COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/No.00898

BETWEEN

JOSEPH McCOY

Plaintiff

AND

ZHARVARGO ARCHER

First Defendant

AND

ARCHER'S MESSENGER SERVICES

Second Defendant

Before: **The Hon. Madam Justice Simone Fitzcharles**

Appearances: **Ms. Monique V. A. Gomez for the Plaintiff**

Mr. Raynard Rigby K.C. and Ms. Asha Lewis for the First and Second Defendants

JUDGMENT

FITZCHARLES, J.

1. This is an action brought by the plaintiff, Joseph McCoy ("**Mr. McCoy**"), claiming relief for personal injury, loss and damage allegedly caused by the negligence of Zharvargo Archer ("**Mr. Archer**") and Archer's Messenger Services ("**AMS**" and collectively, "**defendants**").

Background

2. On 06 August 2015, while Mr. McCoy was on his 2005 Honda VDR1300 motorcycle standing stationary at the corner of Palmdale Avenue and Rosetta Street, Mr. Archer, driving a 1999 Toyota Corolla motor-car which belonged to AMS, collided with Mr. McCoy's motorcycle. ("**Accident**").

3. Mr. McCoy was thrown from his motorcycle and said to have landed on the ground some eight feet from the point of collision. An ambulance and the police were then called to the scene of the Accident. After the initial police investigation at the scene, the plaintiff was taken to Doctors Hospital. His initial complaints were injuries to his neck, back, right leg and toes.

4. Between 06 August 2015 and 11 November 2016, Mr. McCoy was assessed and treated by several physicians and other health care professionals regarding his injuries.

5. Mr. McCoy was 60 years old at the time of the Accident, and had a history of being a self-employed taxi driver who owned four buses and a taxi car. At that time, Mr. McCoy also suffered from several pre-existing medical conditions, which are discussed later in this judgment.

6. On 03 August 2018, Mr. McCoy filed a Specially Indorsed Writ of Summons ("**Writ**") against the defendants.

7. Mr McCoy pleads the following under the heading "Particulars of Injury" in his Writ:

> **"i. Injuries to his neck**
>
> **ii. Injuries to the back and lower right leg**
>
> **iii. Injuries to his toes**
>
> **iv. As a result of the fall [from] the motorcycle the plaintiff [lost] two front teeth."**

8. He also pleads "Particulars of Special Damages" in his Writ as:

"1. Doctor's Hospital 6th August, 2015	**$1,380.99**	
2. Paramount Rehabilitation & Fitness Company	**$1,250.95**	
3. The Prescription Parlour		**$ 26.51**
4. Docs Pharmacy Ltd.		**$ 30.00**
5. Elite Imaging		**$ 50.00**
6. Dr. Charles Osazuwa		**$ 480.00**
7. Doctor's Hospital [15th May, 2016]	**$ 292.40**	
8. Anesthesia Services		**$ 430.00**
9. Medical Report		**$ 450.00**
10. Dental Expenses		**$2,650.00**
	TOTAL	**$7,040.85"**

9. The plaintiff claims he lost the sum of $90,000.00 due to his alleged inability to work for one year, having suffered injuries resulting from the Accident.

10. In his Writ, Mr. McCoy then asked the Court for the following reliefs:

> **"(i) Damages**
>
> **(ii) Special Damages in the amount of $7,040.85**
>
> **(iii) Loss of income in the amount of $90,000.00**
>
> **(iv) Interest pursuant to Civil Proceedings Award of Interest Act.**
>
> **(v) Costs**
>
> **(vi) Such further or other relief as the court deems just."**

11. In their Defence filed on 28 January 2019 ("**Defence**"), the defendants deny all allegations made in the Writ and put Mr. McCoy to strict proof of the same. The defendants contend that the Accident was wholly caused by Mr. McCoy's negligence in failing to stop at the junction, thereby causing the Accident. The defendants also aver that Mr. McCoy failed to exercise all due regard to Mr. Archer's approaching vehicle. Further, they aver that the Accident was low velocity and as such, Mr. McCoy's injuries are exaggerated in his claim.

12. They also contend that Mr. McCoy had pre-existing injuries for which they should not be responsible as the same were not caused by the Accident.

13. Lastly, the defendants contend that the plaintiff failed to mitigate his losses by not receiving proper medical care and attention and by not seeking alternative employment or leasing a taxi to earn income.

Issues

14. Neither party provided the Court with a Statement of Facts and Issues. As I understand the pleadings, the evidence and the written submissions before me, the issues that the Court must determine are:

    (i) whether the defendants are liable in negligence for the plaintiff's injuries, if any;

    (ii) whether Mr. McCoy is contributorily negligent for the Accident;

    (iii) whether Mr. McCoy mitigated his losses;

    (iv) whether the plaintiff's claim is exaggerated; and

    (v) whether he is entitled to damages and, if so, the quantum of the same.

Evidence

15. Before embarking upon the medical evidence, which was extensive in this case, the Court has considered the evidence offered in relation to how the Accident

occurred. It is noteworthy that while Mr. McCoy testified about the events of the Accident, the defendants did not call Mr. Archer or any other witness to give direct evidence about the Accident. As the defendants called no witness of fact to substantiate how they pleaded the Accident occurred, and no direct evidence to contest Mr. McCoy's version of the Accident, the court accepts the plaintiff's version of those facts.

Evidence for Mr McCoy

Dr. Joyous Pickstock

16. On 26 October 2021, the Witness Statement of Dr. Joyous Pickstock ("**Dr. Pickstock**") was filed, which stood as her evidence in chief at trial ("**Pickstock WS**"). Based on Dr. Pickstock's credentials and experience, she was accepted as an expert witness in Dentistry and Dental Surgery by this Court. The Pickstock WS states that:

    i. In early 2014, Mr. McCoy began full mouth reconstruction to replace defective and non-serviceable restorations and missing teeth. Extensive dental procedures, including dental surgery, root canal treatments and fixed partial dentures were carried out with completion of the upper maxillary arch in May of 2014; and

    ii. On 31 August 2015, Mr. McCoy went to see Dr. Pickstock at her surgery center complaining of pain and slight swelling in the upper anterior region of the mouth.

    iii. Mr. McCoy told Dr. Pickstock about the Accident where he suffered trauma;

    iv. An examination of Mr. McCoy by Dr. Pickstock revealed that there was damage to the upper anterior teeth including the fixed partial denture (bridge) that was inserted on 19 May 2014;

    v. The damage sustained was consistent with trauma of the nature presented; and

    vi. Mr. McCoy was prescribed analgesics (i.e. pain killers) and antibiotics for the pain and swelling and was given a follow up appointment to begin extensive treatment.

17. Dr. Pickstock also prepared a medical report on 31 August 2015 ("**Pickstock Report**"). The Pickstock Report provides the following:

    i. Mr. McCoy presented to her clinic complaining of pain and slight swelling in the upper left anterior region of the mouth as a result of the Accident;

ii. oral examination revealed trauma to the upper left lateral incisor abutment and consequently the loosening of existing upper anterior 3 unit fixed partial denture;

iii. an (oral) x-ray showed slight radiolucency (an area of tissue that is less dense) at the apex of #8 and #10, complete fracture at the cervical consistent with the trauma; and

iv. there were signs and symptoms of acute pulpitis (inflammation of the pulp in teeth which cause tenderness, pain and high sensitivity to air, hot and cold weather).

v. treatment given at the time was analgesics and antibiotics;

vi. Mr. McCoy was informed of his treatment plan and reappointed for treatment;

vii. two treatment plans were recommended (The First Treatment Plan cost $6,000.00 and the Alternative Treatment Plan cost $21,500.00); and

viii. Mr. McCoy agreed with the Alternative Treatment Plan which includes dental implants and crowns to have his dentition (i.e. typical arrangement or structure of the teeth) permanently restored as was in his existing dentition prior to the accident.

Mrs. Rhoda E. Hanna

18. On 26 October 2021, the Witness Statement of Mrs. Rhoda E. Hanna ("**Mrs. Hanna**") was filed which stood as her evidence in chief at trial ("**RHWS**"). Based on Mrs. Hanna's credentials, she was deemed an expert in Physical Therapy by this Court. The RHWS provides that: (i) Mrs. Hanna saw Mr. McCoy on 11 November 2016 and commenced physiotherapy sessions with him; (ii) she has provided several reports exhibited to her witness statement on the treatment given to Mr. McCoy.

19. There are four reports prepared by Mrs. Hanna which are in evidence.

20. The **First Report** dated 25th September 2008 states that Mr. McCoy completed 12 sessions of physiotherapy from 11 August 2008 to 12 September 2008. The muscles along the cervical, thoracic and lumbar spines were painful and spastic. In particular, the pain radiated from the cervical spine down to bilateral upper extremities with numbness to his fingertips. Mr. McCoy was painful in the groin and unable to perform straight leg raises.

21. As a result of his treatment regimen the pain and numbness subsided at the cervical spine, upper extremities, lumbar spine and groin. He was able to perform straight leg raises and walk with a normal gait. However, Mrs. Hanna opined that

the plaintiff may experience symptoms periodically for many years and thus may require physical therapy treatment three times per year.

22. The **Second Report** dated 21st December 2016 sets out that Mr. McCoy successfully completed 12 sessions of physiotherapy, which commenced on 15 November 2016. No date was provided for when the sessions ended.

23. In the initial valuation, Mr. McCoy had pain that was a 9/10 in his lumbar spine and had cervical impingement with symptoms radiating into the right upper extremity. However, post evaluation, Mr. McCoy responded very well to the prescribed regimen of physiotherapy. His pain dropped to 3/10 post treatment with 24hrs of relief before pain returns. The pain was rated 5/10 with exacerbation from prolonged positioning.

24. Mr. McCoy was then assigned a home exercise program and was recommended for continued physical therapy.

25. The **Third Report** dated 17th October, 2018 states that Mr. McCoy did 18 sessions of physiotherapy with much improvement with pain at a 1 or 2/10 ordinarily and a 4 or 5/10 after aggravation. A home exercise program and swimming and walking activities were assigned to Mr. McCoy. Mr. McCoy was also educated on management strategies and therapy discontinued.

26. The **Fourth Report** dated 12 December 2019 provides that upon evaluation, Mr. McCoy was spastic and acutely painful along the paraspinal muscles of the thoracic and lumbar spine with pain radiating into the lower extremities. The pain was characterized as sharp along the right thigh and gastric-soleus complex. Mr. McCoy reported pain level to be 8/10. However, after physiotherapy, Mr. McCoy was responding well to the regime. His high pain level decreased from 8/10 to 4/10. He was advised to do 12 sessions of physiotherapy to continue strengthening, improve neurodynamics and increase postural endurance.

Mr. Joseph McCoy

27. On 02 February 2023, Mr. McCoy filed the Witness Statement of Mr. Joseph McCoy which stood as his evidence in chief at trial ("**McCoy WS**"). The McCoy WS states that on 06 August 2015, Mr. McCoy was stationary when he was struck by Mr. Archer who was driving too fast. Mr. McCoy was hurled into the air and landed on his left side. He was briefly unconscious and was then transported to Doctors Hospital by ambulance.

28. Mr. McCoy was examined by Dr. Nigel Johnson ("**Dr. Johnson**") at Doctors Hospital's Accident and Emergency Department and was noted as having neck pain, lower back pain and right lower extremity pain. Dr. Johnson's report is included in Mr. McCoy's bundle of documents filed 25 August 2022 – "**Plaintiff's Bundle of Documents**"). He visited Dr. Charles Osazuwa ("**Dr. Osazuwa**") at

the Sea Grapes Medical Centre on 17 August 2015 due to pain in his left knee. A copy of Dr. Osazuwa's report is included in the Plaintiff's Bundle of Documents.

29. The McCoy WS further states in part that:

    i. due to the pain and swelling in his mouth, on 31 August 2015, Mr. McCoy attended Dr. Joyous Pickstock's clinic at Faith Dental Centre at #110 , Pickstock Plaza, Robinson Road;

    ii. Mr. McCoy then visited Dr. Johnson who later referred him to Dr. Magnus Ekedede ("**Dr. Ekedede**");

    iii. Mr. McCoy was examined by Dr. Ekedede who concluded that Mr. McCoy had multiple cervical disc prolapses especially at C3-C4, C4-C5, and C6-C7 as well as spondylosis after review of the MRI which Mr. McCoy had taken at Elite Imaging Aventura, Florida, USA. Mr. McCoy has continued seeing Dr. Ekedede and produced several reports from this physician in the Plaintiffs Bundle of Documents.

    iv. he was referred to Paramount Rehabilitative for therapy and the pain continued despite the sessions; and

    v. Mr. McCoy also saw Dr. Robert Gibson ("**Dr. Gibson**") on 02 September 2015 as a result of the pain which Mr. McCoy experienced in his knee resulting from the Accident, for which he was referred to therapy.

30. The McCoy WS also provides that:

    i. on 26 September 2015, Mr. McCoy attended Dr. Clyde Munnings ("**Dr. Munnings**") who requested an MRI;

    ii. on 26 November 2015, Dr. Gibson requested an MRI of Mr. McCoy's left knee, which was done at Open MRI;

    iii. on 15 November 2016, Mr. McCoy started seeing Mrs. Hanna and subsequently, started doing therapy at home;

    iv. Mr. McCoy states that he has not been able to work and continues to take medication as a result of the Accident.

Evidence for the Defendants

Dr. David N. Barnett

31. On 29 September 2020, the defendants filed the Witness Statement of Dr. David N. Barnett ("**Dr. Barnett**") which stood as his evidence in chief at trial ("**Barnett WS**"). Based on his credentials, he is accepted as an expert in Orthopedics and Orthopedic Surgery by this Court. According to the Barnett WS:

i. Dr. Barnett prepared a medical report in relation to this action which is exhibited to the Barnett WS;

ii. Dr. Barnett examined Mr. McCoy and provided other reports of his injuries and treatment course. His earlier reports are dated 05 January 2011, 16 July 2013 (before the Accident) and 19 December 2016 (after the Accident). The three reports are included in the Defendants' Bundle of Documents filed on 17 January 2020 – "**Defendants' Bundle of Documents**");

iii. he is very familiar with Mr. McCoy and has a good understanding of Mr. McCoy's chronic medical issues; and

iv. Dr. Barnett sets out Mr. McCoy's medical issues briefly in the recent report (prepared on 07 September 2020 and exhibited to the Barnett WS – "**Barnett Report**") as they are discussed in more detail in his earlier reports. Dr. Barnett has concluded that Mr. McCoy's chronic medical challenges are continuing.

32. The Barnett Report is quite comprehensive. Accordingly, I will only highlight the most salient parts of the report.

33. The Barnett Report ventured a synopsis of the Accident based upon information gathered after the same. The Doctor stated that Deangelo Sturrup (a medical technician summoned to the scene of the Accident), wrote a Prehospital Care Report which states that Mr. McCoy's chief complaint then was *"Pain to the right lower extremity ("RLE") and right upper extremity ("RUE")"*. The report further provided that: *"Patient stated history of symptoms this AM secondary to being struck from his motorcycle, while at a stop sign. Patient was said to have been rear-ended by a Sedan utilizing minimal speed. Patient denies head, neck and back pain"*.

34. Mr. McCoy was said to have high blood pressure and diabetes mellitus and that he was taking medication. At the comments section of the Prehospital Care Report, Mr. McCoy was said to be *"...ambulatory post incident... Compliant with the taking of his medications. History of cancer to pelvic region [prostate cancer] in remission since July 2015; currently on treatment..."*; Mr. McCoy complained of *"neck pain, lower back pain and right lower extremity pain etc..."*. The pain was described as being sharp, of intensity 5/10, but was not radiating from his neck and back into his extremities.

35. The Barnett Report further provides that: (i) upon Dr. Johnson's assessment of Mr. McCoy on the date of the Accident, Mr. McCoy stated he had: *"no headaches or other symptoms...[and] he was alert and orientated in time, place and person and was in no apparent cardiopulmonary distress"*. Dr. Johnson confirmed that Mr. McCoy' Glasgow Coma Scale normal at 15, in keeping with **a minor head injury**, if any; (ii) Mr. McCoy incorrectly stated that he had "*no previous trauma*", but did confirm that he had three other conditions (mentioned above).

36. Dr. Johnson wrote that Mr. McCoy had *no motor neurological deficits in his extremities, which were non-tender.* The doctor opined Mr. McCoy had a normal range of motion with no evidence of injury, except that he had a dried ulcer on the sole of his right big toe, which was bandaged with no active bleeding and no signs of infection. Dr. Johnson reiterated that the ulcer was pre-existent, when he wrote that it was ***"not from the Accident"***.

37. The Barnett Report further provides that Mr. McCoy's neck was fitted with a soft collar as a preventative measure at the scene of the Accident, until he was formally assessed by the treating physician when his neck appeared normal on inspection and in alignment. It was not tender, but stiff on motion, reflecting the known ongoing degeneration in this region. It was therefore determined that Mr. McCoy did not have a significant bony acute neck injury, and the collar was discarded.

38. Mr. McCoy's back appeared normal on inspection, but there was tenderness in his lumbar spinal region. After reviewing x-rays, Mr. McCoy was diagnosed as having (a) soft tissue injuries to his right lower extremity and lower back and a sprain of his cervical region. His management consisted of prescribing painkillers, muscle relaxants and antibiotics. His wounds were cleaned and dressed. Wound care follow-up consultations were done forty-eight hours later on 08 August 2015 and again on 14 August 2015. On the latter date, Dr. Johnson wrote that Mr. McCoy was much improved, but *"still [has] some extremity pain. He reports no tingling or numbness in the extremities."*

39. Mr. McCoy consulted on of his regular doctors, Dr. Osazuwa on 17 August 2015 where Dr. Osazuwa documents that Mr. McCoy was limping on painful knees, with the left being swollen for the past week. From this, Dr. Barnett concluded that the swelling of the knee was not related to the Accident.

40. Further, the Barnett Report provides: (i) upon examination, the left knee was said to be swollen, warm and tender with noises on motion. Mr. McCoy's history then was that he had also sustained injuries to his neck and bruises to his right foot/big toe. He also had abrasions/lacerations to his right lower leg and face at the left cheek. Dr. Osazuwa diagnosis then was a painful swelling of the left knee likely exacerbated by the motorbike accident. (ii) It was also revealed that Mr. McCoy had a degenerative joint disease, (osteoarthritis). Mr. McCoy was injected with a steroid, Depo-medrol and Marcaine, a long acting local anesthetic, an admixture for anti-inflammatory and pain relieving effects. Medication was also prescribed.

41. It is also opined by Dr. Barnett that the Alternative Treatment Plan selected by Mr. McCoy when he saw Dr. Pickstock would provide him with implants, which would be a benefit beyond what he had prior to the Accident. On 18 September 2015, Mr. McCoy was again seen by Dr. Johnson. In his past medical history the

plaintiff was known to have diabetes and hypertension, but nothing was mentioned of his multiple past accidents, injuries or treatments.

42. The Barnett Report also spoke to a report made by Dr. Ekedede on 20 January 2016 (which is not before the Court) documenting Mr. McCoy's treatment regimen with Dr. Ekedede. Dr. Ekedede concluded his report by stating that: "Mr. McCoy has completed his physiotherapy...continues to have moderate lower back and neck pains. I have advised him to proceed with lumbar spine and cervical spine surgery in the future...". Mr McCoy had a protracted history of spinal degenerative osteoarthritis for which he opted to be treated conservatively.

43. Dr. Barnett also discussed Mr. McCoy's past medical history which revealed the plaintiff suffered before the Accident from:

    a. extensive degeneration in his C and L/S spinal regions;

    b. on and off knee pain and decreased mobility for years with proven degenerative osteoarthritic changes with small osteophytes on both the femoral and tibial surfaces in both knees and crepitus (noise caused by irregular surfaces of degenerative cartilage scouring each other on motion);

    c. tendinitis of the left knee; and

    d. obesity, diabetes which was sub-optimally controlled, and he had hyperlipidemia (high blood levels of cholesterol and fat). ;

44. In the Barnett Report, he also noted that Mr. McCoy was involved in another road traffic accident on the 16 November 2007 when as a pedestrian he was knocked down and another on 28 December 2009, when he was an unrestrained driver whose vehicle was rear-ended. Dr. Osazuwa prepared a note on 06 December 2014 revealing that Mr. McCoy was ***"unable to operate his motor vehicle for commercial purposes since April 2014"***. This showed that Mr. McCoy was not working for some time prior to the Accident of August 2015.

45. The Opinion and Prognosis portion of the Barnett Report can be summarized as follows: (i) after examination of Mr. McCoy and bearing in mind the Accident, the acute soft tissue injuries from the Accident would have settled within 4 to 6 weeks after the Accident. The pre-existing degenerative osteoarthritis and diabetes mellitus are the disorders causing most of his discomfort in his spine and lower limbs, which continue to be treated conservatively and with medication. The soft tissue injuries as a consequence of the Accident were treated conservatively and appropriately and no further intervention is required. Any ongoing treatments are mainly as a consequence of his pre-existent disorders. The contribution to any future management of his degenerate spine, Dr. Barnett concludes, would not exceed 5% of the whole, as the apportioned blameworthiness that has a relationship to the Accident.

Submissions

Mr. McCoy's Submissions

46. Mr. McCoy's Counsel, Ms. Monique Gomez, submits that due to the negligence of the defendants, Mr. McCoy suffered injuries and loss. She asserts that Mr. Archer was driving at a high rate of speed and violently collided with Mr. McCoy, hurling him into the air and causing him to land on the ground some eight feet away from his motorcycle (which was also extensively damaged). He was seen by Dr. Johnson on the day of the Accident who noted that Mr. McCoy had the following injuries: (i) sharp pain to the neck, lower back pain and right lower extremity; (ii) pain secondary to being hit from the back while at a stop on his motorcycle; and slight dizziness with blurred vision but able to stand.

47. Further, Counsel submits that during a follow up visit with Dr. Johnson on 14 August 2015, Mr. McCoy was much improved but still experiencing pain. Counsel then asserts that Mr. McCoy visited Dr. Osazuwa on 17 August 2015, was examined by him and stated in his report that Mr. McCoy had painful swelling in his knee likely exacerbated by the Accident.

48. On 31 August 2015, Mr. McCoy then visited Dr. Pickstock and stated that Mr. McCoy had trauma to the upper left lateral incisor abutment and consequently loosening of existing upper anterior 3 unit fixed partial denture, which was noted to be as a result of the Accident.

49. Ms. Gomez submits that, during cross-examination, Dr. Pickstock gave the following evidence at page 42 lines 23-32 and page 43 at lines 1-8 of the court transcript:

> **"Well, seeing that he already just completed this extensive dental work done of what we call Crown and Bridge permanent work done. When we saw him, he told us that he was in an accident and he had been hospitalized for a few days. As a result of a motor vehicle accident, he didn't come in right away. So, when we saw him, of course he had a, his alveolus or the jawbone around the work we had just completed was destroyed. His bridge at that time was completely loose and several teeth were involved in this upper jaw…it mean that we had to start over and try to give him some other type of appliances that would be permanently fixated. And from that stage, you can only go up from that to – if it's gonna be fixated which is even more costly. But in the meantime, of course, we had to do something with him because he didn't ha[ve] any teeth at that time. He had lost those teeth."**

50. Counsel further discussed that Mr. McCoy had to undergo physiotherapy as a result of the Accident, and she referred to the evidence.

51. Counsel argued that the plaintiff's injuries were not exaggerated. She relies on a report by Dr. Robert L. Gibson dated 09 February 2016 which stated:

> **"[Mr. McCoy] had previous injuries with lumbar spondyloses and documented left hip labral injury with impingement. All injuries had been treated non-operatively and had resolved sufficiently to allow him to return to regular sustained employment."**

52. Essentially, Counsel submits that despite the pre-existing injuries, the defendants are still liable for the resulting injuries based on their negligence and should therefore pay damages to Mr. McCoy. Ms Gomez argues that the defendants must take the plaintiff as they found him. Further, they ought reasonably to have foreseen that as a result of their tortious actions the plaintiff would require medical treatment, and they are liable for such treatment. Counsel relies upon the authorities of **Robinson v Post Office and Another (1974) 2 All ER 737** (per Orr LJ at page 750) and **Forbes v Smith (2009) 1 BHS J No. 18.**

53. With respect to general damages, Counsel cites paragraph 17 of **Shorn Scott (A.K.A. Shawn Scott) v Attorney General and another (Respondents) (Bahamas) 2017 UKPC 15 Privy Council Appeal No. 0042 of 2016 ("Scott")** where Lord Kerr opined:

> **"General damages must be compensatory. They must be fair in the sense of being fair for the claimant to receive and fair for the defendant to be required to pay – Armsworth v South Eastern Railway Co (2) (1847) 11 Jur at p 760."**

54. Counsel argues that, Mr. McCoy should be awarded $65,000.00 for pain and suffering and, based on the Judicial College Guidelines (which was not provided as an authority for the Court's review), he ought to be awarded the following additional damages:

"i. Neck injury	**£ 7,410.00**
ii. Knee injury	**£22,430.00**
iii. Damage to teeth	**£10,710.00"**

55. In relation to the loss of income claim, Ms. Gomez conceded that there was no documentary evidence of Mr. McCoy's income placed into evidence. However, she relies on the case of **Automotive & Industrial Distributors Ltd. v Daphne Omerod BS 2003 CA 14 ("Omerod")** where Osadebay JA made the following pronouncements at paragraph 47:

> **"As I understand those decisions, where there is credible evidence of an amount of lost earnings, whether it be by way of profit, dividends or lost wages/salary, the fact that there is no documentary evidence to show the exact sum lost will not deter the Court from making a reasonable assessment of such loss based on facts which it accepts as having been proven on a preponderance of probabilities."**

56. Relying on ***Omerod***, Mr. McCoy's Counsel asserts that Mr. McCoy, prior to the Accident, he drove his bus sometimes five days and sometimes six days a week. His income from his bus at page 21 line 23-26 of the Court Transcript reads:

"The income from the bus was like $350.00, $320.00. But some days you only make like about $220.00, $230.00 on a rough day. But the regular...about $350.00 or something like that."

57. Counsel then draws the Court's attention to the Privy Council decision of **Peter Seepersad v Theophilus Persad and Capital Insurance Limited (2004) UKPC 19 ("Persad")**. There, the Court estimated the income of the appellant, a taxi driver, based on figures placed in evidence at the trial and making allowances in the process. The estimated figure that the Court of Appeal settled on was increased by the Privy Council.

58. Counsel asserts that $90,000.00 is the total sum which Mr. McCoy should be awarded for loss of income.

59. With respect to special damages, Counsel relies on the evidence furnished at trial and the calculation as provided in the Writ. Counsel then states that Mr. McCoy ought to be awarded the following:

"PARTICULARS OF SPECIAL DAMAGES AND LOSS

1.	**Doctor's Hospital 6th August, 2015**	**$1,380.99**
2.	**Paramount Rehabilitation & Fitness Company**	**$1,250.95**
3.	**The Prescription Parlour**	**$ 26.51**
4.	**Docs Pharmacy Ltd**	**$ 30.00**
5.	**Elite Imaging**	**$ 50.00**
6.	**Dr. Charles Osazuwa**	**$ 480.00**
7.	**Doctor's Hospital 15th May 2016**	**$ 292.40**
8.	**Anesthesia Services**	**$ 430.00**
9.	**Medical Report**	**$ 450.00**
10.	**Dental Expenses**	**$2,650.00**
11.	**Plaintiff's loss of earnings**	**$90,000.00**
	TOTAL	**$97,040.85"**

49. Counsel concludes by requesting the Court to grant interest on the special damages at the rate of 5% from 03 August 2015 to the date of trial and interest on general damages at the rate of interest at 2% from the issuance of the Writ to the date of trial.

The Defendants' Submissions

50. Counsel for the defendants, Mr. Raynard Rigby KC, submits that Mr. McCoy did not discharge the burden of proof placed upon him at the trial. He further asserts

that it is incumbent upon Mr. McCoy to prove his claim, as set out in his Writ, on a balance of probabilities.

51. Counsel then cites **sections 82 to 84 of the Evidence Act, 1996 ("Evidence Act")** as to the burden of proof on parties to litigation. The burden of proof is placed on a claimant in a civil action to prove on a balance of probabilities the claims he alleges in the Writ of Summons and Statement of Claim.

52. Mr. Rigby KC also refers to the case of **Colco Electric Co. v. Gold Circle Co. [2003] BHS I. No. 53** where Lyons J opined in relation to the burden of proof in civil cases:

> **"16 A court can only act on evidence. The law, as in the case authority, is useless without the necessary evidence having been led to enable a case to be of relevance. Cases are distinguished on the facts. It is logical thus, that facts (or evidence) determines cases not some previous case authority in isolation...**
>
> **39 The question of where the burden of proof lies in civil cases was succinctly answered by Walsh JA in Currie v. Dempsey (1967) 2 NSWR 532. His Honour said at pp 539:**
>
> > **"... the burden of proof lies on a plaintiff, if the fact alleged (whether affirmative or negative in form) is an essential element in his cause of action, that is, if its existence is a condition precedent to his right to maintain an action. The onus is on the defendant, if the allegation is not a denial of an essential in the cause of action, but is one which, if established, will constitute a good defence, that is, an "avoidance" of a claim which, prima facie, the plaintiffhas".**
>
> **40 Thus, in a civil case. the plaintiffhas the onus of proving its case. If, however, the defendant asserts that the plaintiff, having proven its case, owed a duty to the defendant which the plaintiff breached, it is for the defendant (who asserts this breach) to prove it. Sections 82 to 89 inclusive of the Evidence Act are instructive."**

53. Counsel for the defendants contends that Mr. McCoy failed to establish by adducing cogent and reliable evidence that the accident caused the injuries that he allegedly sustained. He further submits that Mr. McCoy ought to have called direct evidence by a treating physician to confirm that he in fact sustained the injuries that he alleged in the Writ. Counsel submits, Mr. McCoy was required to show by direct evidence, his medical state prior to and after the Accident, thereby drawing a direct conclusion that the injuries were caused by the Accident. This was especially required where the defendants were asserting that Mr. McCoy had pre-existing injuries and exaggerated his injuries purportedly resulting from the Accident.

54. The defendants' Counsel asserts that the evidence adduced at trial proves that Mr. McCoy did not suffer any serious injury from the Accident and had pre-

existing injuries. Based on the evidence, Counsel submits that the below summarizes all of Mr. McCoy's injuries which existed prior to the Accident:

1. Due to an accident in November 2007 when he was hit by the door of a passing ambulance – Mr. McCoy developed traumatic bulging discs in the neck and lower back causing radiating pain occasionally and difficulty walking....Despite treatment, pain is still experienced;

2. 19 November 2007 – Mr. McCoy was diagnosed with cervical strain/radiculopathy, secondary bulging discs at C4, 5 and C5,6; a closed head injury with cerebral concussion and post concussive syndrome; low back pain syndrome, secondary to lumbosacral strain and lumbosacral radiculopathy; and traumatic neuropathy and polyneuropathy.

3. 20 November 2007 – Mr. McCoy had a mild discogenic disease of the cervical spine and the lumbar spine has a moderate amount of degenerative disease with L5-S1 stenosis.

4. Dr. Clyde Munnings own 13 March 2008 and 17 October 2008 concluded Mr. McCoy had continued to have severe pain in the center of his back, neck, head, waist, left thigh and both feet were numb and both hands were numb; mild left sided foraminal compromise at C4 and C5, 6, worst at the C5 6 level. There was straightening of the cervical lordosis which indicated cervical muscle spasms.

5. Mr. McCoy was in an accident on 28 December 2009 when he was rear ended. He was left with bruised soft tissue in the spine which occurred in milieu of degeneration in his spinal regions.

6. A report by Dr. Jimmy Abubakar dated 02 April 2013 concluded that Mr. McCoy continues to experience pain in neck, shoulder arm, low back and legs with increasing knee pain causing difficulty meeting his day to day activities. Mr. McCoy also has multiple degenerative changes in both the upper and lower extremities.

55. Counsel also highlights the fact that Mr. McCoy made several admissions during testimony. He admitted that he had pre-existing injuries in his knee, neck and back. Counsel references examples at page 4 at lines 22 to 27 of the Court Transcript where Mr. McCoy admitted he had fluid in his knee which caused pain and on page 7 at lines 8 to 13 of the Court Transcript where Mr. McCoy admits he had issues with his back, neck and shoulder prior to the Accident). Further, Counsel refers to Mrs. Hanna's testimony (at page 36 of the Court

Transcript) where she stated Mr. McCoy had a history of pre-existing lumbar, thoracic and cervical issues.

56. Mr. Rigby KC further asserts that the injuries suffered by Mr. McCoy were minor. He relies on the medical evidence provided by Dr. Barnett during his cross examination where he stated (on page 51 to 52 of the court transcript):

> **"Q. How would you characterize the injuries that he sustained in the accident in August 2015? Were they life threatening, were they severe, were they serious or minor? How would you describe them out of that category?**
>
> **"A. Let me go to the next paragraph. I think I addressed that point there. I said his diagnosis: "The injuries suffered were superimposed on the severe long lasting and on-going degenerative arthritis. However, none of the injuries were limb or life-threatening, thus, they fall to be classified as being minor..."**

57. Additionally, on page 60 of the Court Transcript, Dr. Barnett testified as follows during his cross-examination:

> **"A. That's Dr. Osazuwa. He said there that Mr. McCoy had a painful and swollen left knee which he injected – ...the mixture ... was the same drugs which I would have clarified earlier in my report. But the medication lessened his pain of his on-going injuries which was on-going in the knee joint. He saw him in April 2015. The said knee was painful and grossly swollen, prevented him from walking any distance."**

58. The defendants assert that the Court should categorize or define Mr. McCoy's injuries as minor flowing from the Accident and should accept the evidence of Dr. David Barnett.

59. Mr. Rigby KC goes on to address Mr. McCoy's claim for special damages. He submits that it is trite law that special damages are to be sufficiently pleaded and proven (**Russell v Simms et al. 2008/CLE/gen/00440 ("Simms")**).

60. Counsel references the specifically pleaded special damages contained in Mr. McCoy's Writ where Mr. McCoy pleads a total of $7,040.85 in special damages.Counsel concedes and agrees that the following expenses are recoverable:

The Prescription Parlous	$26.51
Docs Pharmacy Ltd	$30.00
Elite Imaging	$50.00
Dr. Charles Osazuwa	$480.00
Doctor's Hospital 5/15/16	$292.40
Medical Report	$450.00
Dental Expenses	$2,650.00
TOTAL	**$3,978.91**

61. In respect of the disputed sum, Counsel invites the Court to award $0 for the claim for special damages for the Doctors Hospital visit on 06 August 2015, and Paramount Rehabilitation and Anesthesia Services on the basis that none of these were strictly proven.

62. On the $90,000.00 claim for loss of income, Counsel asserts that such claim is for special damages, which must be specifically pleaded and strictly proven (See **Trudy-Ann Silent-Hyatt V Rohan Marley Jason Walters [2021] JMSC Civ. 52**). He submits that Mr. McCoy has not produced any evidence to support him being awarded damages under this head. Counsel further asserts that, although Mr. McCoy did claim loss of earnings in his Writ, he did not sufficiently particularize his claim under this head in any of his pleadings. He gave no details for the time period of the loss nor did he give any indication of how much he made before the Accident.

63. At trial, Mr. McCoy was asked about his state of employment after the Accident. At pages 13 to 19 of the Court Transcript, the following was revealed in evidence:

> **"Q. What kind of work were you doing prior to August 2015?**
>
> **A. I'm a bus operator. I own buses and I was driving a bus. But after the accident, I wasn't able to drive the bus. So, I got a taxi and sometimes I drive the taxi. But after my bulging and nerves and things start – you see my hand, it's because of the nerves. You see sinks in it. The nerves, the bulging and everything I just take it easy.**
>
> **Q. This is after August 2015 you took it easy or before?**
>
> **A. After. Before like I say, I was driving the bus.**
>
> **Q. You were driving the bus?**
>
> **A. Before August 2015.**
>
> **Q. Before August 2015. And then you start to drive a taxi when?**
>
> **A. I just recently got a taxi plate from the government.**
>
> **Q. What is recent? In a year, two years, three years, four years, ten years? What is recent?**
>
> **A. That would have been two and a half years I been driving but I just recently got my own plate.**
>
> **Q. So, you recently got your own plate two and a half years ago.**
>
> **A. No. I recently got it just – about three months ago."**

64. Counsel asserts that during Mr. McCoy's cross-examination that he admitted to driving as recently as February 2023, and that he had other taxi drivers whom he employed after the Accident.

65. Mr. McCoy admitted under cross-examination that he eventually stopped managing a bus service, and gave up the taxi plates sometime after the Accident. Mr. Rigby KC, asserts that this evidence proves Mr. McCoy was a bus driver prior to the Accident and invites the Court to find that there is no difference between driving a bus and taxi and therefore it is clear that, despite being in an accident in 2015, Mr. McCoy was able to drive a vehicle to earn a living. Therefore, Counsel contends that the totality of the evidence does not prove or support Mr. McCoy's claim for damages for loss of income. The evidence supports a finding that Mr. McCoy did not lose income from the Accident because he still had the capacity to drive and he had other drivers.

66. On the issue of mitigation, Counsel submits that Mr. McCoy failed to mitigate his loss of income by hiring additional drivers or leasing the buses or taxi. He relies on the case of **National Transport Co-Operative Society Ltd v The Attorney General (unreported), Supreme Court Jamaica, Claim No 2003HCB0169** and to a relevant passage from that judgment which, in part, is:

> **"[50] The innocent party must therefore take all reasonable steps to mitigate the loss flowing from the defendant's wrong and he will not be allowed to recover damages in respect of any part of his loss which is really due not to the breach."**

67. Counsel submits that it is clear that the defendants cannot be held liable for any losses that Mr. McCoy experienced due to his own failure to take reasonable steps to mitigate his losses.

68. In assessing general damages, Counsel asserts that the guiding principle stated by Blackburn J in **Livingstone v Rawyards Coal Co. [1880] 5 Appeal Case 25**, was that the measure of damages is the sum of money which will put the injured party in the same position as he would have been in if he had not sustained the loss. The defendants argue that the Court should not award more than $10,000 for Pain, Suffering and Loss of Amenities ("**PSLA**") because Mr. McCoy only sustained minor injuries as a result of the Accident. The Court is urged by the defendant to calculate what would be a reasonable total award taking into consideration the total injury to a plaintiff. He relies on the case of **Symonette v Turnquest (2008/CLE/gen/01877)**.

69. Counsel then addresses the alleged exaggeration of the claim. He submits that Mr. McCoy's case is largely exaggerated given, inter alia, (i) the decision of Winder J (as he then was) in the case of **McCoy v Williams and Another** [2014] 1 BHS J. No. 112; (ii) the fact that Mr. McCoy had a long history of degenerative disease in his neck and back; (iii) Mr. McCoy had a pre-existing

knee injury; and (iv) because Mr. McCoy was undergoing work to his mouth prior to the Accident.

70. The defendants' Counsel then provided the case of **Yvonne Hazel Painting v University of Oxford [2005] EWCA Civ 161 ("University of Oxford")** to buttress the proposition that the defendants should be awarded costs in this case due to the plaintiff's alleged exaggeration of his claim. Counsel further asserts that, due to the exaggeration of the claim, Mr. McCoy should only be awarded nominal damages (**O'Connell v Marin: Ali v Martin [2019] IEHC 571**).

Discussion and Analysis

Issues 1 and 2: Liability for Negligence

71. Negligence is a well-known form of tort law that the Courts have dealt with time and time again. The tort of negligence first came before the Court in the landmark decision of ***Donoghue v. Stevenson [1932] A.C. 562***. The case involved Mrs. Donoghue who consumed a bottle of ginger beer and, upon finishing the bottle, discovered a decomposed snail at the bottom of it. She claimed that she became ill as a result and sued the manufacturer, Mr. Stevenson. The House of Lords held that Mr. Stevenson owed his consumers a duty of care to ensure that their products were safe to consume and that Mrs. Donoghue's illness was a reasonably foreseeable consequence of Mr. Stevenson's breach of duty of care. The case encapsulates the law of negligence.

72. Charles J (as she then was) provides a useful discourse on the law of negligence in our jurisdiction in the case of **Angeline Turnquest v Stephen Rahming [2022] 1 BHS J No 8** ("**Turnquest**") where the learned judge opined:

> **"The law of Negligence**
> **8 In The Attorney General v Craig Hartwell [2004] UKPC 12, Lord Nicholls of Birkenhead, in delivering the judgment of the Privy Council, on negligence, stated at para 20:**
>
> > **"Negligence as a basis of liability is founded on the impersonal ("objective") standard of how a reasonable person should have acted in the circumstances. Shortfall from this standard of conduct does not always give rise to legal liability. In order to elucidate the circumstances in which shortfall will give rise to liability the courts have fashioned several concepts, such as "duty of care". This familiar phrase is legal shorthand. Expressed more fully, a duty of care is a duty owed in law by one person or class of persons to another particular person or class of persons. The duty comprises an obligation to take reasonable care to ensure that the person or persons to whom the duty is owed do not suffer a particular type or types of damage. Thus drivers of cars owe, among other duties, a duty to other road users to take reasonable care to avoid inflicting personal injury on the latter."**

9 Put another way, in the tort of negligence, liability is based on the conduct of the defendant and has three elements namely:

1. The existence of a duty of care situation (i.e. one in which the law attaches liability to carelessness). There has to be a recognition by law that the careless infliction of the kind of damage complained of on the class of person to which the plaintiff belongs by the class of person to which the defendant belongs is actionable;

2. Breach of the duty of care by the defendant, i.e. he failed to measure up to the standard set by law; and

3. A causal connection between the defendant's careless conduct and the damage.

Existence of a duty of care
10 On the existence of a duty of care, Lord Nicholls in Craig Hartwell [supra], at para 21 said:

> **"Speaking generally, one of the necessary prerequisites for the existence of a duty of care is foresight that carelessness on the part of the defendant may cause damage of a particular kind to the plaintiff. Was it reasonably foreseeable that, failing the exercise of reasonable care, harm of the relevant description might be suffered by the plaintiff or members of a class including the plaintiff? "Might be suffered" embraces a wide range of degrees of possibility, from the highly probable to the possible but highly improbable. Bearing in mind that the underlying concept is fairness and reasonableness, the degree of likelihood needed to satisfy this prerequisite depends upon the circumstances of the case. Reasonable foreseeability does not denote a fixed point on the scale of probability: see Lord Hoffmann in Jolley v Sutton London Borough Council [2000] 1 WLR 1082 1091. There must be reasonable foreseeability of a risk which a reasonable person would not ignore. The risk must be "real" in the sense that a reasonable person "would not brush [it] aside as far-fetched": see Lord Reid in Overseas Tankship (UK) Ltd v Miller Steamship Co Pty (The Wagon Mound No 2) [1967] 1 AC 617, 643. As the possible adverse consequences of carelessness increase in seriousness, so will a lesser degree of likelihood of occurrence suffice to satisfy the test of reasonable foreseeability."** (Emphasis added).

11 In short, a duty of care will be owed wherever, in the circumstances, it is foreseeable that if the defendant does not exercise due care, the plaintiff will be harmed.

Breach of the duty of care/ Burden of proof

12 A defendant will be regarded as having breached his duty of care if his conduct falls below the standard required by law. The standard normally set is that of a reasonable and prudent man. In Blyth v Birmingham Water Works [1856] 11 Exch. 781 at 784, Anderson B said:

> **"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."**

> **13 Whether the defendant's conduct has been negligent is determined by the risk factor which takes into account (i) the likelihood of harm; (ii) the seriousness of that; (iii) the importance and utility of the defendant's conduct; and (iv) the practicability of taking precautions."**

73. Accordingly, Mr. McCoy would need to prove: (i) the defendants owed him a duty of care, (ii) the duty of care was breached, (iii) the breach caused Mr. McCoy to sustain damage, and (iv) the damage was reasonably foreseeable.

74. It is not in dispute that the defendants owed Mr. McCoy (and all other road users) a duty of care when operating a motor vehicle on the road.

75. Next, applying the principles set out at paragraphs 12 and 13 of ***Turnquest*** to the instant case, the Court is of the view that the reasonable and prudent man would ensure that he was driving cautiously while behind the wheel in an effort to avoid and minimize any harm to other road users. The direct evidence before the Court as to the facts of the Accident was provided by the plaintiff and have been accepted by this Court. These have not been disproved by direct evidence from the defendants. Further, according to the Police Report dated 20 August 2015 (provided by the parties) Mr. Archer was charged with *"Driving Without due care and attention contrary to section 46 of the Road Traffic Act Chapter 220".* Nowhere in the report is any fault or liability attributed to Mr. McCoy. Accordingly, Mr. Archer was documented as the individual solely responsible for the Accident, and by Mr McCoy's uncontroverted testimony as to how the Accident occurred, the Court accepts that this is so. The defendants have not provided any evidence refuting this Police Report which is produced in their documents. Therefore, I am satisfied that Mr. Archer was in breach of the duty of care owed to Mr. McCoy at the time of the Accident.

76. I turn to whether the breach of duty caused injuries to Mr. McCoy. According to the Pickstock WS, Dr. Pickstock notes that the trauma to Mr. McCoy's mouth was consistent with the Accident. Under cross-examination, Dr. Pickstock confirmed that Mr. McCoy's jawbone was injured. She also confirmed that Mr. McCoy had damage to about six to eight teeth. In fact, in her testimony, Dr. Pickstock said that Mr. McCoy's *"alveolus or the jawbone around the work we had just completed was destroyed. His bridge at that time was completely loose* (page 42 at lines 29 to 32 of the Court Transcript)."

77. Dr. Picktock also confirmed under cross examination that a root canal was required as a consequence of the Accident (page 44, lines 22 to 24 of the Court Transcript). I found Dr. Pickstock to be an honest witness. She remained resolute in her testimony during cross examination and her testimony is consistent with her witness statement. Accordingly, I will rely on her evidence.

78. Dr. Barnett also admitted during his examination, that Mr. McCoy did suffer injuries as a result of the Accident, but categorizes the injuries as "minor". (See Court Transcript page 55 at lines 4 to 5). Of note was when Mr. Rigby KC asked if there was any new injuries suffered by Mr. McCoy as a result of the Accident. Dr. Barnett said: *"Yes. It did."* (See page 53 at line 8 of the Court Transcript). Counsel for the defendant pointed out (at page 5, paragraph 23 of the Closing Submissions of the defendant) that Dr. Barnett stated that Mr. McCoy suffered "trauma to his upper jaw in a milieu with a previous 3 unit fixed partial denture." He also stated that Dr. Osazuwa's final diagnosis of Mr. McCoy was that the painful swelling of Mr. McCoy's knee was likely exacerbated by the Accident (page 62 at lines 15 to 19 Court Transcript).

79. I found Dr. Barnett to be a knowledgeable and believable witness. Similar to Dr. Pickstock, he also remained resolute in his testimony and remained consistent in his witness statement. I also rely on his evidence.

80. Based on the foregoing, I am satisfied that Mr. McCoy has made the necessary nexus between the Accident and resulting injuries and that such injuries were reasonably foreseeable. I note that the defendants' Counsel's reference to sections 82 to 84 of the Evidence Act and that Mr. McCoy failed to discharge his burden of proof. I do not agree with this submission. Based on Mr McCoy's testimony, the Police Report tendered into evidence, along with the aforementioned testimony of Dr. Pickstock and Dr. Barnett, it is quite clear that Mr. Archer was negligent when driving at the time of the Accident and it caused Mr. McCoy to suffer injuries to his jaw and teeth, and exacerbation of other pre-existent injuries.

81. I must now turn to whether AMS is liable in negligence. This requires reviewing the law with respect to vicarious liability. The law of vicarious liability was explored in the case of **Claudia Edwards Bethel v The Attorney General of the Bahamas 2015/CLE/gen/00245** where Charles Snr. J (as she then was) opined:

> **"Vicarious liability**
> **158 Vicarious liability is a principle of strict liability. It is a liability for a tort committed by an employee not based on any fault of an employer. There may, of course, be cases of vicarious liability where employers were at fault. But this is not a requirement.**
>
> **159 It is well-established that an employer is only vicariously liable for his servant's tort if the tort was committed during the course of his employment. According to Winfield and Jolowicz, Tort 15 th edn, 1998, a tort comes within the course of a servant's employment if: (i) it is expressly or impliedly authorised by his master, or (ii) it is an unauthorised manner of doing something authorised by his master, or (iii) it is necessarily incidental to something which the servant is employed to do."**

82. On the evidence, AMS was the owner of the vehicle which Mr. Archer was driving. This is not in dispute. Although no evidence was led regarding Mr. Archer's employment with AMS, an agency relationship as between the defendants was expressly pleaded. In the Writ at paragraph 1, Mr. Archer is referred to as the "***servant or agent of the 2nd Defendant***" and it is alleged he ***"so negligently [drove] the 2nd Defendant['s] 1999 Toyota Corolla motor-car along the said Palmdale Avenue at the Junction of Palmdale Avenue and Rosetta Street that it collided into the Plaintiff['s] motorcycle***". Neither in their Defence nor in the evidence did the defendants deny the averments of the plaintiff that Mr Archer is employed by AMS and drove its car at the material time. Therefore, the Court accepts this as uncontroverted fact.

83. The actions of Mr. Archer can be attributed to AMS as he was acting as agent (or servant) of AMS, while driving AMS's car and was at fault for the Accident. It can be gleaned from the pleadings and the accepted facts that the vehicle Mr. Archer drove at the time of the Accident not only belonged to AMS, but was being driven in the course of his employment or agency when the Accident occurred. I find, in these circumstances, that AMS was vicariously liable for the Accident.

84. Accordingly, I also find, for the reasons stated, that Mr. McCoy has proven the negligence of both defendants which resulted in his injuries.
85. With respect to Mr. McCoy's culpability for (or alleged contribution to) the Accident, in light of the evidence already accepted by the Court I find no fault attributable to the plaintiff for the Accident or his injuries. The Court notes as well that in the evidence led, it was confirmed Mr. McCoy wore his helmet at the time of the Accident, thus evidencing he took steps to ensure his own safety.

Issue 3: Mitigation of Losses by Plaintiff

86. Mitigation of loss within the context of a personal injury claim was discussed in the Bahamian Court of Appeal decision of **Eldon Johnson v Devaughn Brown and Pinder's Customs Brokerage Ltd SCCivApp No. 107 of 2015**. The facts of the case are quite similar to the instant case. There, the appellant suffered personal injuries when the motorcycle he was driving collided with a vehicle owned by the second respondent and driven by the first respondent. Liability was admitted and the matter proceeded to an assessment of damages. The appellant was awarded $31,638.17 (which encapsulated PSLA and special damages). Dissatisfied with the amount awarded, the appellant appealed the decision on the basis that the quantum awarded was "inconceivably low".

87. The Court dismissed the appeal and made the following pronouncements (in relation to mitigation of losses):

> **"17.As is well known, the mitigation principle requires the innocent party, following the defendant's breach, to take reasonable steps to avoid or**

reduce the loss flowing from the breach, failing which he will be unable to hold the defendant responsible for that part of the loss which is attributable to his failure to do so. Although most of the authorities on the duty to mitigate relate to contractual breach, the broad principles are equally applicable to tort, and in particular to actions for personal injury. Furthermore, what is reasonable is a question of fact in each case. See 18th Edition, Winfield & Jolowicz, "Tort" paragraphs 22-17 and 22-34.

18.In the light of the foregoing, the learned judge was, in our view, entitled to reach the conclusions which he did at paragraph 14 of his judgment that the hasty closure of the car dealership business had been unreasonable and unwarranted. Before arriving at his conclusion as to the unreasonableness of the appellant's decision to close the Truck City business, the judge adverted to the evidence which the appellant himself gave under cross-examination in the court below. As appears from paragraph 13 of his judgment, the learned judge found instructive the appellant's testimony, inter alia, that he closed the car dealership because he "couldn't handle the business anymore, because of my sickness and the overdraft was going crazy…I couldn't handle it anymore. I had to close it down."

19. In the face of the appellant's own testimony as to the real reason why he had closed the business down, the learned judge could not be faulted for reaching the conclusion which he did at paragraph 14 of his judgment, that the losses from Truck City, were unreasonably incurred and too remote to have been incurred as a result of the injury. At paragraph 14 of the written judgment the judge expressly found that if the Truck City business was as viable as the appellant suggested, the appellant could have hired assistance to run the business in the interim whilst he was incapacitated. We agree with the learned judge that hiring assistance to run the business would have been a more reasonable means of mitigating any loss which he perceived would have flowed from the respondents" negligence. In the circumstances, we found no error of law or of fact in the judge's conclusions and both these grounds must also fail." (Emphasis added).

88. I found Mr. McCoy's testimony mostly believable. There were instances where he contradicted his own evidence. However, most of his evidence appeared trustworthy. I will therefore, rely on the evidence I found compelling. During Mr. McCoy's testimony, he revealed that due to his injuries, he was unable to manage his bus and taxi service business. He admitted that: (i) he sold one of his buses (page 17 at lines 17 to 18 of the Court Transcript); (ii) one was left in a body shop on Carmichael Road (page 17 at lines 20 to 21 of Court Transcript); (iii) one had "rotted down" (page 17 lines 25 to 28 of the Court Transcript) and (iv) that he had to let go of a bus driver (page 16 lines 29 to 31 of the Court Transcript). Mr. McCoy also admitted during cross-examination that he had another driver, but that he let him go because he stopped bringing in money (page 16 at lines 29 to 31 of Court Transcript).

89. Mr. McCoy admitted that he returned all license plates that he was renting (save and except one) after the Accident (page 19 at lines 1 to 10). In addition, Mr. McCoy stated that he let 3 drivers go because it had all become too much to manage (page 17 at lines 10 to 16 of Court Transcript).

90. Based on the foregoing, on this issue of mitigation of loss, I am not satisfied that Mr. McCoy mitigated his losses. He was duty bound to do so – particularly with losses which could have been avoided i.e. loss of earnings. He sold one bus, which, in my judgment, is not sufficient to discharge his duty to mitigate. He could have done more. It is apparent that he did not attempt to lease his buses, taxis or the license plate he retained. Moreover, it was clear that Mr. McCoy did not attempt to replace his drivers with others to lessen his losses. He seemed to have forsaken his source of income altogether (save and except a few instances when he felt well enough to drive to collect some fares) by letting his bus and taxi service diminish and fade away.

91. On that basis, I find that Mr. McCoy has not mitigated losses and I shall make such necessary reductions under the damages heading of this judgment.

Issue 4: Entitlement to Damages & Quantum

Special Damages

92. The principles governing special damages are clear and agreed by the Parties – special damages must be specifically pleaded and proven. I rely on the ***Simms*** case as mentioned by the defendants' Counsel for such a proposition.

93. According to the Writ, Mr. McCoy pleaded the following special damages:

"1. Doctor's Hospital 6th August, 2015		**$1,380.99**
2. Paramount Rehabilitation & Fitness Company		**$1,250.95**
3. The Prescription Parlour		**$ 26.51**
4. Docs Pharmacy Ltd.		**$ 30.00**
5. Elite Imaging		**$ 50.00**
6. Dr. Charles Osazuwa		**$ 480.00**
7. Doctor's Hospital [15th May, 2016]		**$ 292.40**
8. Anesthesia Services		**$ 430.00**
9. Medical Report		**$ 450.00**
10. Dental Expenses		**$2,650.00**
	TOTAL	**$7,040.85"**

94. I agree with the defendants that there are several discrepancies with certain invoices or receipts and pleadings under special damages which Mr. McCoy did not properly detail or explain. I will go through each discrepancy. All tab references below are with respect to the plaintiff's Bundle of Documents for trial. Such discrepancies include:

- **The medical report of Dr. Pickstock at Tab 7**: I agree with the defendants that it is just that, a medical report. There is no invoice or receipt evidencing the cost for such a report. Accordingly, I will disallow such costs.

- **The Treatment Progress Report of Dr. Pickstock at Tab 12**: As the defendants state, these are merely estimates of costs. Receipts or invoices evidencing payment are required to prove such costs. Consequently, I also disallow those costs.

- **The transaction summary from Paramount Rehabilitation and Fitness Company at Tab 21**: This document shows a history of payments made by Mr. McCoy during varying dates between 22 October 2015 and 27 June 2016. It is unclear if these expenses are all related to the Accident, further, it is not clear what total amount Mr. McCoy paid. As the defendants said, it is not clear that such expenses flowed from the Accident. I am, therefore constrained and must disallow this expense.

- **Invoices from Doctors Hospital at Tab 23 and 31**: I have calculated such expenses to amount to $18,552.78. Mr. McCoy, however, has only pleaded a total figure of $1,673.39 for his time at Doctors Hospital. Litigants are bound by their pleadings. Further, no application had been made to amend the pleadings to adjust the figure for Doctors Hospital expenses. I will accordingly only award $1,673.39.

- **Cost of Knee Replacement at Tab 32**: This is a quote provided by Dr. Dane Bowe in relation to costs for a knee replacement. The cost is $40,000.00. No evidence was provided confirming that the need for a knee replacement was directly caused by the Accident. Furthermore, costs for the knee replacement surgery were not pleaded by Mr. McCoy. As such, this sum is also disallowed.

- There is no evidence for the sums pleaded for Elite Imaging, or Dr. Charles Osazuwa. Further, there is only a quote for Anesthesia services, which does not evidence payment. Accordingly, such costs are disallowed.

95. Mr. McCoy has provided receipts for various prescriptions (totaling $393.95), which I accept, along with the costs associated with dental work. The defendants sought to challenge the costs associated with the dental work as their Counsel submits that it is unclear if such costs are directly as a result of the Accident. I, however, do not agree. Dr. Pickstock, during her cross-examination, made it clear that there was damage to Mr. McCoy's mouth resulting from the Accident and that she attended to such dental treatment required. Accordingly, I will allow such expenses to be recovered as evidenced both by Dr. Pickstock's testimony and the invoice provided by Mr. McCoy in the amount of $2,650.00.

96. I now address the pleading of loss of income. In the case of **Automotive & Industrial Distributors Ltd v Omerod BS 2003 CA 14**, the Bahamian Court of Appeal had to determine whether, *inter alia*, an award for loss of income was reasonable. It was within the context of a personal injury action (slip and fall)

where the respondent (the plaintiff who was self-employed and successful at trial at first instance) was awarded $48,000.00 for loss of income. The appellant appealed that sum on the basis that the evidence in relation to same was vague, not quantifiable and did not substantiate the sum awarded. With respect to that aspect of the appeal, the Court found:

> **"47...where there is credible evidence of an amount of lost earnings, whether it be by way of profit, dividends or lost wages or salary, the fact that there is no documentary evidence to show the exact sum lost will not deter the Court from making a reasonable assessment of such loss based on facts which it accepts as having been proven on a preponderance of probabilities.**
>
> **48 In other words, while a plaintiff is entitled to damages for the loss of his earning capacity resulting from his injury - and this includes earnings already lost between the date of the injury and the time of trial - and prospective loss of earnings for the foreseeable future, the rules of procedure require that past loss be pleaded as special damage and future loss as general damage. The Court must therefore take account of relevant changes of circumstances that occurred before judgment, and those that are likely to occur after judgment Past loss of earnings is a matter of reality while future loss of earnings is a matter of estimate – see e.g. sections 1537-1545 of McGregor on Damages 16th Edition.**
>
> **49 The factors which the learned judge was required to take into account in assessing the respondent's past loss of income were any actual figures which she produced, any medical evidence about the extent and duration of her incapacity, the extent of the diminution of her business's profitability in the year before the accident, any deductions which would have to be made from the income of the retail business and the fact that the wholesale business had yet to show any profit. In addition, the learned judge made no express mention of the sale of the business other than that it was at a "loss"; there was no evidence before the learned judge about the extent of that loss. Nor do we know the value of the retail business at the time it was sold. It is at least unclear by how much the $20,000-$24,000.00, which the respondent said was her annual income from the retail business, had been reduced as a result of the injury to the respondent...**
>
> **50 In my judgment, the appellant is entitled to succeed on this ground and I would set aside the award of $48,000.00 for past loss of income under this item since there was no evidence of the extent of loss of income which was directly referable to the injury she suffered."** (Emphasis added).

97. Furthermore, the ***Persad*** decision can be distinguished as the court did not go into great detail as to what evidence was relied upon in arriving at the final sum

for loss of income. The Court relied heavily on the reasoning of the Court of Appeal of Trinidad and Tobago with no direct reference to what evidence was considered. Except the evidence of the taxi driver who stated what his income was, there is no confirmation of what other factors were considered by that court.

98. In Mr. McCoy's Writ, he pleads that he lost income to the tune of $90,000.00. There are no receipts, pay stubs, accounting records or the like evidencing that Mr. McCoy made such amount annually prior to the Accident. This very subject was also examined in the ***McCoy*** decision by Winder J (as he then was). After considering the evidence, the learned judge had this to say:

> **"LOSS OF INCOME**
> **43 Notwithstanding the absence of pleadings, I am not satisfied that that the evidence adduced enables me to conclude that McCoy sustained any loss of income. The evidence indicated that McCoy sparingly operated the bus following the 2007 injury. There is no evidence of McCoy's income prior to the accident. Following the 2009 accident he mitigated his loss by permitting his son to operate the bus and make periodic payments to McCoy. This arrangement secured $700.00 per month to McCoy. It did not appear to me that this arrangement, having regard to McCoy's sporadic driving of the bus, caused any loss to McCoy."**

99. Though there are no receipts or pay stubs evidencing such annual salary, Mr. McCoy did state, under cross-examination, that he made daily fares of $60 per day with his taxis and between $220 and $350 per day with his buses (page 21 at lines 10 to 26 of Court Transcript). No evidence corroborates this and there is no means to determine whether such fares were typically collected by him prior to the Accident, save for Mr. McCoy's testimony. Furthermore, Mr. McCoy did not provide medical evidence confirming that any injuries he sustained from this particular Accident prevented him from working or for how long and to what degree he would be incapacitated due to his injuries from the Accident. I remind myself of the old maxim: *he who asserts must prove*. It was incumbent upon Mr. McCoy to prove his loss. In my view, he has failed to do so. His testimony provides bare assertions, with no evidence to corroborate the figures stated. He could have called one of his bus drivers to give evidence, provided statements from the National Insurance Board of the Bahamas, or provided bank statements confirming the amount of money he derived from his bus and taxi business monthly or annually. None of this was done.

100. As previously discussed, Mr. McCoy has not made sufficient efforts to mitigate his losses after the Accident. The Court cannot overlook this coupled with the lack of evidence of his earnings. Even if substantive medical evidence was provided by Mr. McCoy, he did not call an expert witness (except Dr. Pickstock and Mrs Hanna) to challenge the testimony of Dr. Barnett who classified all of Mr. McCoy's injuries as 'minor'. The evidence provided by Dr.

Pickstock did not prove that Mr. McCoy was unable to work due to his injuries. It merely demonstrated that such injuries (to the teeth and jaw) existed as a consequence of the Accident. As there is no medical evidence challenging Dr. Barnett's testimony coupled with his extensive medical report, I am not satisfied that Mr. McCoy suffered any loss of income resulting from his injuries from the Accident. Consequently, I make no award for loss of income.

101. Based on the foregoing, I award the following in special damages:

Doctors Hospital	**$1,673.39**
Prescription Costs	**$ 393.95**
Dr. Pickstock's Dental Costs	**$2,650.00**
TOTAL	**$4,717.34**

102. Accordingly, I award Mr. McCoy the sum of $4,717.34 representing special damages.

General Damages

103. The principles relevant to general damages are not in dispute. I merely reiterate what the Privy Council noted in the ***Scott*** decision at paragraph 17:

> **"General damages must be compensatory. They must be fair in the sense of being fair for the claimant to receive and fair for the defendant to be required to pay – Armsworth v South Eastern Railway Co (2) (1847) 11 Jur at p 760."**

104. One must also bear in mind that the purpose of damages is to put the aggrieved party in the position as if the injury never occurred. It is not to put the plaintiff in any better position – only in a position as if no harm had ever come to him. (See **Livingstone v Rawyards Coal Co. [1880] 5 Appeal Case 25**).

105. Much reliance was placed on the Judicial College Guidelines by all parties. While these provide useful insight, it has been opined that this jurisdiction is not strictly bound by such, a Bahamian court must ultimately make an award which is appropriate for The Bahamas. (See **Angelina Turnquest v Stephen Rahming 2013/CLE/gen/01409** where Charles J (Snr.) (as she then was) referred to the Opinion of the board delivered by Lord Kerr at paragraphs 25,28 and 29 of **Scott v The Attorney General and Anor**. [2017] UKPC 15.

106. With respect to his alleged injuries, I am not satisfied that all of those injuries, in the severity alleged by the plaintiff, resulted from the Accident. Dr. Barnett testified that these injuries were pre-existing. In fact, there was a host of pre-existing conditions (highlighted earlier in this judgment).

107. Both parties acknowledge the principle of '*take your victim as you find him*' and that the defendant would only be responsible for such injuries resulting from the accident (**Robinson v Post Office and Another (1974) 2 All ER 737 Orr LJ at page 750; Forbes v Smith (2009) 1 BHS J No. 18**). It must be noted that, though there are pre-existing conditions, any new injury or exacerbation of any existing injury still leaves the defendants liable in negligence for same. To be clear, the Court will not hold the defendants responsible for any pre-existing injury or condition that was not worsened by, or has nothing to do with, the Accident.

108. I also note that Dr. Barnett classified all injuries as soft tissue injuries and minor. He said this throughout his testimony at varying instances (for example at page 52 at line 6; page 54 at line 28; and page 55 at line 5 of the Court Transcript). Save and except the medical evidence provided by Dr. Pickstock and Mrs Hanna, Mr. McCoy did not call any expert witness to challenge Dr. Barnett's evidence and his classification of the injuries as minor.

Back and Neck Injuries

109. For the back and neck injury, Dr. Barnett testified that Mr. McCoy suffered *"soft tissue injuries to his spinal region, his back and specifically to his neck and lumbar-sacral spinal region, his lower back..."* (page 53 at lines 13 to 15 of the Court Transcript). His conclusion was that such injuries were minor. This testimony is also consistent with his medical report. Accordingly and using the Judicial College Guidelines for general reference, a sum up to £2,300 is appropriate. I am satisfied that Mr. McCoy's back and neck injuries were minor and award the sum of $2,900.00

Lower right leg and knee Injuries

110. With respect to lower right leg and injuries to toes and knees, Mr McCoy's pre-existing injuries may have been exacerbated by the Accident. However, the MRI Report (for Mr. McCoy's left knee) prepared by Dr. Timothy J. Greenan and dated 26 November 2015 provide evidence that was consistent with Dr. Barnett's testimony and medical report. The MRI Report stated:

- There is no fracture.
- There is no muscle strain.
- The visualized musculature about the left knee appears unremarkable (meaning there is no appreciable injury upon examination).
- There is no soft tissue mass.
- The quadriceps tendon and patellar tendon are intact.
- Posterior cruciate ligament is intact.
- The anterior cruciate ligament is intact.

- The medial collateral ligament and the lateral collateral ligament complex are intact.

111. There were, however, other findings consistent with Mr. McCoy's pre-existing conditions. Such findings include:

- Diffuse thickening of the synovium indicative of a severe chronic synotivits.
- There are markedly severe tricompartmental productive changes diagnostic of osteoarthritis.
- The posterior horn and body of the medial meniscus are markedly degenerated and torn.

112. My understanding of this is that there is no appreciable injury to the left knee resulting from the Accident. It is apparent from the report that no new damage to the left knee was suffered by Mr. McCoy – only pre-existing conditions have been highlighted. Accordingly, I am not prepared to award any sum in relation to Mr. McCoy's knee as the issue with his knee seems wholly related to his pre-Accident condition and he has not called any expert witness to expound upon any purported injury (or the extent of the purported injury) to his left knee resulting from the Accident.

113. Mr. McCoy has not furnished any substantive evidence relating to his legs, though Dr. Barnett did note that there were minor injuries suffered by Mr. McCoy resulting from the Accident. In his testimony, he said that Mr. McCoy suffered *"superficial abrasions to his distal right leg"* (page 53 at lines 15 to 16 of the Court Transcript). The Judicial College Guidelines state, for minor injuries, an award of up to £2,450 can be made. I believe Mr. McCoy's injuries fall into the lower category due to lack of evidence of the extent of the injury and that those said injuries were stated to be minor. Accordingly, I will make an award of $600.00 for the injuries to his right leg.

Injuries to toes

114. No evidence was led regarding the extent of Mr McCoy's toe injury and it may very well have been as a result of a pre-existing condition as noted earlier. In Dr. Barnett's medical report, he notes that the only injury that was observed by Dr. Johnson in his report (detailing his findings from 06 August 2015 to 09 October 2015) was a dried ulcer on the sole of Mr. McCoy's right big toe which was said to be "*not from the Accident*". Mr. McCoy is obliged to prove his case on a balance of probabilities. I have no evidence before me which speaks to the extent of his toe injury. Consequently, I make no award for such injuries.

Injuries to Teeth

115. In relation to the injuries to his teeth, I take into consideration the evidence of Dr. Barnett that these were minor. However, I also weigh Dr. Pickstock's evidence that extensive work was required to correct the injuries resulting from the Accident. She also stated in her testimony that Mr. McCoy had approximately 6 to 8 teeth damaged as a result of the Accident (page 43 line 16 of the Court Transcript). Dr. Pickstock also goes further and provides a report detailing the extent of Mr. McCoy's dental injuries and the recommended treatment plans. The Court is satisfied that that the injuries to Mr McCoy's mouth are extensive. The commentary of the Judicial College Guidelines as to factors which influence how awards are assessed for injuries to teeth depending on severity are helpful. In particular they state:

> **"Damage to teeth**
> **In these cases there will generally have been a course of treatment as a result of the initial injury. The amounts awarded will vary according to the extent and/or the degree of discomfort of such treatment. Any difficulty with eating increases the award. These cases may overlap with fractures of the jaw, meriting awards in the brackets for such fractures. Awards may be greater where the damage results in or is caused by protracted dentistry."**

116. A range of possible awards is given which fall between **£1,460** and **£1,600 per tooth** on the lower end of the scale for loss of or damage to back teeth. The possible awards go up to **£35,790** for an injury which causes significant chronic tooth pain extending over a number of years together with significant general deterioration in the overall condition of teeth. Taking Mr McCoy's situation into consideration, I will award on the higher end and grant $20,000.00. The Court considers the severity of the injury and any likely discomfort of the dentistry he will have to undergo in order to rectify the damage. I add that had Mr. McCoy pleaded the costs associated with the treatment for his dental work (as was mentioned in the Pickstock Report), he would have been awarded such costs. Unfortunately, no such pleading was made.

117. In arriving at an overall award for Pain, Suffering and Loss of Amenities I note that Mr. McCoy stated that he was in pain as a result of the Accident. The RHWS and the accompanying reports do detail the level of pain that Mr. McCoy experienced. The Court considers also that Mr. McCoy has a myriad of pre-existing conditions that could possibly be the source of his pain and there is no discussion or distinction provided in the reports referencing if the Accident is the cause of such pain. I also bear in mind Dr. Barnett's overall assessment that the injuries were minor. There, however, must have been severe pain associated with the extensive damage to Mr. McCoy's teeth and jaw (as evidenced by Dr. Pickstock in her testimony and reports). Further even "minor" injuries must have caused some pain and inconvenience in daily motion.

118. In relation to loss of amenities, Mr. McCoy did state that he used to play basketball, but could no longer do so as a result of the fluid in his knees, (page

22 lines 17 to 18 of the Court Transcript). The fluid in the knees has been evidenced a pre-existing condition, thus the defendants cannot be faulted for them. The only other evidence which speaks to any amenities Mr. McCoy would have enjoyed was that Mr. McCoy usually would help around his home by doing chores and would ordinarily watch television. I glean from this that there was no material change in his everyday living as a result of the Accident and that he led a sedentary life. Accordingly, there appears to be no real loss of amenities.

119. Having considered all of this, for general damages, I allow the following sums:

"Injuries to back and neck	**$ 2,900.00**
Injuries to lower right leg and knees	**$ 600.00**
Injuries to teeth	**$20,000.00**
TOTAL	**$23,500.00**

Issue 4: Exaggeration

120. In relation to this issue, I am not persuaded that Mr. McCoy's claim is an exaggerated one. He has proven that he suffered injuries resulting from the defendants' negligence. This was a legitimate claim that he has proven with evidence. He may very well have been awarded more damages had he provided stronger medical evidence to substantiate his claims for damages and provided additional clear and express receipts evidencing special damages.

121. Furthermore, Mr. McCoy made no claim for the damage to his motorcycle, which he likely would have been awarded if it were pleaded and proven. Had he provided compelling, clear and cogent evidence of loss of income, the same may have also been awarded. If anything, Mr. McCoy would have been granted a larger sum if his case were pleaded and proven more fully.

122. The Court therefore makes no finding that this claim was exaggerated.

Conclusion

123. Based on the current state of the law and the evidence before me, I rule that the defendants were negligent and caused Mr. McCoy to suffer injuries as a result of the Accident for which he should be compensated in damages, both special and general. I grant the following relief:

i. Mr. McCoy is awarded **$4,717.34** for special damages and interest at the rate of 3% per annum running from the date the Writ was filed until judgment, and at the statutory rate thereafter of 6.25% per annum (pursuant to section 2(1) of the Civil Procedure (Award of Interest) Act, 1992); and

ii. Mr. McCoy is awarded **$23,500.00** as general damages plus interest at the rate of 3% per annum running from the date the Writ was filed until judgment, and at the statutory rate thereafter at 6.25% per annum (pursuant to section 3(1) of the Civil Procedure (Award of Interest) Act, 1992).

iii. additionally, Mr. McCoy is awarded his reasonable costs; should these costs not be agreed by the parties, the Court shall determine the amount of the same upon receipt of the parties written submissions to be delivered to the Court within 30 days of the parties' receipt of the signed copy of this decision.

124. I am cognizant of the time this decision has taken, and as such, extend apologies to the parties for the delay in its delivery.

Dated 06 May 2024

Simone I Fitzcharles

Justice