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NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR JUDGMENT

SUPREME COURT CIVIL APPEAL NO COA2023CV00012

BETWEEN	**ANTHONY BROWN**	**1ST APPELLANT**
AND	**AMBUCARE COMPANY LIMITED**	**2ND APPELLANT**
AND	**CLIFTON WILLIAMS**	**RESPONDENT**

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Mrs Justice V Harris JA, and the Hon Mr Justice Laing JA on 4 December 2025, with Ms Ishia Robinson and Miss Monique Rowe for the appellants, and Richard Hemmings instructed by Sylvester Hemmings and Associates for the respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons for its decision, delivered orally on 4 December 2025 by the Hon Mrs Justice McDonald-Bishop P, is as follows:

[1] This is an appeal from the judgment of Hutchinson Shelly, J ('the learned judge') delivered in the Supreme Court on 19 December 2022, following a trial conducted on 24 October 2022.

[2] The claim in the court below was filed by the respondent, Clifton Williams. It arose from a motor vehicle accident that occurred on 10 October 2013 at the intersection of Half-Way Tree Road, Constant Spring Road, and Hope Road, involving an ambulance owned by the second appellant, Ambucare Company Limited, and the

respondent, who was a pedestrian at the material time. The first appellant, Anthony Brown, was the driver of the ambulance.

[3] Having heard the parties' evidence and considered the medical evidence adduced in the proceedings, the learned judge decided that the respondent was 80% contributorily negligent, and the appellants were 20% contributorily negligent. Consequently, the learned judge made the following awards of damages:

> "ii. The claimant is awarded general damages in the sum of $5 million dollars 20% of which is to be borne by the Defendants whith interest at the rate of 3% from October 7th, 2019 to December 2nd, 2022.
>
> iii. The claimant is awarded special damages in the sum of $88,500 with interest at the rate of 3% from October 13th, 2013 to December 2nd 2022."

[4] The appellants are aggrieved by the awards of both general and special damages and filed a notice of appeal asserting 13 grounds in challenge to the learned judge's findings in relation to those awards.

[5] The court considered the written and oral submissions of counsel for the appellant, no written submissions in response having been filed by the respondent. Having considered those submissions and the concession of counsel for the respondent, in the light of the standard of review applicable to appeals against awards of damages expressed in **Flint v Lovell** [1935] 1 KB 354 and **Cadet's Car Rentals and another v Pinder** [2019] UKPC 4, the court concluded that there is merit in the appeal and that the appeal ought to be allowed.

[6] The court accepts the submissions of counsel for the appellant that the learned judge applied the wrong principles and made errors of law and fact by taking into account irrelevant factors, particularly in relation to the nature and extent of the respondent's injuries.

[7] The court accepts that the learned judge ought not to have relied on the expert evidence contained in Dr Melton Douglas' medical report. Dr Douglas' report was based on a single examination conducted four years after the accident. It spoke to injuries not contained in the medical report from the Kingston Public Hospital ('KPH'), which was contemporaneous with the accident, and there was no evidence establishing a nexus between the injuries described in Dr Douglas' medical report and the accident on 10 October 2013.

[8] The court agrees with the submission that the learned judge's conclusion—that the soft tissue injury to the respondent's neck reported in the KPH report could have caused his shoulder injury, diagnosed by Dr Douglas four years after the accident, and that the injury to his hip could have led to his back ailment, also diagnosed four years post-accident—was incorrect, as it lacked support from medical evidence.

[9] The learned judge's reliance on those later injuries mentioned in Dr Douglas' report rendered the award of general damages inordinately high and disproportionate, having regard to the relevant and admissible evidence that was before her. Therefore, this court has the power to interfere with the award in accordance with the principles established in **Flint v Lovell** and **Cadet's Car Rentals and another v Pinder**. In these circumstances, the court finds that the assessment of damages based on injuries detailed in Dr Douglas's report was erroneous in fact and law, and, therefore, unsustainable and must be set aside.

[10] Having set aside the award of general damages in the sum of $5,000,000.00, this court must determine the appropriate award to be made based on the relevant and otherwise admissible evidence.

[11] The court has considered the numerous authorities cited by counsel for the appellant, including those cited at trial. The respondent has not presented any contrary authorities or sought to defend the award made by the learned judge because, as previously indicated, the respondent's counsel had candidly conceded that the basis of

the award is unsustainable. The court considers the cases of **Roger McCarthy v Peter Calloo** [2018] JMCA Civ 7 ('**McCarthy v Calloo**') and **Gaylia Johnson v Dalmin Jones** [2021] JMSC Civ 142 ('**Johnson v Jones**'), among the cases cited by the appellants, as the most relevant for application. These cases establish the general range of an award of damages in cases such as this, between $500,000.00 and $700,000.00. The others cited in the court below ranged from approximately $300,000.00 to a little over $8,000,000.00.

[12] We accept that the respondent sustained the following injuries: soft tissue injuries to the left hip and neck, and a laceration to the scalp that required suturing and dressing, with a recommendation for follow-up dressing after the initial treatment. There would have been pain and suffering (as evidenced by the fact that he was prescribed painkillers), and there may have been some loss of amenities, although the respondent's case lacks evidence of any prolonged impact of the injuries on him. Having considered the cases of **McCarthy v Calloo, Johnson v Jones**, and those considered by the learned judge, against the background of the need for the award to be reasonable and proportionate, the court considers an award of $800,000.00 for general damages appropriate in the circumstances. Consequently, the appeal succeeds on grounds (a) to (l).

[13] Turning to the issue of special damages, the court accepts the appellants' submission that the learned judge erred by failing to apportion liability for special damages in accordance with her findings of contributory negligence. The court agrees that an apportionment reflecting the contributory negligence should have been made. In light of the learned judge's findings of contributory negligence, the learned judge should have ordered that the appellants pay 20% of the special damages in accordance with the extent of their liability. Therefore, on that basis, ground (m) succeeds regarding special damages, as the learned judge erred in law in failing to apportion liability for damages in accordance with the findings of contributory negligence. Accordingly, an order should be made in line with the appellants' submissions.

[14] For all the reasons stated above, the appeal should be allowed, and paras. ii. and iii. of the orders made by the learned judge should be set aside, and substituted therefor should be the orders that ought to have been made in the court below.

[15] Lastly, in making the orders that ought to have been made in the court below, the court notes that the learned judge had ordered interest on general and special damages to run up to 2 December 2022, rather than to the date of the judgment, 19 December 2022. The power to determine the period for which interest is to be paid is, of course, discretionary. However, it is noted that the learned judge's order runs contrary to the general practice of the courts to award interest on both general and special damages up until the date of the judgment (see **Central Soya of Jamaica Ltd v Junior Freeman** (1985) 22 JLR 152). The learned judge did not give reasons for departing from the established principle and practice, and no reason for doing so is gleaned from the record. Accordingly, in making the awards of general and special damages that the learned judge ought to have made, and in the interests of justice, this court will award interest up to the date of the judgment in the Supreme Court, namely 19 December 2022.

[16] We, accordingly, make the following orders:

1. The appeal is allowed.

2. Paragraphs ii. and iii. of the order of Hutchinson Shelly J, made on 19 December 2022, are set aside and substituted therefor are the following orders:

    ii. The respondent is awarded general damages in the sum of $800,000.00, 20% of which is to be borne by the appellants with interest thereon, at the rate of 3% per annum from 7 October 2019 to 19 December 2022.

iii. The respondent is awarded special damages in the sum of $88,500.00, 20% of which is to be borne by the appellants with interest thereon at the rate of 3% per annum from 13 October 2013 to 19 December 2022.

3. There shall be no order as to costs of the appeal, as agreed.