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IN THE SUPREME COURT OF BELIZE, A.D. 2017

CLAIM NO. 660 OF 2013

BETWEEN:

LILLIAN ROCHES — **Claimant**

AND

ARELI MANZANILLA — **Defendant**

CLAIM NO. 216 OF 2014

BETWEEN:

DORITA NOH — **Claimant**

AND

ARELI MANZANILLA — **Defendant**

BEFORE: Hon. Chief Justice Kenneth Benjamin

Appearances: Mr. Ernest Staine for the Claimants
Mr. Hubert Elrington, SC for the Defendant

October 22 & November 13, 2014.

JUDGEMENT

[1] Before the Court are two Claims arising from a road accident on January 25, 2013 and consolidated by Order of Court dated May 27, 2014. The Claimants are Lillian Roches ("No. 1 Claimant") and Dorita Noh ("No. 2 Claimant"). They have brought suit against the Defendant, Areli Manzanilla, in negligence seeking damages for injuries

sustained in the said accident. In each Claim Form, it is averred that the Claimant was hit by a motor vehicle owned and driven by the Defendant at the time.

[2] The following facts are pleaded in the Statements of Claim: the No. 1 Claimant was a passenger in a Green Bluebird bus licence plate No. BZ-D7053 traveling along the Phillip Goldson Highway between 6:00 and 6:30 pm on January 25, 2013 from the Northern Border of Belize towards Corozal Town. A brown Chevrolet Astro van, licence plate No. CZL – C02740 driven by Jeremias Garcia collided with the rear of the said bus between Miles 88 and 89 of the said Highway. The No. 2 Claimant was a passenger in the said van. After the rear-ending accident, the Claimants came out of the respective vehicles in which they were travelling. While they were standing talking to each other in the area of the right side carriage way facing Corozal behind the said van, a Green Subaru Legacy motor-car license place No. CZL-C-11390 owned and being driven by the Defendant collided with the Claimants. Both of them sustained multiple injuries as a result of the accident and were taken the Corozal Community Hospital.

[3] Both Claimants averred that the Defendant was driving too fast, failing to keep any or any proper look out, failed to stop, to slow down, to swerve or in any other way so to manage or control her car so as to avoid colliding with the Claimants. These matters were asserted as to the Defendant being negligent in causing the said accident and the injuries sustained and the loss and damage suffered.

[4] In her Defence to the No. 1 Claimant's suit, the Defendant disputed the Claim on the basis that the accident was caused by the negligence of the drivers of the bus and of the van in that after that collision both vehicles were blocking the right lane of the Highway from traffic travelling from Santa Elena in the Corozal District to Corozal Town. It was also pleaded that the said drivers had failed to place any lights behind and in front of the vehicles to mark the obstruction on the highway. With regard to the No. 1 Claimant, it was averred as follows:

"8. The Claimant of her own will and volition, left the safety of the bus and went out onto the unlit highway, in the middle of the highway, and stood there, fully knowing that other vehicles were using the highway and that it was unsafe and even dangerous to stand where she stood or to walk about where she walked about.

9. She voluntarily and knowingly accepted the risk of being knocked down or run into by an oncoming vehicle, whose driver would have great difficulty in seeing her in the middle of the highway on a dark and rainy night."

The Defendant specifically relied on the defence of *volenti non fit injuria.*

[5] The Defence to the No. 2 Claimant's Claim rejected that the Defendant was negligent and stated that the accident and the injuries were caused by the negligence of the Claimant in not taking reasonable care to avoid the injuries sustained. It was said that the accident was not caused or contributed to by the Defendant but that the Claimant deliberately and of her own free will went to stand on the right hand side of the road between the two stationary vehicles on the highway. The Defendant further pleaded that the night was dark and rainy thus affecting visibility and the vehicles were an obstruction blocking the right hand lane of the Highway with no lights warning oncoming vehicles. The Defense's version of how the accident occurred was stated as follows in paragraph 13 of the Defence:

"The Defendant was driving her vehicle at about 45 mph when her light picked up the obstruction in her path. She tried to apply brake but the road surface was wet, and the vehicle began to skid. She tried to swerve to the left but saw oncoming traffic. She tried to swerve to her right, but saw many people standing on the right shoulder of the road near the bus; they appeared to be passengers from the bus. Her only options was to brakes (sic) the vehicle and contract the skid holding the vehicle straight, this is what she did. Her vehicle hit the rear of the van and that impact caused the van to move and hit the Claimant who was standing between

the van's front and the rear of the bus. The Van's front pinned the Claimant by her feet to the back of the bus – causing her injury."

Neither of the Defences disputed the particulars of injuries and special damages claimed in the Statements of Claim.

EVIDENCE OF LIABILITY

[6] In her witness statement, the No. 1 Claimant said that after the first collision, the bus stopped on the right side of the road with half of its body on the shoulder of the road. The van stopped immediately behind the bus. She was asked to get out of the bus and she did so. She then stood at the side of the right next to the van and she was speaking to the No. 2 Claimant. While doing so, a vehicle which she neither saw nor heard collided with both of them, rendering her unconscious.

[7] In cross-examination at trial, the No. 1 Claimant confirmed that she did not see the car that collided with her nor did she see its licence plate or who was driving. This, however, was overtaken by the Defendant's admission in Court that she had hit two persons with her motor-car on the night of the accident. The No. 1 Claimant said she was standing with the No. 2 Claimant behind the bus when a vehicle ran into both of them. She said that it was night but that it was bright on account of a street light on the side of the highway. She was unable to say how far away that street light was. As to where she was standing, she said she was on the edge of the shoulder of the road about five to ten feet from the bus facing the direction of Corozal. At the time, the rain was drizzling and the road surface was wet.

[8] As was the case with the No. 1 Claimant, the No. 2 Claimant could only say that she was struck and was rendered unconscious as she neither saw nor heard a vehicle approaching. She said it was dark and she also said it was raining and the roadway was wet. She told the Court that after the first collision between the bus and the van, both vehicles stopped partly on the shoulder of the right side of the road facing Corozal.

In contrast to the No. 1 Claimant, the No. 2 Claimant said she was standing behind the van which in turn was behind the bus.

[9] Both Claimants accepted that no lights or any signal was placed by anyone to indicate that there had been an accident. The No. 1 Claimant further responded that it never crossed her mind that she could have been struck while standing where she was.

[10] The only evidence in support of the Claimant's case as to how the accident actually occurred was provided by Jeremias Garcia, who was the driver of the van and at the time he was the common law wife of the No. 2 Claimant. He explained that it was raining when he applied brakes at a distance of 15 feet behind the bus. The van skidded and slid into the back of the bus. He attributed the failure of the van to stop to the amount of load it was carrying as the van had good brakes. He said at the time of the second accident it was getting dark and it had stopped raining.

[11] When crossed-examined he expanded on his witness statement where he said he was standing with No. 2 Claimant who was conversing with the No. 1 Claimant adding that they were standing behind the van. His testimony was that he heard a vehicle approaching 'with speed' from the direction of the border. He turned around and saw a light approaching about fifteen (15) feet away. Within seconds there was an impact into the passenger side of the back of the van. He identified the speed limit as being 55 miles per hour but although he thought the approaching vehicle was exceeding the speed limit he could not say whether that was so with any certainty. His van was again pushed into the bus then it turned and came to rest on the opposite side of the road.

[12] This witness' evidence was consistent with that of both Claimants in that he said that no sign was placed to warn oncoming traffic of the accident and the vehicles on the road. However, he agreed that, with hindsight, where they were standing was dangerous but at the time it being just after the first collision had occurred, that was not considered.

[13] It was suggested to Mr. Garcia that he was a heavy drinker and he denied it. He also rejected a suggestion that he was "under the influence," presumably of alcohol. In response to direct questions he stated that he was examined and he had taken a blood test. Nothing was further asked nor any evidence adduced on this issue. It should therefore be immediately stated that there was no evidence of the driver of the van being under the influence of alcohol, a factor which could have had a bearing on his creditability.

[14] The Defendant was the sole witness for the Defence. Her examination-in-chief as taken from her witness statement was that she was driving her car on her way home before 6:30 p.m. with her sister. It was dark and the road was wet as it was raining intermittently. She stated that "in the half of the high beam" of her vehicle she saw a dark obstruction on the highway in the middle of the road. She subsequently clarified that two black obstructions were blocking one half of the road and she saw them in her high beams at a distance of twenty (20) feet. She pointed out an estimated distance of 30-40 feet. She said she at once applied brakes and the vehicle began to slide so she eased up on the brakes continuing towards the obstruction. She was unable to pass on either side of the obstructions which she observed to be a van. Erroneously, she stated that the bus was behind the van. She said there were people on the highway near the vehicle and on the right hand shoulder of the road. She tried to stop the vehicle by again applying brakes and maintaining a straight course. Her car then skidded into the van. Her car came to a stop on the shoulder of the left hand side of the road.

[15] The Defendant said it was impossible for her to pass on either side of the obstruction. She gave her speed at the time she saw the obstruction as 45 miles per hour in a speed limit zone of 55 miles per hour. She sustained a broken ankle.

[16] In furtherance of her Defence, she stated as follows at paragraph 7 of her witness statement:

"There was no light on the van or the bus, there were no signals or objects in the road in my lane or anywhere between where the bus was and where I was in my care to warn me of the presence of the two unlighted vehicles in the middle of the road."

[17] It is to be noted that in her witness statement, the Defendant said she saw the obstruction as being two vehicles which she could not pass on either side. However, in court, she said she later found out that the black obstruction was a bus and a van. Further, in her witness statement, she never mentioned that any vehicle was approaching from the opposite direction. She only mentioned that people were on the highway near the stationary vehicles. However, when cross-examined, she mentioned for the first time that a vehicle was coming from the opposite direction at the time. She specifically testified that: "....before I get to the obstruction, a vehicle was coming so I could not go on the left hand side." She reiterated further on that she only saw one vehicle approaching.

[18] In cross-examination, the Defendant admitted that since it was raining she could not see far. She was driving on a straight road wide enough for two trucks to pass each other. She said she knew she was driving at 45 miles per hour as that was her normal speed. She said her vehicle continued to skid until she hit the back of the van. She was not aware that she had struck down two persons until she went to the hospital.

FINDINGS ON LIABILITY

[19] The cause of action is framed in negligence. Accordingly the Claimants must establish to the civil standard of a balance of probabilities that: there existed a duty on the part of the Defendant as the driver of the motor-car to employ ordinary skill or care towards them as persons on the highway; such duty was reasonably foreseeable resulted. (see: **Donoghne v Stevenson [1932] AU E.R. Rep.1.**). Each case must be judged on its own facts. Learned Counsel for the Claimants cited the case of **Nettleship v Weston [1971] 3 All E.R. 581** as illustrative of the standard of care

expected of any driver. That case involved injury to the plaintiff by a vehicle driven by a learner driver accompanied by a non-professional instructor. The UK Court of Appeal held that whether or not the driver was a learner, the standard of care owed by any driver is that of one that is possessed of skill, experience and care is sound in mind and body with good eye sight and hearing and makes no errors of judgment. This duty extends to all persons on or near the highway.

[20] In written submissions, the Defendant referred to the dictum of Lord Bridge of Harwich in **Caparo Industries Plc v. Dickman [1990] UKHL 2** where he stated (at p.5):-

> *"What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."*

This text was commended to the Court and I wholeheartedly accept this as applicable to the present case.

[21] On the day in question, January 25, 2013, between 6:00 and 6:30 p.m. there was a collision where Jeremias Garcia who drove his van into the rear of a bus between Miles 88 and 89 on the Phillip Goldson Highway while driving towards Corozal Town. The No. 1 Claimant was a passenger in the bus and alighted after the accident when the Police were being awaited. She was joined by the No. 2 Claimant who had been a passenger in her common law husband's van which collided with the bus. Both were seriously injured when a car owned and driven by the Defendant collided with them and the back of the van. The foregoing facts are not disputed.

[22] There was conflicting testimony as between the Claimants as to where they were standing. In this regard, considering the more complete recollection and awareness of hour the accident occurred emerging from the testimony of Jeremias Garcia, I accept his clear statement in cross-examination that he was standing behind the van with the No. 1 Claimant, the No. 2 Claimant and Tanya Noh.

[23] It is noticeable that neither Claimant heard or saw the lights of the Defendant's vehicle and that the witness, Garcia, only became aware of its presence when it was a mere fifteen (15) feet and away and seconds before the impact. The Defendant demonstrated thirty (30) to forty (40) feet as the distance at which she became aware of the black obstruction in front of her. Having regard to the discrepancy between her witness statement and her testimony as earlier pointed out, I believe that she never realised what the obstructions were. Indeed, she never knew she had collided with two persons.

[24] The question therefore arises as to whether speed was a factor in causing the accident, or as it was put in the Statements of Claim, whether she was driving too fast. Let me once say that there is no clear evidence apart from that of the Defendant herself as to what speed she was driving at. I am content to accept her evidence that she was driving at 45 miles per hour.

[25] In the written submissions, Learned Senior Counsel for the Defendant devoted several paragraphs to the scientific approach to be taken as regards braking distances and the attendant stopping distances. With respect, while the material cannot be faulted, this case is to be decided on the facts emerging from the evidence. The following matters are uncontroverted: (a) the rain was falling; (b) the road surface was wet; and (c) it was dark. Driving under those conditions required vigilance on the part of the Defendant as the driver of a motor vehicle.

[26] The bus and the van occupied the right half of the roadway facing Corozal Town. Contrary to what the No. 2 Claimant said, I accept the evidence of Jeremias Garcia that

both vehicles were on the roadway, therefore in the path of the Defendant's vehicle. In the normal course of driving, one is expected to be on the lookout for vehicles and/or pedestrians occupying the lane in which one is driving. These would be the neighbours to whom the Defendant owed a duty of care and it cannot be gainsaid that it would be fair, just and reasonable to impose liability for injury caused, applying the test in **Caparo.**

[27] Although the Defendant was travelling below speed limit at 45 miles per hour, there raises the question as whether such a speed was a safe speed in all the circumstances. She explained that she was driving at her usual speed. However, bearing in mind that she was driving in adverse conditions, namely a wet road on a rainy night, she ought to have been driving at less than her normal speed. Further, she had her wipers and high beam on but yet she only saw the obstruction at a distance of thirty (30) – forty (40) feet which serves to define the limit of visibility. A fortiori, she admitted to Learned Counsel that she was unable to see far. The adverse nature of the road conditions was compounded by her own testimony when she said that upon applying brakes her vehicle began to slide. I pause here to call to mind the testimony of Jeremias Garcia about his van skidding before colliding with the rear of the bus. As I see it, the Defendant was travelling at a speed that's too fast in the circumstances. In doing so, she deprived herself of the ability to stop, slow down or to avoid the collision.

[28] The Defendant laid much store on the accepted fact that no warning of any kind was placed on the roadway ahead of the stationary vehicles to warn oncoming traffic. Such a responsibility would have fallen upon the drivers of the vehicles stopped on the road. Garcia admitted that this ought to have been done. However, neither driver is before the Court, and in any event, there has been no plea of contributory negligence by the Defendant. Learned Senior Counsel posited that the case did not allow for such a plea.

Volenti Non Fit Injuria

[29] The Defendant pleaded that the No. 2 Claimant had put herself in harm's way when she left the safety of her van to stand to the rear of the bus *"without thinking about the possible danger of doing so."* The evidence disclosed that she was injured in the first collision and that she had some difficulty getting out of the van. As to the Defence to the Statement of Claim of the No. 1 Claimant it was pleaded that the Defendant would rely on the defence of *volenti non fit injuria* in addition to the averment that the No. 1 Claimant had *"voluntarily and knowingly accepted the risk of being knocked down or ran into by an oncoming vehicle"* given the prevailing conditions.

[30] The maxim *'volenti non fit injuria'* is availed as a defence in proceedings in tort. It operates not to negative negligence but to absolve the alleged tort–feasor from the consequences of negligence. To be successfully invoked, the Claimant must have expressly or impliedly assented to an act and thus cannot claim for the consequences of such act (see: Bingham & Berryman's Personal Injury and Motor Claims Cases, 13th ed at p. 46). The principle is illustrated in the cases of **Cutter v. United Dairies (London) Ltd. [1933] 2 K.B. 297** and **Haynes v. Harwood [1935] 1 K.B. 146.**

[31] Learned Counsel for the Claimant again relied on **Nettleship v. Weston (supra)**. In that case, the so-called instructor of the learner driver was injured and brought proceedings. The evidence disclosed that he had inquired about insurance. The Court of Appeal, inter alia, held that the defence of volenti non fit injuria was not available unless the plaintiff expressly or impliedly agreed to waive any claim for injury that he might sustain. Since the plaintiff did not so consent by rather sought to ensure he was covered by insurance, the maxim was inapplicable.

[32] The Claimants gave no indication that they were aware of any danger in standing behind the stationary vehicles. The No. 1Claimant said it never crossed her mind that she could have been struck down where she was standing. The matter was never put to the No. 2 Claimant. The witness Jeremias Garcia said that he was only able to agree

after the fact of the accident that it was dangerous to be standing on the highway without any warning sign or signal.

[33] The plain evidence is that the Claimants did not expressly or by implication waive any claim for injury that befell them. They were both out in the position where they had to get out of the respective vehicles after the first collision. Accordingly, the defence must fail.

DAMAGES

[34] Learned Senior Counsel for the Defendant did not dispute the claim for damages – special and general – by either Claimant. Apart from their own testimony evidence was received from Mr. John Waight, a medical doctor and surgeon by training. The medical report of Dr. Francis Smith was admitted by consent to support the No. 1 Claimant's case.

1st Claimant – Special Damages

[35] The Particulars set out in the statement of claim were for a dress - $85.00, shoes - $69.00, travelling expenses - $300.00 and hospital fee - $5.00. The receipts tendered exceeded these amounts for hospital fees and taxi expenses. No amendment was sought. A Claimant is required by law to specifically plead and prove special damages (see: **Ilkiw v Samuels [1963] 2 All E.R. 879**). There being no objection, the total sum of $459.00 is allowed with interest at the rate of three per cent from the date of the accident to the date of judgment.

[36] No. 1 Claimant also claimed loss of earnings at the rate of $300.00 per week. Mr. Waight testified that she was not fit to engage in remunerative employment for a period of eighteen months in the first instance. In addition, she would require a further surgical procedure which would extend her period of medical incapacity. Regrettably, neither in her witness statement nor in her testimony did the No. 1 Claimant give any indication as to what was her employment status save to state that she was a

professional secretary earning $60.00 per day at the time of the accident. At $1,200.00 per month for 18 months, this amounts to $21,600.00. No evidence was adduced as to any further period of incapacity on account of the further surgical procedure. Accordingly, special damages can only be awarded in the sum of $22,059.00.

No. 1 Claimant - General Damages

[37] The No. 1 Claimant was admitted to hospital after the accident with the following injuries: (a) a closed head injury with transient concussion; (b) lacerations to the face; (c) injury to one of the tooth of the lower right jaw; (d) fractures of the right tibia and fibula with abrasions and lacerations to the anterior and posterior aspects of the leg. The head injury was treated and the fracture of the tibia was treated by interval fixation. She was in the hospital until February 3, 2013. She was seen by four doctors including two orthopedic surgeons.

[38] On November 2, 2013, the No. 1 Claimant was seen and examined by Mr. John Waight. He prepared a report as to significant injury to her right leg including a fracture of the right ankle. Her headache had resolved itself. Her facial injuries had left ugly scars which were described in the report, and there were also prominent scars on the anterior and posterior aspects of her right leg. She continued to experience pain and suffering in her right leg and right ankle. The range of motion of the ankle joint was restricted and that limb was unable to bear her weight.

[39] An x-ray of the bones of the right leg revealed:

> *"Tibia: a comminuted fracture of the upper third of the shaft which has been treated by internal fixation with a plate and ten screws. The appearances are those of a fracture that has not united.*

Fibula: Fractures of the neck, middle third of the shaft and lateral malleolus all of which have united in slightly displaced by acceptable positions.

Foot: There is osteoporosis of the talus, calcaneus and navicular (bones of the foot)."

The following opinion of the injuries and recommended treatment was rendered in Mr. Waight's report:

1. A closed head injury with transient concussion, from which she has apparently recovered without complication. The transient loss of consciousness does, however, indicate permanent injury to a number of brain cells.
2. Lacerations to the face which have healed with scars as described above. It is unlikely that the appearance of the scars can be improved by further surgery and her condition in this regard can be considered permanent.
3. An injury to a tooth of the right lower jaw. I recommend that Ms. Roches consult with a dental surgeon in order to assess said injury and to receive the necessary treatment.
4. A fracture of the right upper tibia which has been treated by internal fixation and which has not united. It is my view that periodic review be conducted for a further period of six months at the end of which time the decision can be taken as to whether further surgery in the form of a bone grafting procedure be performed.
5. Fractures of the right fibula which have united as described above and which will require no further surgical treatment. The decrease in the range of movement of the right ankle is the result of the prolonged immobilization and lack of weight-bearing on the right lower limb. It is my view that Ms. Roches will require a series of rehabilitative exercises performed under the supervision of a physical therapist and it is my recommendation that said therapy be

instituted as soon as possible. The scars over the anterior and posterior aspects of the right leg are permanent and their appearance cannot be improved by further surgery".

As previously indicated, Mr. Waight expressed the view that the No. 1 Claimant's injuries were severe enough to prevent her from working for an initial period of eighteen (18) months and most likely for a further period should she have a further surgical procedure. The doctor assessed her permanent residual disability at 40% of the total body. However, if the surgical procedure for the union of the fracture was successful, the permanent residual disability would be reduced to 15% to 20% of the total body.

[40] At a subsequent examination in June, 2014, Mr. Waight observed that the fracture had not united.

[41] The No. 1 Claimant was also seen by Dr. Francis Smith, an Orthopedic Consultant in respect of which he wrote a report dated January 27, 2014. He saw the patient on April 29, 2013 and again on January 7, 2014. In the first examination with the aid of x-rays of the injured right leg he observed:

> *"...fixation of the fracture fragments of the upper tibia with plate and screws. The fracture fragments were not anatomically aligned and there was little bone callus. There was also a fracture of the distal fibula, which apparently had gone undiagnosed. This distal fibular fracture was acceptably aligned and there was evidence of both unions. There was significant quadriceps muscles atrophy and the ankle was stiff. There were healed fracture of the neck and midshaft right fibula."*

Reporting on the second examination, Dr. Smith stated that no significant changes were revealed by the x-rays done on January 7, 2014. There was still no evidence of bone union. In his opinion with the significant quadriceps and gastrosleus muscle atrophy he observed, the patient would need intensive physical therapy. No evidence was led as to

the duration of the therapy and the cost thereof. It was also opined that she was currently incapable of gainful employment.

[42] The classic guidance for general damages for personal injuries is gleaned from the judgment of Wooding, CJ in **Cornilliac v St. Louis [1965] 7 WIR 491**. The considerations to be borne in mind by the court are as follows:

(i) The nature and extent of the injuries sustained;

(ii) The nature and gravity of the resulting disability;\

(iii)The pair and suffering which had to be endured;

(iv)The loss of amenities suffered; and

(v) The extent to which consequentially, the pecuniary prospects have been materially affected.

[43] Learned Counsel for the Claimants relied upon the **Guidelines for Assessment of General Damages in Personal Injuries Cases**. Also submitted for the assistance of the Court was the Authorized Dealers Rate of Exchange for the Pound Sterling to the Belize Dollar as at November 20, 2014. The buying rate was stated to be £1 being equivalent to BZ$ 3.1127.

[44] Having regard to the injuries sustained by the 1st Claimant as listed at paragraph 39 above, the following tariffs are applied:

(a) Closed Head injury - £1,788.

(b) Lacerations to the face with scarring - £14,520.

(c) Injury to tooth - £1,000.

(d) Fracture of the right upper tibia and right fibula - £100,000.

The aggregate of £117,308 converted to BZ$365,144.61. Taking into account the difference in the cost of living I would scale down the amount to $300,000.00 as general damages.

2nd Claimant – Special Damages

[45] The Statement of Claim of the No. 2 Claimant sought sum of $75.00 and $50.00 as special damages for loss of a dress and a pair of shoes respectively. There being no demur, these sums are awarded as special damages.

[46] The Particulars of Injuries were listed in the Statement of Claim as follows:

(1) severe cuts to both feet
(2) cut wounds to left side of face
(3) Bruises to the back
(4) Multiple trauma fracture of tibia comminuted right leg
(5) Injury to the head and face.

There injuries appeared to be at least partially erroneous as it was stated in her witness statement that both of her feet were amputated. No medical certificate was attached to the State of Claim. However, the No. 2 Claimant did present herself in court in a wheelchair and it was plain to observe that her legs had been amputated – the left foot below the knee and the right foot above the knee.

[47] The No. 2 Claimant was rendered unconscious after the accident and was hospitalized being discharged on February 3, 2013.

[48] The guidance in **Cornilliac v St. Louis** is equally to be applied in considering general damages for the injuries sustained by the No. 2 Claimant. Here again, Learned Counsel commended the **Guidelines for the Assessment of General Damages in Personal Injuries (12th Edition)** compiled for the UK Judicial College. The tariff recommended was £194,700 to £227,975 for loss of both legs where one was lost above and the other below the knee. No evidence was led as to any other injury or any exacerbation of the double amputation. I would therefore award the sum of £200,000 which converts to BZ$ 622,540.00 at the prevailing rate referred to in paragraph 43. As before, I would scale this down to BZ$ 550,000.00 to adjust for the variance in the cost of living.

(a) General damages in the sum of BZ$ 550,000.00 with interest thereon at a rate of 6% per annum from the date of the service of claim to the date of trial.

(b) Special damages in the sum of $125.00 with interest thereon at the rate of 3% from the date of the accident to the date of trial.

As agreed at pre-trial review, each Claimant is entitled to costs in the sum of BZ$16,000.00.

KENNETH A. BENJAMIN
Chief Justice