.

Item (11) – Cost of Care

[56] The defence submitted that the claimant did not definitively prove the duration of his incapacity, and there is no evidence indicating how the cost of care was calculated. The claimant's evidence on this issue comes from himself and Mrs Sexius. He stated in his witness statement (para 15):

“Following my discharge from hospital, I was unable to perform any daily task for myself and was unable to sleep in my bed because of the pain. My wife s [sic was] forced to stop working to stay home and take care of all my need [sic]. These included and not limited to washing me, brushing my teeth, assisting to use the toilet, feeding me and generally be available 24 hours.”

[57] Regarding post-accident care, Mrs Sexius stated (para 3 of her witness statement) that:

“Following my husband's return home from hospital he needed full time care throughout the day and night. This care included all his personal needs such as washing him, cleaning him after he used the bathroom, brushing his teeth, feeding him to name a few. This was all necessary because after leaving hospital he was in so much pain and was unable to move very much or do anything for himself.”

[58] Mrs Sexius also presented a letter from her employer confirming, among other things, that she resigned from her job on 30th March 2019. Neither of these witnesses was challenged on this aspect of their evidence during cross-examination.

[59] In **Cunningham v Harrison**²⁷ (which has been applied in our jurisdiction²⁸), Lord Denning MR espoused the principle to be adopted in circumstances such as this case, where a spouse provided post-accident care, thus:

“... [I]t has been said in some cases that a plaintiff can only recover for services rendered to him when he was legally liable to pay for them ... But, I think that view is much too narrow. It seems to me that when a husband is grievously injured – and is entitled to damages – then it is only right and just that, if his wife renders service to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her. She cannot herself sue the

²⁷ [1973] 3 All ER 463 at 469.

²⁸ Cleos Billingsy v Kevon Jesse-Don Anderson et al, SVGHCV2013/0096 (3rd December 2014, unreported).

wrongdoer ...; but she has rendered services necessitated by the wrongdoing, and should be compensated for it. If she had given up paid work to look after him, he would clearly have been entitled to recover on her behalf, because the family income would have dropped by so much.... Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.”

- [60] Regarding the duration of the claimant’s incapacitation, the court accepts the defence’s submission that the claimant did not provide direct evidence of how long he required such care. However, Mrs Sexius’ unchallenged evidence was that she obtained new employment in September 2019; therefore, it is reasonable to infer that the claimant no longer needed full-time care by that time, especially in the absence of evidence that any alternative caregiving arrangements were made after Mrs Sexius’ return to work. Additionally, the medical evidence from Dr Dagbue shows that by 5th December 2019, when the claimant was examined, he was capable of performing most activities of daily living, albeit with some assistance due to pain.
- [61] Applying the principle in **Cunningham**, the court believes that an award for the cost of care is reasonable to reflect the period (April to August 2019) during which the court is satisfied that some assistance would reasonably have been required following the accident. Still, it remains: what is the compensation for the value of the services rendered?
- [62] The claimant claims \$2,050.00 per month without indicating how it was calculated. From the court’s analysis, it appears to be Mrs Sexius’ salary of \$1,800.00 plus \$250.00, which the court considers excessive because the home assistance and/or nursing care provided should have been obtainable at a lower cost, considering that a claimant has a duty to mitigate his loss.²⁹ Saint Lucia recently published legislation³⁰ providing for a minimum wage without particularising the different categories of workers at \$1,131.00. However, in the jurisdictions of the Commonwealth of Dominica and Grenada,³¹ there is a minimum wage based on the type of work. For example, in the Commonwealth of Dominica, a home assistant with meals earns \$240.00 per week and without meals \$300.00 per week; and in Grenada, a domestic worker earns \$60.00 per day.

²⁹ See Halsburys Laws of England (5th Edn., 2024), Vol 29, para 377.

³⁰ Statutory Instrument No. 134 of 2024 – Labour (Minimum Wage) Order, 2024.

³¹ Statutory Rules and Orders Nos. 49 of 2025 – Labour Standards (Minimum Wage) Order 2025 and 42 of 2023 – Minimum Wages Order, 2023, respectively.

[63] Given that the economic conditions and workforce dynamics are comparable across these jurisdictions, where minimum wage rates were already established in the Commonwealth of Dominica and Grenada prior to 2019, it is reasonable to conclude that, despite the recent publication of the minimum wage in Saint Lucia, it was meant to reflect a situation that existed beforehand. Thus, the court is satisfied that compensation for the value of services rendered by Mrs Sexius to the claimant should, in the absence of contrary evidence, be at the minimum wage of \$1,131.00 per month.

[64] Accordingly, the nominal award for post-accident care is \$1,131.00 per month for five months (April to August 2019), a total of \$5,655.00.

Item (12) – Recliner Chair

[65] The defence submitted that the claimant failed to establish that the recliner chair was reasonably necessary and, therefore, failed to prove this item of special damages. The claimant gave evidence that, upon his discharge from the hospital, he was unable to sleep in his bed due to the pain and purchased a recliner chair in order to rest. However, he produced no evidence to substantiate the purchase, the sum claimed or that it was reasonably necessary apart from his bald statement. As such, in the absence of strict proof, this item of special damage is disallowed.

Item (13) – Taxi

[66] The claimant provided an invoice from No Link's Taxi Service as proof of the transportation cost from 21st March 2019 to 11th June 2019 of \$2,390.00.³² The defence did not object to the admission of this invoice into evidence nor challenged any aspect of it in cross-examination, but raised in their written submissions that certain of these expenses arose from a matter of personal preference and the defendant ought not to be held liable for expenses incurred because of Mrs Sexius' preference that meals be prepared at home rather than obtained from the hospital.

[67] Mrs Sexius explained in her evidence thus:

5. At the hospital I did not allow my husband to eat hospital meals for health reasons. I was not pleased with the surrounding in which the meals were prepared so I dedicated my time to bring him breakfast, lunch, snacks and dinner. I am not mobile so I hired a taxi service that assisted me so that his meals would be on time. I needed a driver that understood the situation so that he would be a little more lenient and dedicated to such a time consuming service."

³² See exhibit HS/4.

[68] In cross-examination, she accepted that hospital meals were available and that providing additional meals was a matter of preference rather than necessity.

[69] Upon conducting a line-by-line review of the itemised invoice, the court finds that the first six transportation expenses could not have been incurred by the claimant, as he remained hospitalised during that period, having been discharged on 26th March 2019. Therefore, the court will not award the cost of the taxi transportation for Mrs Sexius to deliver meals to the claimant at the hospital, as this was unforeseeable and too remote.

[70] In contrast, the transportation expenses incurred after his discharge, specifically those dated from 16th April 2019 to 11th June 2019, are approved because, upon reviewing all the evidence, the court is satisfied that the claimant used taxi services to attend medical appointments on 25th and 29th April 2019, 3rd and 13th May 2019, and 11th June 2019.³³ In the circumstances, the sum of \$870.00 is awarded for taxi transportation expenses.

Remaining items of Special Damages

[71] Regarding the remaining items of special damages, there was also no cross-examination of any witness in respect of the sums claimed. Therefore, the court will award the sums claimed for which there is supporting documentary evidence (invoices and or receipts) or other cogent evidence of loss and or expense.

[72] The receipts produced in support of the claim substantiate the amounts claimed for the remaining items of special damages, and they are allowed in full, save for item (3) - post-accident medical consultations. The claimant claimed \$1,500.00 in respect of this, but the receipts provided support expenditures totalling only \$1,000.00, which is awarded for post-accident medical consultations.

[73] Accordingly, the total sum awarded for special damages is \$13,939.57.

³³ The principles upheld in *Dolette Cyr Bartholomew et al v Kenten Hazzard et al*, GDAHCVAP2021/0021 (4th April 2022, unreported) para [45] would apply here.

Future Loss of Earnings

- [74] This head of damages aims to compensate the claimant for the loss of earnings he would have received during his normal working life but for the accident, rather than income already lost.³⁴ To qualify for this award, the injured party must satisfy the court by medical or other cogent evidence that he was rendered incapable of working or his ability to work was impaired to the extent that the income which he earned from his employment was lessened as a result of his injuries.³⁵ The relevant legal principle for assessing future loss of earnings was endorsed as the multiplier/multiplicand approach in **Alphonso v Ramnath**³⁶, where Singh JA stated that:

“It is obvious from these authorities that the identification of the true multiplier depended on the individual facts and circumstances of each case and that there was no rigid formula. ...

In determining the multiplier a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident.

....

For the purpose of the multiplicand, the basis should be the least amount the respondent would have been earning if he had continued working without injuring.”

- [75] The claimant’s evidence from his witness statement on this matter was that:

- “12. At the date of the accident, I worked for Massy Stores St. Lucia Ltd as a Warehouse Clerk, located at Choc Perishables Warehouse from 1 December 2015. My gross monthly income was EC\$1,416.20. (EC\$16,994.40 per annum).
13. As a direct result of the accident, Massy Stores St. Lucia Ltd terminated my employment on 12 December 2019 In addition to my loss of income I will no longer make pension contributions of EC\$23.10 per month (EC\$277.20 per annum). ...³⁷
14. Using the seventh Edition Ogden Tables 2017, the multiplier to age 65 (Ogden Table 9) is 38.85 the adjustment factor (Table A) is 0.82. Using these multipliers my future loss of earnings to age 65 is as follows $[38.85 \times 0.8290 \times 14,317.09] = \text{EC}\$461,109.09$.
15.
16. My injuries resulting from the accident caused me to lose my job. I am likely to suffer from some physical disabilities, which will result in me being disadvantaged in the labour market. To this end, if I am able to re-enter the labour market there will be a risk of potential loss due to my disability which but for the accident and the negligence of the defendant I would not have suffered.

³⁴ See *Sarju v Walker* (1973) 21 WIR 86.

³⁵ *Terrance Amedee v Marcus Modeste SLUHCVP2022/0001* (9th November 2023, unreported).

³⁶ (1977) 56 WIR 183, 192.

³⁷ The claimant exhibited his letter of termination and salary slips as Exhibit SH/3.

17. At the date of the accident, I had attained an Associate Degree in engineering and was planning to commence a further course to achieve my BSC honours to pursue a career in engineering. It is unclear at this time if I will ever be physically able to pursue my dream job. With this in mind I have started to investigate alternative career options, which may be open to me, if I were to recover from my injuries, these include teaching and education leadership. My medical prognosis will determine what if any career I will be able to pursue in the future. Whichever the case, it will involve a degree of retraining over a number of years.” [footnote added]

- [76] The claimant maintained that he cannot use his right hand after the accident. However, in cross-examination, he admitted that he is now a licensed driver, having continued to learn to drive even after the accident, and passed the driver’s test in 2020, and that driving requires using both hands on the steering wheel and, to properly control the steering wheel, one needs to wrap one’s fingers around the wheel.
- [77] When questioned about the prospect of further or alternative employment, the claimant acknowledged that he can sit in a chair, has an Associate Degree, is computer-savvy, and can use the Zoom platform. He stated that he cannot sit for a full day, but may be able to get a non-physical job, even if part-time.
- [78] Dr Dagbue confirmed that the claimant first consulted him on 28th November 2019, approximately eight months post-accident. In a medical report dated 17th December 2019, Dr Dagbue stated that clinical and radiological assessment confirmed soft tissue sprain injuries to the neck and lower back, together with soft tissue injuries to both shoulders and the right wrist. These injuries were managed conservatively with non-steroidal anti-inflammatory medication, rest, and physiotherapy. Dr Dagbue further recorded that on 5th December 2019, the claimant complained of persistent upper and lower back pain and stiffness in both shoulders, which interfered with his normal activities.
- [79] In an updated medical report dated 30th August 2021, Dr Dagbue indicated, among other things, that the claimant was clinically stable and was not expected to suffer sudden incapacitation within the ensuing year as a result of the injuries sustained. While the soft tissue injuries to the neck and back were anticipated to improve to some degree, Dr Dagbue opined that intermittent pain was likely to persist for many years. He further noted that stiffness in the shoulders was expected to improve with adequate physiotherapy. At the date of that report, Dr Dagbue was of the view that the claimant was capable of performing most activities of daily living, albeit with some difficulty due to a restricted ability to elevate his arms fully above his head.

- [80] Dr Dagbue assessed the claimant as having a 4% whole person impairment attributable to persistent pain arising from soft tissue injuries at multiple sites. He explained that “impairment” denotes a significant deviation from, or loss of use of, a body structure or function, and distinguished it from “disability,” which relates to limitations or restrictions in occupational or functional performance rather than anatomical loss alone.
- [81] Paragraphs 12 and 14 of the claimant’s witness statement quoted above were repeated as their submissions on this issue.
- [82] The defendant submitted that the claimant’s claim for \$461,109.09 for loss of future earnings on the basis that the claimant will never again be able to work is exorbitant and is unsupported by the evidence. The claimant was employed as a warehouse clerk; he has no profession, and he was not required to attend university to do this job. The function of a warehouse clerk is to unload and load the warehouse; it involves manual labour and does not require any degree of cognitive skill. It is not a career.
- [83] The defence urged that the court reject any assertion that the claimant is an engineer or has the skills or qualifications to become an engineer. It is a fact that the claimant admitted in his evidence that he was computer-savvy and could obtain a desk job; he is under a duty to mitigate his loss, and, given that he is not giving up a profession, he could very well procure a job that does not require manual labour. They invited the court to reject the claim of loss of future earnings.
- [84] The defence continued that on the claimant’s evidence (which they do not accept), his time of incapacity was a mere eight months. Further, the claimant used the UK method of calculation to determine loss of future earnings, whereby the claimant’s net annual earnings of \$14,317.20 were multiplied by a multiplier. The multiplier was calculated in accordance with the UK economy, Bank of England interest rates and the Lord Chancellor’s discount rate - factors which are not relevant to the Caribbean because of its gross inflation to reflect the UK economy. Accordingly, the court is not obligated to follow this method. The claimant’s loss of earnings for eight months, if taken at its maximum, amounts to \$9,544.80.

[85] At the outset, the court agrees with the defence that the claimant was under a clear duty to mitigate his loss and thereby reduce avoidable damage. The claimant has produced no evidence to demonstrate that he sought alternative employment but was unable to secure it. While he may no longer be able to perform the physically demanding duties associated with his former employment, the court is satisfied on the evidence that he retains the capacity to undertake other forms of work, which the claimant himself accepted in cross-examination. The court is fortified in its view, having regard to the fact that the claimant obtained his driver's licence after the accident.

[86] Additionally, while the court recognises that the UK method of calculating future loss of earnings using the multiplier/multiplicand approach may not be suitable for this jurisdiction for the reasons provided by the defence, it remains clear that, as previously stated, the multiplier/multiplicand approach is the correct method to assess the future loss of earnings for an appropriate claimant, taking into account the realities applicable to our jurisdiction.

Multiplier

[87] The courts have generally held that an unskilled person's working life extends to age 65.³⁸ The claimant, who was born on 6th May 1995, was 26 years old at the date of trial and would therefore have had an anticipated further working life of 39 years. Considering the relevant principles cited earlier in **Ramnath** and the evidence that the claimant is not entirely incapable of working in the future, which the court believes is more likely than not, the notional starting multiplier of 39 years must be adjusted significantly downwards. The court considers that a discount of about 75% is appropriate, giving a multiplier of 10.

Multiplicand

[88] Prior to the accident, the claimant earned a net monthly income of \$1,193.10. The court accepts this as the appropriate starting point for assessing what he would have earned if he had not sustained the injury. Although the court is satisfied that the claimant is not entirely incapacitated and can earn income in the future, there is no evidence on which it can quantify this future earning capacity. However, the court believes that the reduction applied to the multiplier adequately addresses this issue. Consequently, the multiplicand will be the net monthly income of \$1,193.10, multiplied by 12 months, to give a net annual income of \$14,317.20.

³⁸ Fraser v Dalrime ANUHCv2004/0513 (5th May 2010, unreported).
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[89] It follows that multiplying the multiplier (10) and the multiplicand (\$14,317.20) to establish the award of damages for future loss of earnings gives \$143,172.00, which the court awards to the claimant.

General Damages

[90] It has been stated that general damages are damages which will be presumed to be a natural or probable consequence of the wrong complained of, with the result that the claimant is only required to assert that such has been suffered.³⁹ Both parties referred the court to the landmark authority of **Cornilliac v St. Louis**,⁴⁰ where Sir Hugh Wooding CJ outlined the factors to consider when awarding damages for personal injuries. These factors are now well established and only require brief mention, namely: (i) the nature and extent of injuries suffered; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities suffered; and (v) the extent to which the claimant's pecuniary prospects have been affected. Sir Hugh Wooding CJ noted that it is not the practice to quantify damages separately under each head; instead, each head is to be considered in arriving at a final quantification of the award.

[91] So far, as relevant to this issue, the claimant stated in his witness statement that he was a married man with no dependent children, born on the 6th May 1995, aged 23 years at the date of the accident. He continued:

- "6. Following the accident I was conveyed to Victoria Hospital, where I was admitted and discharged after 4 days. Whilst at the hospital I was fitted with a catheter and underwent an MRI, CT scan and X ray. Following discharge I continued to attend consultations and had to take a cocktail of medication daily.
7. As a result of the accident I suffered multiple injuries to my neck back and lower extremities as described in the attached medical reports, these include:
 - (1) Fracture to spinous process of C3 and C4 vertebrae
 - (2) Whiplash - associated disorder; grade 2
 - (3) Numbness to right ankle and foot
 - (4) Pain to the lower limbs, lower back, neck and waist.
8. As outlined in the medical reports of Dr C Thierens, Consultant Orthopaedic Surgeon dated 9th May 2019 and Kim Jackson, Senior Physiotherapist dated 2nd December 2019 (exhibited as HS/1) Throughout the whole time, from being hit and my stay in hospital I remained conscious and suffered continuous pain and discomfort. I was unable to lie down on the normal hospital bed, due to the pain in my neck, back and spine, and had to be placed on a ripple bed which takes the shape of your body to allow for some comfort. Was unable to sit up, could not use the toilet, was unable to pass any solid waste, and was fitted with a catheter. I was not able to brush my own teeth and could not bathe or wash myself. I suffered weight loss because I was unable to eat any solid food because of broken teeth making my mouth sensitive.

³⁹ Charles v Corridon SVGHCV2002/0506 (3rd June 2014, unreported).

⁴⁰ [1964] 7 WIR 491

9.
10. In addition to the injuries outlined in the medical reports I sustained bruising to my face and broken front tooth. The broken front tooth has resulted in a great deal of pain and sensitivity, which in turn causes distortion to my face when eating; resulting in a loss of self-confidence when in the company of others.
11. I have been unable to use my right hand normally since the accident because the middle and ring fingers of are stuck together and I am unable to part them or use the hand normally.
18. I was always engaged in many sporting activities including taking part in track athletics competitions 100m, 200m and 400m races, football, daily 30 - 40min jogging and gym work to maintain fitness. As a direct result of the accident I have been unable to take part or enjoy in any of these activities.
19. Upon discharge from hospital I returned to my home and had to be carried in. I was unable to sleep on my bed and had to purchase a suitable recliner chair which enabled me to get 3-4 hours sleep a night. I was unable to walk short distances without assistance, required full assistance to do daily hygienic routines (bathe, wipe my bottom, brush teeth, and was ordered by my doctor not to leave the house unless for medical check-ups. For these check ups I had to use a taxi and exhibit the invoice as (exhibit SH/4).
20.
21. The need for 24 hour care and assistance resulted in my wife being forced to leave her employment as a tour guide which she had since October 2018; her monthly income was EC\$1,800.00 plus daily tips.
22. Having now lost my job my wife and I struggle to find money to maintain all our bill and buy food. Of late we have been to relying on family for handouts to subsidy my wife's income. In addition we had to sell many valuable items to bring in extra income to help manage medical bills, food and rent⁴¹
23.
24. Because of the accident, both my wife and I have suffered emotionally, in addition to the reduced family income. We have been unable to engage with each other sexually as a normal young couple. We have put on hold all plans of starting a family until such time in the future when I may be able to perform physically without pain. My wife and I celebrated our first wedding anniversary at home, we were unable to go out to dinner and to spend the weekend at a local hotel as we planned and due to my injuries could not even share any sexual exchange.
25. I am unable to help around the house as I used to, and it hurts to sit and watch my wife having to do all the domestic work in the house which when I was healthy we done together.
26. As a result of the foregoing I have suffered the following loss and damage." [footnote added]

⁴¹ The claimant then mentioned several items that were allegedly sold, but acknowledged in written submissions (paras 27 and 28) that no claim was made for these items.

- [92] During cross-examination, with respect to his injuries, the claimant accepted that although the initial X-ray recorded spinous fractures of C3 and C4 vertebrae, a subsequent CT scan revealed only a mild subluxation between C2 and C3. He further accepted that the medical report of Dr Dagbue dated 17th December 2019⁴² documented soft tissue sprains to the neck and lower back, as well as soft tissue injuries to the shoulder and right wrist. He acknowledged that the updated medical report of Dr Dagbue⁴³ referred only to soft tissue injuries and did not confirm fractures or subluxation in C2 and C3 vertebrae. The claimant further accepted that no medical or dental evidence was produced to support claims of facial bruising or a broken tooth. He admitted that several matters alleged in his witness statement, including educational qualifications, plans for further studies, items allegedly sold to alleviate financial hardships, and certain asserted sexual limitations, were unsupported by documentary or medical evidence.
- [93] Additionally, although the claimant maintained in his evidence that he was unable to make full use of his right hand, he accepted under cross-examination that he continued learning to drive after the accident and successfully obtained his driver's licence in 2020. When questioned about the prospect of further or alternative employment, he confirmed that he is able to sit, albeit not for prolonged periods, holds an associate degree, is computer-savvy, and can use platforms such as Zoom. He therefore accepted that he may be able to obtain non-physical employment.
- [94] As already seen (para [57] above), Mrs Sexius' evidence, in some respects, corroborates the claimant's evidence regarding his situation following his discharge from the hospital for the need of care. It also confirms the alleged financial hardships and the impact on the family and/or household, but she, too, accepted that no documentary proof or witness testimony was produced to substantiate the loans allegedly received from family and friends.
- [95] The medical evidence in this case includes Dr Dagbue's reports (as previously discussed in paras [78], [79], and [80]) and the medical report dated 9th May 2019 by Dr C Thierens, Senior House Officer at Victoria Hospital, which states that:
1. On preliminary assessment, the claimant exhibited tenderness to palpation and a decreased range of motion of the left hip. He was noted to be alert and oriented, with full motor power and intact sensation in all extremities.

⁴² Exhibited to the Expert Report of Dr N. A. Dagbue dated 15th September 2020 as "NAD1".

⁴³ Exhibited to the Updated Expert Report of Dr N. A. Dagbue dated 31st August 2021 as "NAD3".

2. Radiographic investigations revealed fractures of the spinous processes of the C3 and C4 vertebrae. No fracture of the hip or pelvis was identified.
3. A CT scan of the cervical spine performed on 21st March 2019 demonstrated what appeared to be a mild subluxation between the C2 and C3 vertebrae.
4. He was discharged after five days with a cervical collar in situ on a course of analgesia and Vitamin B complex with follow-ups at the orthopaedic outpatient clinic and physiotherapy sessions.
5. At a subsequent follow-up appointment, the claimant was referred for neurosurgical evaluation.

[96] The claimant submitted that in assessing general damages for pain and suffering, and loss of amenities, the court should rely on the guidelines published by the Judicial Studies Board for Northern Ireland in the **Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland** (“the Guidelines”), particularly in light of the limited regional authorities on quantum. This approach, they argued, was consistent with the decision in **Karen John v David Dibique**,⁴⁴ where the court considered the Guidelines a useful benchmark.

[97] Applying the Guidelines, the claimant submitted that the injuries are categorized as follows: soft-tissue sprain to neck (whiplash-type injury with possible long-term pain and limitation of movement) valued at £30,000 – £60,000; soft-tissue sprain to lower-back injury with recovery expected within approximately two to five years valued at £12,000–£30,000; soft-tissue injuries to both shoulders, including frozen shoulder with limitation of movement and discomfort with symptoms persisting for some years valued at £12,000 – £30,000; and a soft-tissue injury to the right wrist resulting in less severe but permanent disability, including persistent pain and stiffness, valued at £21,000 – £50,000.

[98] Accordingly, the claimant submits that a reasonable award for pain and suffering and loss of amenities should be £40,000 (the Eastern Caribbean equivalent of EC\$148,943), as prescribed by the Guideline. However, given the varying socio-economic circumstances between the United Kingdom and the Eastern Caribbean, the claimant submits that the award ought properly to be scaled down by 25% to the reasonable sum of EC\$111,708.00.

⁴⁴ SVGHCV2009/0359 (20th March 2014 and reissued on 8th April 2014, unreported).

[99] On the other hand, the defence referred the court to **Harvey Taliam et al v Kurt Duncan et al**⁴⁵, **Manwaring & Ors v C.L. Singh Transport Service Ltd**⁴⁶, and **Ramdoolar v Boodoo**⁴⁷, and suggested that an award of no more than \$29,677.50 for general damages should be made. Strangely, the defence also submitted that the court should not rely on **Ramdoolar**, as the injuries suffered there were not comparable to those in this case. The court agrees and similarly does not believe that **Manwaring** is helpful for the same reason.

[100] In **Taliam**, the claimant, aged 39 at the time of the accident, sustained a whiplash injury to the cervical spine, soft-tissue injuries to the upper and lower back, and a sprain to the right index finger, for which he was awarded \$25,000.00 in general damages for pain and suffering and loss of amenities in April 2019. The last medical report described the victim as stable without expectation of any incapacitation over the next year. The report also stated that a whiplash injury usually causes pain in the neck with difficulty in movement for periods up to a year, and soft tissue injury to the upper back up to six months. The victim was able to perform most activities, but with pain whenever he turned and was unable to bend or lift heavy items. At the time of the report, the victim had not yet reached maximum medical improvement, which typically takes up to two years. The award was based on the fact that the victim had made full and significant recovery from his injuries with no permanent disability.

[101] In addition to the authorities cited by the parties, the court has considered the following authorities from its own research, namely –

1. **Sheena David et al v Kingston Bowen et al**⁴⁸ – The claimant sustained a soft tissue injury to the neck and shoulders, including ligamentous strain and muscle spasms, which significantly limited the movement of the cervical spine and caused neck pain following an accident. Sheena was diagnosed with chronic ligamentous inflammation, with pains expected to persist indefinitely based on her posture and movements. According to the reports, Sheena faces an increased risk of developing arthritis in the neck, cervical, and lumbosacral spine, accompanied by ongoing pain. In 2013, the court awarded \$37,000 for pain and suffering and loss of amenities.

⁴⁵ SLUHCV2018/0418 (26th April 2019, unreported).

⁴⁶ The Lawyer (Journal of the Law Association of Trinidad & Tobago) March 2001, Vol. 7 No.1.

⁴⁷ Trinidad and Tobago, Case No. 710 of 1973.

⁴⁸ GDAHCV2007/0055 (7th June 2013, unreported).

2. **Lisa Bellot v Albert Raffoul**⁴⁹ – The claimant suffered whiplash in a motor vehicle accident along with soft tissue injuries to the head, neck, back, and shoulder, which impacted her activities of daily living. An MRI diagnosed the claimant with post-traumatic cervical spine disc herniation at C6-C7 on the left side. Physiotherapy was recommended for six weeks, with surgical discectomy and bone grafting considered if there was no improvement. The claimant was awarded \$40,000.00 for pain and suffering and loss of amenities in 2014.
3. **Cavet Thomas v The Attorney General et al**⁵⁰ – The claimant sustained a head injury with a 1cm laceration to the forehead and a whiplash injury to the neck caused by a forklift blow. She was not hospitalised, and there was no medical evidence before the court indicating that the whiplash injury was severe or that she was unable to exercise, go for walks, or socialise. The most recent medical report indicated that the claimant's injuries were almost completely healed. In 2022, the court awarded \$45,000 for pain and suffering and \$5,000 for loss of amenities.

[102] The court is reminded of the well-known and often-cited principle that, when assessing damages, the amount awarded for pain and suffering and loss of amenity cannot be precisely calculated. All that can be done is to award a sum within a broad range of what is reasonable and aligned with similar awards in comparable cases, reflecting the court's basic estimate of the claimant's damage.⁵¹

[103] The court has carefully reviewed the parties' submissions and the guidance of comparable authorities and believes that the level of damages awarded in the UK and other 'first world' countries is considerably higher than the economic, social and other realities in our jurisdiction can sustain. Therefore, despite the claimant's conceded adjustment, the sum sought in their submissions remains excessive. Accordingly, the court prefers to assess the proper range of damages by analysing comparable cases.

[104] The claimant was 23 years old at the time of the accident, when he was thrown to the ground some 4.42 metres from the point of impact into the supermarket parking lot. He was hospitalised for five days, from 22nd to 26th March 2019, and immediately after the accident, he was unable to ambulate short distances without assistance and required full support with activities of daily living.

⁴⁹ DOMHCV2012/0360 (30th May 2014, unreported).

⁵⁰ SVGHCV2020/0033 (17th May 2022, unreported).

⁵¹ Wells v Wells [1998] 3 All ER 481 per Lord Hope of Craighead.

- [105] The most significant feature of the claimant's condition is the continuing effect of the injuries on his daily functioning and enjoyment of life. Although the injuries are soft-tissue in nature, they involve multiple anatomical regions and have resulted in persistent, multi-site pain and functional limitations affecting ordinary physical activity and recreation. The evidence demonstrates ongoing restriction in sitting, standing, lifting, exercise, and other activities that previously formed part of his normal routine, which places his injuries above cases involving temporary soft-tissue injury followed by a substantial recovery. On the other hand, the court takes into account evidence of retained functional capacity, including the claimant's ability to obtain his driver's licence after the accident, which indicates that he remains capable of performing a range of coordinated physical and cognitive tasks despite his ongoing symptoms.
- [106] In my view, the cases of **Taliam** and **David** are the most comparable in terms of the nature of the injuries, each involving soft tissue injury to the cervical spine and surrounding regions. However, in **Taliam**, the claimant had made a full and substantial recovery, and there was no permanent disability. That case accordingly falls at the lower end of the range for soft tissue injuries. In **David**, the claimant suffered a reduced range of motion of the cervical spine, and the court found that her quality of life had been diminished by the accident. That authority is therefore more reflective of cases involving a continuing functional impact, but the award is somewhat dated, being nearly 13 years old. In **Bellot**, the injuries were potentially more serious than in this case, but the award was made before it was ascertained, and it is dated as well.
- [107] In **Thomas**, the most current of the awards considered and clearly where the injuries were much less serious than in the present case, the award of \$50,000.00 was significantly higher than in the more comparable cases. Therefore, taking all these matters into account, including the claimant's age, the extent and duration of his injuries, the continuing impact on his quality of life, and the dates and levels of the comparable awards, the court assesses the general damages for pain and suffering and loss of amenities in the sum of \$60,000, as fair and reasonable compensation.

Disposition

- [108] In summary, the claimant is entitled to the following reliefs or awards of damages: (1) special damages of \$13,939.57; (2) future loss of earnings of \$143,172.00; and (3) general damages for pain and suffering and loss of amenities of \$60,000.00. The claimant was found 25% contributorily negligent for the damage he suffered, and as such, these awards will be accordingly discounted to

(1) special damage of \$10,454.68; (2) future loss of earnings of \$107,379.00; and (3) general damages for pain and suffering and loss of amenities of \$45,000.00.

[109] Article 1009A of the **Civil Code of St. Lucia** authorises the court to award interest for the period between the date of a cause of action and the date of judgment at a rate the court considers appropriate. In **Terrance Amedee v Marcus Modeste**⁵², the Court of Appeal reminded us that interest on special damages was payable from the date of loss or expense to the date of judgment, and on general damages from the date of service of the claim form to the date of judgment. Therefore, the court awards interest of 3% per annum from the date specified for each of the items of special damages allowed (which is either the date the service was provided or the date of the final invoice/receipt or record of the service provided over a period) to the date of judgment as follows:

<u>Item of Special Damages</u>	<u>Award after 25% reduction for contributory negligence</u>	<u>Date from which interest to run</u>
1. MRI of cervical spine	\$1,500.00	3 rd May 2019
2. CT scan	\$ 900.00	22 nd March 2019
3. Post accident medical consultations	\$ 750.00	11 th June 2019
4. Hospital Fees	\$ 168.75	28 th March 2019
5. Cervical Spine Flexion	\$ 135.00	11 th July 2019
6. Medical Reports	\$ 187.50	21 st May 2019
7. Transfer for CT scan	\$ 75.00	22 nd March 2019
8. Medication	\$ 303.43	21 st June 2019
9. Clinic	\$ 11.25	25 th April 2019
10. Physiotherapy	\$1,530.00	4 th August 2020
11. Cost of care	\$4,241.25	31 st August 2019
12. Taxi	\$ 652.50	11 th June 2019

[110] The court also awards interest at the statutory rate of 6% per annum on the general damages for pain and suffering and loss of amenities of \$45,000.00 from the date of service of the claim form (7th August 2019) to the date of judgment; and on the total sums awarded from the date of judgment to the date of payment.

⁵² SLUHCVP2022/0001 (9th November 2023, unreported)

[111] No reason has been given for why the costs should not be awarded in accordance with the usual practice of costs following the cause, so the claimant shall be entitled to prescribed costs on the total sum awarded pursuant to CPR 65.5.

[112] Accordingly, IT IS ORDERED THAT:

1. Judgment is entered for the claimant against the defendant.
2. The defendant shall pay the claimant damages as follows:
 - (a) Special damages of \$10,454.68, with interest at 3% per annum from the date stated earlier at para [109] for each item allowed to the date of judgment.
 - (b) Loss of future earnings of \$107,379.00, with no pre-judgment interest.
 - (c) General damages of \$45,000 with interest at 6% from 7th August 2019 to the date of judgment.

Additionally, interest at the statutory rate of 6% per annum on all sums awarded from the date of judgment to the date of payment.

3. The defendant shall pay the claimant prescribed costs pursuant to CPR 65.5 on the total sum awarded.

**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar