

TUESDAY – 21ST NOVEMBER, 2000

IN COURT

SUPREME COURT ACTION NO. 97 OF 2000

DUANE CANO

Plaintiff

v.

**BHOJRAJ GHANWANI
OMAR ZELAYA
BELINSCO**

Defendants

REPRESENTATION:

Dean Lindo S.C. for Plaintiff.
Michel Chebat for 1st Defendant.
Nicholas Dujon for 2nd Defendant.

LINDO:

Informs Court that he will not proceed against 3rd Defendant. Will file necessary papers.

DUJON:

Had written to attorney for Plaintiff that if there was a Medical Report which would be agreed so this would save costs of bringing in witness from abroad. This is to be borne in mind for costs if necessary.

First witness for Plaintiff:

P.W. 1 JOHN BARKER (Affirm):

Lives at Coral Gables in Florida, U.S.A. Professor Emeritus of Orthopedic surgery at University of Miami.

Went to U.S. State College for Teacher for B.A., Albany Medical College for M.D., then one year of internship in Sheffield, England and then back to Albany for residency in internal medicine. Three years of training in Orthopedics

at Pittsburgh University, then two years Fellowship at Massachusetts General Hospital in Boston.

1963 went to work at University of Arkansas as Professor of Orthopedic surgery, stayed for 19 years.

In 1982 moved to University of Miami Faculty and retired this year.

I did surgical operations – 500 amputations a year.

Familiar with Jackson Memorial Hospital and Cedars – did all my surgeries at both and did most of my work at Cedars.

I met Plaintiff last year. **(Witness identified Plaintiff)**. He was referred to me by surgeon treating him at Jackson. To see him about injuries sustained in his leg in an auto accident.

He was referred to me because surgeon treating him . . .

I amputated his leg. It took about 1 ½ hours.

I made notes of my operation by dictation.

It was impossible to save leg. There was tremendous loss of soft tissue and there was no reconstruction to be done to save situation.

On 18th November, 1999 Plaintiff taken to operating room where amputation was performed. This was done below the knee and the wound was closed – it was on the left leg. He stayed in hospital several days. He had a cast on leg. Discharged on 23rd November, 1999.

There after I followed him up as an outpatient.

The operation would be injury – post operative – he had puss in the leg before the operation. The pain would be after the injury up till two or three weeks after operation.

He would still have some pain intermittently.

I followed him as a regular outpatient. He wore cast for three weeks, changed each week, treated wound, moved leg (for example, not to be inactive).

After three weeks stitches were taken out on 10th December, 1999; thereafter prosthesis was fitted.

This is a process, a heavy elastic stocking on leg to shrink it to fit prosthesis.

The stocking was tightened several times to fit the prosthesis.

Plaintiff was fitted with prosthesis in February and then trained how to walk. There would be a shrinking of the leg.

I looked at his leg this morning and noticed that he had gone from one thin sock to ten thin size.

As the stump shrinks in size there is a loss of control of the prosthesis. Plaintiff's walking is not as steady as it was.

The initial prosthesis has to be changed after 10 – 12 months.

On average a prosthesis will last about three to five years when stump is stable. But younger people wear them out faster than older people.

Some young people may require a change every one to one and a half years.

Sometimes these devices will break – sometime a comes along necessitating change.

With age, you will need new prosthesis every five years plus sock to go with it.

The Plaintiff's prosthesis is modern – costs about US \$7,000.00.

The impairment of plaintiff would be 28% to the body as a whole.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

The amputation we did is advanced as we have advanced technology.

The operation is performed by a surgeon. This could not be performed by a surgeon in a reasonably equipped hospital in view of our technology.

It was a modern prosthesis. He could have chosen a less expensive one but of less functionality.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

I am only aware of date of accident by summary of notes as 22nd October, 1999.

It was a reasonable time to proceed to amputation. The death of the bone necessitated the operation.

A reasonably equipped hospital and surgeon would have had no chance to save plaintiff's bone.

I arrive at plaintiff's disability with reference U.S. Worker's Compensation Table.

I arrived at 28% by looking at the chart.

Adjourned. 16th July, 2001 – next hearing.

MONDAY – 16TH JULY, 2001

IN COURT

SUPREME COURT ACTION NO. 97 OF 2000

DUANE CANO

Plaintiff

v.

**BHOJRAJ GHANWANI
OMAR ZELAYA**

Defendants

Trial (Part-heard) from 21st November, 2000.

REPRESENTATION

Dean Lindo S.C. for Plaintiff.
Michel Chebat for 1st Defendant.
Nicholas Dujon for 2nd Defendant.

P.W. 2 DUANE CANO s/s:

Twenty years old, born April 19th 1981. Resides at 9 Guadalupe Street.
Student at UB –studying architecture.

Recall 27th October, 1999 as I was in a serious car accident. Was a passenger in a car. On night of 27th October, 1999 was at home of 2nd defendant (Omar Zelaya) playing dominoes. His mother asked us to go purchase something from the store.

The 2nd defendant was driving. We went and purchased coca cola. After store, I can recall going on St. Thomas Street towards Municipal Airport. I can't remember anything after that. I believe I was knocked out. When I gained consciousness I was in Jackson Memorial Hospital in Miami.

I can't recall how long after this was.

I had a cast on my left forearm and braces on my left foot, a tube in my chest and I.V. on my right arm.

Doctors and nurses repeatedly gave me pain killers – about three times daily for approximately three weeks.

This was because I was in extreme pain.

The doctors gave me a choice to amputate my leg or go into three years surgery to regrow my bone. I signed the acceptance to go ahead with amputation.

They amputated my leg. The operation was at Cedar Sinai Hospital.

Dr. Baker, P.W. 1, performed the operation.

Initially after amputation I was given I.V. with morphine and a switch to administer morphine into my system whenever I felt pain.

This was for approximately a week.

I was given pills for extreme headaches.

I was in hospital for a week.

After I was discharged I went to lodge at aunt's house in Miami.

This was for approximately three months because after amputation I had a cast on leg that was amputated.

The amputation was 6" below knee on my left leg.

I stayed for three months because of cast on my leg. The cast was removed approximately three weeks after amputation.

I was experiencing pain during this period.

The leg was swollen and I had to stay in Miami to have it shrunk to fit prosthesis.

I was fitted with prosthesis after the leg had remained opened for a while.

It took two or three days to fit prosthesis. I had to be transported to hospital for measurements to fit it.

I had to go back to hospital for physical therapy twice a week for approximately a month and half.

Everyday I put on prosthesis, take it off at night and for bathing.

Sometimes I get blisters. They would affect my walking.

I can walk okay but not for very long distances, like quarter mile.

I can no longer play sports as I used to. I was involved in softball, table tennis and basketball. I can no longer participate in these activities.

As an architect I am required to be in the field to visit construction site.

My social activities have also been affected. I use to go to dance. I no longer can dance as I used to.

The cast on my left forearm was taken off after three weeks. My forearm was broken. The bone was protruding – with a scar of 3”.

I have been back to U.S.A. for treatment – to Jackson Memorial Hospital, three times.

Due to accident I can't hear through my left ear and my eye glands don't produce tears. I have to put in artificial tears from Miami. These were prescribed by doctors.

I have not had an operation in relation to my ear but I should as my doctors told me the bones in my ear are fractured, and I will need an operation for this.

I have not had the operation because I don't have the finance.

I asked for a quotation and doctor estimated US \$50,000.00.

The prosthesis has to be adjusted on an ongoing basis.

CROSS-EXAMINATION by CHEBAT FOR 1ST DEFENDANT:

The accident happened in the night. I am not sure of time.

I do drive, since I was 17. When accident happened I was not holder of valid driver's licence.

I have a driver's licence. I got it after accident.

The vehicle I was in was on St. Thomas Street I believe.

I recall where accident happened – at intersection of St. Thomas Street and Princess Margaret Drive.

I can't recall if vehicle I was in stopped at intersection.

Yes I'm familiar with rules of the road.

The person on St. Thomas Street should stop at intersection.

I was not driving at the time of accident.

I can't say who gave orders for me to be taken to U.S.A.

I was in U.S.A. for three months – stayed with Lucia Cano, my aunt.

I am not sure who paid for medical expenses as my parents did not involve me in the financial transaction.

NO QUESTION BY DUJON FOR 2ND DEFENDANT.

NO RE-EXAMINATION.

P.W. 3 MARIO CANO s/s:

Forty one years old of 9 Guadalupe Street. Electrician by trade. I know the plaintiff, he is my son.

Recall 27th October, 1999 because I got a phone call that night as a result of which I went to Belize City Hospital – K.H.M.H. I got there approximately at 8:30 in the evening.

I asked to see my son. When I entered the room in emergency and saw my son he was covered with blood and crying in pain.

I noted mostly his face. I talked to him but he did not answer me.

I remained at hospital until 11 a.m. the following day.

I did not go alone to hospital, my wife accompanied me.

Before I left I spoke to my son, but he did not answer me.

We were advised to seek medical help outside.

We were able to get him flown out on air ambulance to Jackson Memorial Hospital.

It was a special flight from Miami. It was paid for. It was US \$10,000.00 plus.

The flight took my son approximately 11:30 in the morning. He was accompanied by my wife Lilia Cano, his mother.

Three days later I went to U.S. I met them at Jackson Memorial in Miami.

I saw my son. He was hooked up to a lot of machines. He had a cast on left hand, a bandage to the foot. He also had some metal pins supporting the foot.

I spoke to him but he did not answer.

He only was able to speak to me on the third day. I got there about 1:30 p.m. He was able to speak to me possibly two or three days after I arrived.

He did not recognize any of us in the room - his mother, my other son and me.

He was tired and falling back to sleep and always asking for water. He was confused. He was hooked up to machines, about five different wires.

I stayed in Miami for a week and returned to Belize. I came to raise funds and have more access to finance.

I stayed in Belize for four to five days and went back to Miami.

I stayed there approximately for two weeks.

I made two other trips to Miami, son was still in hospital.

I was there when he had operation.

He remained approximately for a month after operation.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

Yes, son was covered with blood and crying in pain when I visited him at K.H.M.H. He was conscious.

I don't recall name of doctor who told us to get medical help outside.

I spoke only once to this doctor.

I did not consider taking my son to Belize Medical Associates.

My son was flown out about 11:30 the day after accident.

My wife and sister organized air ambulance from Miami.

Yes, another doctor saw my son. He was from B.D.F. There was only one doctor on duty that night.

I paid for air ambulance.

My son stayed in Miami approximately about 2 ½ months.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

I was told by the doctor the same night of accident to get my son outside for medical help.

It was the doctor on duty that night.

The doctor from BDF came the same night and spoke to the other doctor.

I don't know the circumstances this doctor came to visit my son.

I don't know if my son was heavily medicated when I visited him in Miami but he could have been. I am not in a position to say if he was medicated he could not speak to me.

NO RE-EXAMINATION.

P.W. 4 MARLON SKEEN s/s:

Twenty five years old of B.E.C. Layout, Custom Broker.

I remember 27th October, 1999. An accident took place on Princess Margaret Drive.

I saw what happened. I was coming down Princess Margaret Drive towards Pallotti side (North). As I reached corner of St. Thomas Street and turning to my left going into St. Thomas Street I stopped there. I witnessed a car was coming out of St. Thomas Street going towards air strip. A next car was behind me going up Princess Margaret Drive going northerly.

The car out of St. Thomas Street came out and going into St. Matthew Street but before reaching St. Matthew they collided on Princess Margaret Drive.

This car had passed me.

When they collided I saw the car spin in the air and land on fence by MCC.

The car was going into St. Matthew and the van was going up Princess Margaret Drive.

The car was thrown towards the fence in St. Matthew Street. It was in the ditch and side of fence on St. Matthew.

The van was on right hand side on Princess Margaret Drive a couple of feet away from fence.

I doubled up and parked outside BT.L.

I came out and walked towards site of accident. A door of car was opened towards the fence. I saw three people standing outside of van.

I can't remember the face but it was an Indian person with two kids. They were three or four feet away.

The car's front was turned towards Princess Margaret Drive. I saw someone lying on the ground towards the fence. Somebody was in car on driver's side.

The person on the ground was on his back. He was bleeding. I saw blood from his mouth and rest of his body - his face and pants and shirt.

I can't remember the facial details of the person.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

Yes, I do drive. Have had a valid licence since I was 18.

Princess Margaret Drive is a two-way, each way has two lanes.

At intersection of Princess Margaret Drive and St. Thomas Street you should stop if coming out of St. Thomas Street. My knowledge is that Princess Margaret Drive has right of way.

There is a stop sign at St. Thomas Street.

The vehicle coming out of St. Thomas Street did not stop at intersection.

I saw the collision. The collision was on right of Princess Margaret Drive going towards Pallotti.

The vehicle coming out of St. Thomas Street had on lights. The other vehicle also had on lights.

There was a car and van - car came from St. Thomas Street and the other caravan type on Princess Margaret Drive.

I can't recall face of driver of car.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

I first noticed the car in St. Thomas Street at cut off in Princess Margaret Drive. I was not too far away, probably ten yards away. My vehicle was automatic. I was possibly doing 10 m.p.h. or less.

I was on the point turning into St. Thomas Street when I noticed the vehicle behind me in my rear mirror. It was about one to two car lengths behind me.

The vehicle behind me was more on the right hand side.

I had put on my left turn signal. The vehicle behind me was in the right lane back of me.

I am not aware of speed limit in the area.

I was doing between 30 – 35 m.p.h. before slowing down. If the vehicle was too close behind me I would have seen the lights. I wasn't aware of a vehicle behind me up to that point.

There were islands on the dual carriage way. I was half out of Princess Margaret Drive to be able to see what was coming from St. Thomas Street. I would have to go out some more to make a left turn.

It was at that point I saw vehicle coming from St. Thomas Street. I had to incline my head a little bit to see the vehicle as the light was on coming between a car and a car and half length away.

I did not turn but the approach from Princess Margaret Drive south was clear.

I was being courteous in allowing vehicle from St. Thomas to go through.

I am being factual when I say the car was spun in the air and it hit a lamp post and cracked the light. The lamp post was by Stadium on Princess Margaret Drive. I can't remember how far away vehicle was from lamp post.

I recall there was a bus shelter at the area, the van was before this bus shelter.

I heard the collision, it was loud. The impact was loud and must have been hard.

I can't give idea of speed vehicle behind me was coming. He was closing but not too far.

I was driving single cab truck. My windows were lowered. I had my brother with me – Jason, 18 or 19 years old.

My rear windows are heavily tinted, so are my side windows but not heavily.

I don't think there is a dip in road going into St. Matthew Street.

The children I saw with Indian person would be between 10 and 12 years.

I first went to the van. I didn't speak to its driver – they didn't say anything to me.

I didn't assist getting anyone to hospital. I didn't leave the scene. I was there when police arrived, between 5 to 10 minutes after.

A couple of days later I had contact with police – to give a statement. I did.

I was aware there was something behind me travelling at a faster speed. I know I had to give way to vehicle coming from St. Thomas Street.

RE-EXAMINATION:

I was more cautious when I gave way to vehicle from St. Thomas Street.

Adjourned to 2 p.m. for continuation.

2:30 p.m. - TRIAL RESUMES.

P.W. 5 JOSE MOGUEL s/s:

Thirty nine years old. Belize City, surgeon. Medical Practitioner.
Attended -

Witness taken as expert. Medical Doctor working with Government of Belize and privately.

27th October, 1999 I saw Plaintiff in Emergency Department at K.H.M.H. Alleged to have suffered a road accident. He was unconscious having suffered serious injuries to the head, left upper and lower limbs.

He had a blunt head injury which caused him to bleed through the ear.

I did a CG scan which showed fractured skull to left side.

The plaintiff was admitted in K.H.M.H. for about 12 hours from 10 p.m. to 10 – 11 a.m. following day.

He received treatment protocols for several injuries, brain trauma and he had a tube in his throat and kept alive on a ventilator.

As there is no neuro-surgeon in Belize, we recommended treatment abroad.

He proceeded to receive treatment abroad.

I have seen Plaintiff since that day. I issued a medical report on him. He has recovered significantly.

I classified plaintiff as having 45% disability based on his limb loss and other disability.

I know his head injuries have been attended to.

Plaintiff also had decreased lacrimation and hearing disability for which I recommended him to an eye and ear specialist. I don't know how much this would cost.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

On 27th October, 1999 there was a team of doctors working at emergency. I did not see plaintiff alone. I can recall Dr. Andre Sosa, an orthopedist surgeon and other junior officials like Dr. Rivero.

Because of plaintiff's head injuries, I recommended he go abroad.

I think plaintiff's injuries to his left upper and lower limbs could have been treated in Belize.

The 45% disability is permanent.

The eye and ear specialist can better assess disability.

The 45% includes eye and ear injuries.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

I said plaintiff should seek treatment abroad.

This was a collective decision.

Abroad could have meant Guatemala City or Merida.

I only recommended treatment abroad and not any specific place.

I don't recall discussing any specific place.

I have experience of facilities in Merida. The plaintiff could have received treatment there or in Guatemala City.

I also work in private field. Merida is cheaper than U.S.

I don't know the relative price of treatment.

Merida is cheaper than U.S.

Patients often go to Merida for treatment.

It is patient's choice to go to U.S.

It is more common to go to neighbouring countries.

The 45% disability is permanent.

The plaintiff would be going to specialist for follow up treatment. This may or may not improve his condition.

Even if Plaintiff recovers full hearing it would not change the 45% disability.

I arrived at 45% on assessment of Plaintiff by examination. I based my percentage on Social Security laws and regulations.

Amputation of lower limb is 45% disability along with other injuries.

The 45% includes anatomical and functional loss.

The position of loss of two lower limbs and a quadriplegic would be mathematically different.

I would not say 45% disability is on the generous side because of the loss of a limb.

An artificial limb would not in my view change percentage of disability.

RE-EXAMINATION:

There was also an orthopedic surgeon present who agreed that Plaintiff should seek treatment abroad.

Melchor is not an option. The standard of medicine in U.S.A. is higher as it has better facilities.

Adjourned to a date to be notified by Registrar.

MONDAY – 24TH SEPTEMBER, 2001

IN COURT

TRIAL CONTINUES FROM 16TH JULY, 2001.

REPRESENTATION:

The same as last time on 16th July, 2001.

Lindo for Plaintiff calls P.W. 6.

P.W. 6 – LILIA CANO

Married, of 9 Corner of Guadalupe and Hopkins Street, Belize City. A passenger service agent for American Airlines.

I know Plaintiff, he is my son.

I remember 27th October 1999. I received a call about 8:30 p.m. and went to K.H.M.H. where I found my son. He was involved in a traffic accident.

I wasn't allowed to see him. About 1:30 a.m. I was allowed to go in the Trauma Center. My son was hooked up, being given oxygen and blood transfusion. I did not speak to him nor he with me. He appeared to be asleep and I was there for five minutes and doctor came and said he wanted a meeting with me and husband – two doctors.

Doctor advised that it would be better to fly my son out of country because of injuries to his head and food.

In the Trauma Centre, my son was lying there, his foot was covered with bandages. His face was covered with dried blood on his cheeks, his nose, and his ears were like torn.

I mentioned that I would like my son to be taken abroad by Wings of Hope. The doctor specified that Wings of Hope hadn't equipment or facilities to transfer son out of country.

They said the best alternative was an air ambulance – they made this recommendation.

My sister-in-law and I left about 2 a.m. We tried to get things to get air ambulance in Belize City.

We got Aerovac. They needed \$20,000.00 BZ. We called Credit Union to get a loan to get money to get son out of country by Aerovac.

I went back to hospital where my son was screaming with pain. His hands and feet were tied up, he was screaming in pain. His face was still covered with dried blood. He was screaming with pain when Dr. Sosa was treating him.

This lasted from 8:30 to 10 a.m.

The air ambulance transported him. I was with him, I traveled with him to Miami.

On arrival, we were transported, after clearing Customs and Immigration, to Jackson Memorial Hospital.

He was bound up again in the air ambulance as he was screaming in pain. He was given a shot which relaxed him.

At Jackson Memorial he was taken to Trauma Center and I was asked to wait in a room about 7:00. I waited till 11:00 when I was told to go see my son.

He was hooked up to oxygen machine, with wires. I was allowed ½ hour. They took him to intensive care. He did not speak. I didn't stay with him at Intensive Care Unit.

I was at the hospital 24 – 7.

I left hospital about 12:30, 1 o'clock in the morning.

I visited him everyday. I stayed a month in Miami in connection with my son.

He wasn't responding the next day. He was wired and hooked up. He appeared to be sleeping for three days.

On third day he opened his eyes but couldn't speak as there was tube down his throat.

He first spoke to me about the fifth day. He asked where he was and what happened. He asked again two minutes. He had no recollection of his grandmother. He could only recognize me and his father.

He probably began to recognize others on 7th or 8th day.

He stayed for three days in Intensive Care Unit and was transferred to Neuro-surgery Ward, where he started to complain about pains in his head and ears. He would scream with pain when he was seated up. He couldn't hear, his eyes couldn't close down. He can't cry. We have to get artificial tears.

He stayed for 2 ½ to 3 weeks. He was later taken to Ear Ward where a machine extracted dry blood. They said his ear was damaged and he could not hear. He was taken back to Neuro-surgery. There his wounds were treated.

The doctor said they had to amputate his leg. As a mother I couldn't accept this. He made the choice.

He was transferred to Cedar Sinai Hospital for the amputation. This took place on 19 November – two days later. The operation took about four hours. When I next saw him he had one leg. They gave him morphine for the pain.

He stayed at Cedar Sinai for about a week.

When he was dismissed he was given medication for his pain, brain and leg.

He was taken to my sister's home and he had to go in the hospital for change of dressing and therapy.

I came back home. I went back to U.S. for appointment. He was in pain and couldn't sleep. He was in a lot of pain.

We got him a prosthesis. We raised another loan, people gave us donations.

Using the prosthesis causes blisters and pain to him.

He now can't do the things he used to do. Play baseball and tennis.

The therapy and prosthesis session lasted six weeks to two months. He did not finish all the sessions because of money (US \$75) and he wanted to come back home. He remained in the U.S. for five months since I took him there.

He has been back to see the ear doctor and for his prosthesis.

He did not receive any other operation. He needs one for his ear but we don't have the finances – about \$10,000.00 to \$15,000.00 BZ.

I want him to get such an operation as he doesn't hear you clearly. The bones are damaged in his ears.

11:55 a.m.

Counsel request adjournment in view of the hour. The trial will be adjourned to 2 p.m.

2:00 p.m. - TRIAL CONTINUES.

P.W. 6 – EXAMINATION IN CHIEF CONTINUES:

Yes, I have a list of expenses incurred with receipts.

Both Defence counsel stated no objection to documents.

1. Receipt for CAT Scan for \$420.00 in Belize at Universal Health Services.

Tendered as Exh. L.C. 1.

2. Receipt from Belize Emergencies Response Team for \$70.00 for transportation to airport.

Tendered as Exh. L.C. 2.

3. Receipt from Aerovac – transportation from Belize to Miami – US \$8,950.00.

Tendered as Exh. L.C. 3.

4. Receipt for admittance and treatment and medicine at Jackson Memorial for US \$8,988.94.

Tendered as Exh. L.C. 4, pp. 1- 22.

5. Receipt for admittance and services at Cedar Sinai – US \$32,436.92.

Tendered as Exh. L.C. 5.

6. Receipt for prosthesis for US \$3,500.00 but US \$3,500.00 representing the other half is still to be paid for making a total of US \$7,000.00.

Tendered as Exh. L.C. 6 – pp. 1 – 3.

7. Receipt from Jackson Memorial Lab for US \$931.30.

Tendered as Exh. L.C. 7 – pp. 1 – 2.

8. Receipts for outpatient clinic for neurosurgeon, orthopedic and EMT doctor. For eye doctor for US \$50.00. Receipt No. 338673.

Tendered as Exh. L.C. 8.

9. Neuro-surgery Receipt No. 678522 for US \$75.00

Tendered as Exh. L.C. 9.

10. For neurosurgeon Receipt No. 1157200 for less \$75.00.

Tendered as Exh. L.C. 10.

11. Receipt No. 928105 – US \$75.00 for Neuro-surgery.

Tendered as Exh. L.C. 11.

12. Receipt No. 1151380 for US \$75.00.

Tendered as Exh. L.C. 12.

13. For US \$75.00 for Eye – Receipt No. 9292.

Tendered as Exh. L.C. 13.

14. Receipt No. 928018 for US \$75.00 for change of dressing.

Tendered as Exh. L.C. 14.

15. Receipt No. 1212886 for US \$65.00.

Tendered as Exh. L.C. 15.

16.	Receipt No. 937739	-	US \$75.00]	
	Receipt No. 937539	-	US \$75.00]	
	Receipt No. 9374787	-	US \$75.00]	Exhs. L.C. 16, 1 - 6
	Receipt No. 9337912	-	US \$75.00]	
	Receipt No. 937676	-	US \$75.00]	
	Receipt No. 937678	-	US \$75.00]	

17. Neuro-surgery Receipt No. 112638 – U.S. \$75.00.

Tendered as Exh. L.C. 17.

18. For Eyes and Ears

Receipt No. 936031 - US \$40.00

Receipt No. 927859 - US \$40.00

Tendered as Exh. L.C. 18, 1 – 2.

19. For prescription drugs for pain and swelling on brain from Eckard and Walgreen – Total - \$391.92.

Tendered as Exh. L.C. 19.

20. A bundle of receipts for boarding, lodging and transportation – U.S. \$2,000.00.

Tendered as Exh. L.C. 20.

21. Telephone bills for calls to U.S. to see how he was doing - \$564.50.

Tendered as Exh. L.C. 21, pp. 1 – 4.

22. Receipts for departure tax – total of \$67.50.

Tendered as Exh. L.C. 22.

23. Tickets for airfare – Serial No. 0014263237163 – US \$39.79.

Tendered as Exh. L.C. 23, 1 – 2.

No. 0014263237164 – US \$39.79
No. 00406298264 – US \$40.14
No. 0014263837214245 US \$80.28

Tendered as Exh. L.C. 24, 1 – 3.

LINDO applies to amend particulars of special damages because two main items of expenditure were not available at time of settling. Statement of Claim be amended to include these items.

CHEBAT: No objection.

DUJON: No objection but what is the amendment sought?

LINDO: Items of claims submitted through Capital Life Insurance Company for varying provisions of services for:

- 1) US \$11,430.00 dated 7/4/00.
- 2) Of 24/3/00 – US \$10,561.00

Counsel undertaking to file amended Statement of Claim to include these two additional items

P.W. 6 continues:

Each doctor submitted bills for treating the Plaintiff.

- 1) Dated 24/3/00 for US \$10,561.00 - **Exh. L.C. 25, 1 – 14**
- 2) Dated 7/4/00 for US \$11,430.00 - **Exh. L.C. 26, 1 – 34**

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

Both doctors recommended my son be taken out of the country. They did not specify where he should be taken.

No, I did not consult any other doctor before taking him out of Belize.

No, I did not check with Belize Medical Associates to see if they could render service.

Wings of Hope I was told did not have the facilities for my son.

I was with my husband when I went to see my son on 27th October 1999.
My husband was allowed to see him.

I am not sure if he was conscious, nor was he on the plane to U.S.

He was screaming on the plane. I am not sure if he was conscious.

I am working, so that is how I planned to pay for my son's expenses.

He was in Miami for a total of five months.

The doctors in the U.S. never explained to me the quantity of medical care involved.

I had the opportunity to discuss the expenditure.

I did not authorize the doctors for the expenses.

I don't know if the treatment could have been obtained in one of the neighbouring states.

I don't know if medical treatment is cheaper than in U.S. in Guatemala or Mexico.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

When I left my son at hospital I stayed at a nearby hotel.

I have a sister who lives in Miami. I was with my son 24-7.

It is not because I have a sister in the U.S. that I decided to take my son to U.S. This was not a factor but I knew my sister lives in Miami. I didn't think she would be of assistance to me.

I don't know if Jackson Memorial is a private hospital.

Mrs. Guerrero who made arrangement for Aerovac also made arrangement for my son to be admitted at Jackson Memorial.

I didn't inquire from her the expenditure I would be looking at.

If I had known the expense it would not have changed my mind.

I looked at alternatives but was told my son should be flown out. The doctors said there was not much time. It would have been worse by road.

Aerovac was the quickest as time was pressing. I don't know if Aerovac could have flown him to Merida or Guatemala City.

Some people gave us donation - \$8,000.00.

Exh. L.C. 2 is not a donation, it is what we paid.

The additional items are expenses from doctors which they submitted.

I got bills from the doctors apart from Jackson Memorial.

Witness shown document by Dujon – from Cedar Sinai but states not doctor's bills.

At time of accident Plaintiff was a dependent of mine. I work at American Airlines.

I received no assistance from Social Security and I did not attempt to get any from Social Security.

Of the total expenditure a total of \$2,000.00 remains unpaid.

RE-EXAMINATION:

Because I love my son I would have done anything to save his life.

P.W. 7 – DR. ANDRE BRIAN SOSA (affirms):

An Orthopedic Surgeon. Trained in Guatemala. I worked for 2 ½ years with Government.

I had the opportunity to participate in evaluation and treatment of the Plaintiff two years ago.

On 27th October, 1999 I found patient in Emergency Room to be critically ill. He had an altered state of consciousness and couldn't respond when spoken to. His only reaction was to pricks; he was bleeding from ears, nose and mouth and had wounds to one of the legs through which bits of broken bones could be observed.

This patient obviously had brain injuries.

He received treatment within limits of what was available at K.H.M.H. His doctor was Dr. Moguel.

The patient had trauma of brain from motor vehicle accident. This can cause bleeding within brain and excessive swelling.

This was not only injury requiring treatment. The open fracture of the leg also required surgical treatment. But patient would first have to be stabilized to anaesthetize him. No surgical treatment of that magnitude could be done without anesthesia because of increasing blood pressure inside skull, this could hasten death.

Hence general surgeon and anesthetist attempted incubation of the patient and artificial respiration.

This along with sedation reduced pain and pressure in patient's skull.

I personally tried to cleanse the gaping wound on the leg and to immobilize it with a metal splint. One of his forearm was broken and this was similarly immobilized.

I left the Emergency Room hoping that patient would have been sufficiently stabilized for surgery as soon as possible.

Later on in the morning on my ward round I was informed that family intended taking patient abroad as K.H.M.H. lacked facilities for Intensive Care to save patient's life.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

I can't recall exactly when I first saw patient, possibly around 10 o'clock. It is now two years.

I treated patient when I learnt he would be transported abroad. I decided to change splint. It took 20 minutes roughly. We removed dressing to replace with fresh ones - it was painful.

It is conceivable that patient cried a lot.

Yes, I could have amputated the leg here if patient was in condition to be operated on.

Certainly, this particular surgery could have been done in Guatemala but I couldn't say at a cheaper price.

I don't know how the decision to take patient abroad came about.

I was surprised to be told that patient's family would refuse further treatment here for him. As a professional at K.H.M.H. who has seen the limitations of the hospital, I believed that the patient's family made the right decision at the time.

It is difficult for me to say whether lapse of time in U.S. contributed to deterioration necessitating amputation. The Americans are more aggressive to want to cut off a limb than we do here.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

The clinical signs were of swelling of the brain. There was a CAT scan done. I can't recall that I saw it.

The general surgeon would be in a position to determine if situation was life threatening.

My impression of his head injuries was that it was life threatening.

I believed that he might die of his head injuries.

It requires only 20 m.p.h. to sustain injuries of head that can kill or break legs.

RE-EXAMINATION:

The patient was certainly not in a condition to be operated upon.

Plaintiff's counsel indicates one more witness.

Adjourned to 25th October, 2001.

THURSDAY – 25TH OCTOBER, 2001

IN COURT

Trial continues from 24th September, 2001.

REPRESENTATION:

Appearances the same.

LINDO FOR PLAINTIFF:

One more witness to call but as witness is not present will rest Plaintiff's case.

CASE FOR PLAINTIFF.

CHEBAT FOR 1ST DEFENDANT-

D.W. 1 - BHOJRAJ GHANWANI (affirms):

Of 2498 Belama Phase 2, a businessman.

Recall 27th October, was with children at BTL Park. Around 8:15 p.m. left Park going towards house in Belama, driving along Princess Margaret Drive, was driving in my Trooper. When I reached junction, I had one vehicle in front of me – directly in front about 10 to 15 feet. This vehicle showed its indicator to turn left hand side. I applied my brakes and turned little to right to pass the vehicle in front of me.

As I passed the vehicle reaching middle of junction of St. Thomas Street and Princess Margaret Drive, one vehicle was coming from St. Thomas Street in speed – quite a high speed. It hit my vehicle in front by the driver's side, that is, left hand side.

Because of the impact my vehicle turned the other side and went into National Stadium's fence. My vehicle was turned to the opposite direction.

The National Stadium is at corner of Princess Margaret Drive and St. Matthew Street.

I came out of vehicle and called for my children who were with me in vehicle, my son and daughter. My son came out of vehicle and some people helped my daughter out of vehicle.

Because of that I got my head burst up. I was bleeding at the time.

My son had the skin of his knee cap off.

My daughter had some bruises.

I observed my vehicle. It was right in the fence of National Stadium, turned in the opposite direction and completely damaged. It was destroyed completely.

I saw the other vehicle on St. Matthew Street in the drain on the left hand side, turned as if it was going to St. Thomas Street.

I saw somebody was bleeding in this vehicle on the driver's side, he had blood on his face.

Some people stopped a car and told me to go to hospital as I was bleeding. I took my two children with me to hospital.

I was given a stitch on my head and my son's knee cap was stitched.

The impact occurred about 8:20 – 8:25 p.m.

Prior to impact I saw only vehicle in front of me with its indicator for St. Thomas Street. I applied my brakes and passed the vehicle on the right.

I have been driving for last 27 years.

I know for fact that driver on Princess Margaret Drive has right of way and all connected streets have to stop, that is, St. Thomas Street, St. Matthew Street. Anybody coming from these streets has to stop for people driving on Princess Margaret Drive.

About 11:30 p.m. I went home. The next morning I went to my insurance company to inform them that I was in an accident.

I spoke also to the police about accident. I gave them a statement.

The insurance company told me to see somebody for a report of the damages to my vehicle. I went to him and he made statement of the damages. He charged his fees. I have forgotten name of this person. His fees was \$300.00.

After accident, police moved my vehicle to Police Station on Raccoon Street. They asked me to move it from there. I got someone to tow it to my house. He had a towing company. He charged me \$160.00 for this.

Witness shown document.

DUJON for 2nd Defendant objects.

Had applied to Registrar to plead by way of 3rd parties proceedings to join the 1st Defendant. This was granted.

Court drew attention to O.17 r.50.

DUJON:

No notice was served on us for counterclaim.

CHEBAT:

Will rely on O.76 on non-compliance.

ORDER OF COURT:

The 1st Defendant shall serve notice of counterclaim on 2nd Defendant within seven days of this Order.

TRIAL CONTINUES:

Witness shown document.

No objection by Plaintiff and 2nd Defendant.

Receipt for removing vehicle from Princess Margaret Drive and to Raccoon Street and Police Station to my house - \$160.00.

Tendered and marked Exh. BG 1.

I work at 14 Orange Street. I rent a vehicle for transportation every day. I take my children to school every day and do other errands. I rent the vehicle for \$30.00 a day from Chedear Ghanwani. From 1st November I have been paying this rental.

Witness shown document. Receipts for rental from 1st November 1999 to 30th April, 2000.

No objection by Plaintiff and 2nd Defendant.

Tendered as Exh. BG 2, 1 – 6.

I obtained a survey report on vehicle for which I paid.

Witness shown document – no objection from Plaintiff and 2nd Defendant.

It is for \$200.00.

Tendered as Exh. BG 3.

My Trooper is presently completely mashed up and is parked in front of my house on the street.

CROSS-EXAMINATION BY LINDO FOR PLAINTIFF OF D.W. 1:

It was a violent collision. I was going north but after collision my vehicle turned facing south.

The other vehicle was facing towards St. Thomas Street after the impact.

There was a lamp post on corner of Princess Margaret Drive and St. Matthew Street. I have no knowledge if this pole was broken.

My knowledge I am supposed to drive at 25 m.p.h.

I paid attention to vehicle in front of me. The other vehicle had to stop. I had an obligation to stop to avoid an accident.

It is nearly 10 feet from the box to counsel.

I don't think 10 feet to 15 feet behind the other vehicle was careless driving.

I was driving carefully. I was with my children.

I applied my brakes when the other vehicle indicated to turn.

I don't agree that I was too close that's why I applied my brakes. There were no lane lines.

The area was divided into lanes.

I pulled over to my right into the right hand lane to pass the vehicle in front of me.

Princess Margaret Drive was wide at that section.

The accident happened nearer to St. Matthew Street side of Princess Margaret Drive.

I never hit the other vehicle, it hit my vehicle.

The other vehicle was coming from St. Thomas Street. It hit my vehicle in Princess Margaret Drive towards St. Matthew Street and turned it the other way. My vehicle was hit in the front.

COURT:

Suggest a visit to the locus of accident.

Recess for visit to locus.

Visited locus with attorneys along with 1st Defendant who indicates the scene of accident.

2:15 p.m. - Trial resumes.

CROSS-EXAMINATION OF D.W.1 BHOJRAJ GHANWANI BY LINDO cont.:

It is not true that the vehicle of 2nd Defendant ended up where it did because I hit it.

If I hit any vehicle it would have ended up on Princess Margaret Drive.

It is not true I hit 2nd Defendant. He hit me, that is how he came to end up in St. Matthew Street.

The 2nd Defendant hit me in front left and continued in front and ended up on St. Matthew Street.

Yes, the whole front of my vehicle is damaged. It is not true the front of my vehicle hit the other vehicle.

The impact was 360°. It made my vehicle move to the other side.

If my vehicle had hit 2nd Defendant I would have taken him to Princess Margaret Drive and not St. Matthew Street. If he had hit me in the middle I would have ended up in St. Matthew.

CROSS-EXAMINATION BY DUJON FOR 2ND DEFENDANT:

I was coming from BTL Park. My memory is the same.

Yes, I remember telling police about coming from a friend's house on Barrack Road. I made mention of BTL Park to the Police. I told Police about BTL Park.

Yes, I know rule of the road upon approaching an intersection. I have never heard of rule about not changing lanes on approaching an intersection.

My vehicle was an Isuzu Trooper.

The other vehicle was a small car.

It could be my vehicle was heavier than the other vehicle.

My moving to the right did not create a blind spot to my left. I could not see what was in front of the vehicle about to turn left.

It was the left of my fender that was hit, my vehicle made a 360° turn as a result.

The 2nd Defendant passed in front of me and hit me and swung me before it went to St. Matthew Street. It ended up in St. Matthew Street because of the impact.

The 2nd Defendant's vehicle passed in front of mine and ended up in St. Matthew Street.

The front of my vehicle was damaged because of the impact.

The entire damage to my vehicle was caused by the hit on the left fender.

Yes, the radiator was crushed in my vehicle.

Witness shown pictures - identified as his vehicle.

No objection from the other side.

Marked BG 4 for identification only.

It is not true that my vehicle ran into 2nd Defendant's.

I never impacted the 2nd Defendant's vehicle. It could be the majority of the damage was to 2nd Defendant's vehicle back because it dropped in the drain.

If the tail end of 2nd Defendant's vehicle was damaged it may be he hit me with that part. It does not suggest that 2nd Defendant's rear was past me when the impact occurred.

After accident I rented a vehicle from a relative. I obtained receipts. They were not stamped. I am aware that receipts should be stamped.

I rented a vehicle for six months because in that time I could afford to buy my own vehicle, which I bought cash.

I tried to get a loan but couldn't get one.

I own a small business. Yes, I was able to get money - \$7,500.00 to buy a car.

I couldn't borrow the money to buy a car in six months.

It is my brother who rented me a car as he had another. He never charged me, he did me a favour, not to charge sales tax.

It is not true the receipts are a put up to inflate my claim.

Yes, no stamp or tax on the receipts.

NO RE-EXAMINATION.

2ND D.W. – ALLAN LESLEY COLTON s/s:

Of 9 Cork Street, Belize City. I own a Guest house, retired engineer.

I know the 2nd Defendant. He approached me to carry out survey on a vehicle he owned that was involved in an accident.

I did this to see if vehicle was repairable or a total loss.

I did survey on 8 January 2000. I made a report as a result of my findings and signed the report.

Witness shown report.

No objection.

Identified the report.

Tendered and marked as Exh. AC1.

The amount of damages and cost of repairs, it was a total loss. I considered it beyond economic repair.

No question by Lindo for Plaintiff.

No question by Dujon for 2nd Defendant.

CASE FOR 1ST DEFENDANT.

This matter is adjourned to Tuesday 30th October.

TUESDAY – 30TH OCTOBER, 2001

IN COURT

SUPREME COURT ACTION NO. 97 OF 2000

Trial continues from October 25th, 2001.

Representation same as before.

DUJON: Second Defendant ready to start.

3rd DEFENCE WITNESS (First for 2nd Defendant).

TROY WILLIAMS s/s:

Thirty six years old, auto mechanic.

I have a towing service and a junk yard for about 20 years. Towing service about six years.

The towing service involves salvage of vehicles in accidents and to pick up people who need towing.

27th October 1999 I was at home. I heard a radio flash about accident that happened. I knew the vehicle from the licence number called out.

I went on the scene. The road was blocked. I had to go behind Princess Margaret and then up St. Thomas Street.

I was driving my other car.

I saw 2nd Defendant's car facing away from Airstrip.

I noticed it was lodged against the wall, the lamppost and the passenger side back wheel dislodged, broken off.

I only saw one vehicle I was confused about the accident.

I asked Traffic officers if I could go and look, then I saw other vehicle (Trooper) about two lampposts from where the car was. It was on its side, the passenger side.

The vehicle I went to fetch was on St. Thomas Street.

The Trooper was in the bush close to fence by National Stadium.

I called the owner of the vehicle, Miss Nal.

I worked with Mr. Dawson on the scene. We both have tow trucks. The car was taken to my workshop.

I had a look at the vehicle the next day and had a closer inspection. I could see brown paint on its body work from another vehicle.

This was from the truck to the back on passenger side of 2nd Defendant's vehicle.

The other vehicle (Trooper) was brown colour.

Witness shown pictures of vehicle.

I noticed the damage was mostly to the back, the passenger side.

The passenger side was mashed in and wheel was broken off.

There was two doors. The front passenger door was mashed in too.

The Honda Accord was lodged against lamppost.

The front of the Honda Accord was clean, it did not have much damage.

Witness shown picture of Honda Accord and says it is the Honda Accord he is speaking about.

CROSS-EXAMINATION BY LINDO FOR PLAINTIFF: None.

CROSS-EXAMINATION BY CHEBAT FOR 1ST DEFENDANT:

I saw Honda Accord lodged next to lamppost. I did not see a broken lamppost.

I saw Trooper on its side – two wheels on ground and two in air. The passenger side was on the ground.

I saw a broken windshield on the Honda Accord.

It looked like a brown Trooper. I didn't go close. It was in the bush.

NO RE-EXAMINATION.

2ND DEFENDANT.

D.W. 4 – OMAR ZELAYA s/s:

Twenty years old. I know Plaintiff. He is my friend.

27th October 1999 at about 8:30 p.m. I was driving my car on St. Thomas Street. It is a Honda Accord. The Plaintiff was a passenger in my car sitting in front passenger side.

St. Thomas Street will bring me to intersection of Princess Margaret Drive across to St. Matthew Street.

I got to intersection and stopped. Nothing was coming from left side, so I continued on and stopped at median island.

There was a vehicle coming from right side of Princess Margaret Drive. He flashed his lights at me just before the median. I took this to mean for me to go ahead crossing the street.

I can't recall any other observation – it had put on its indicator as if it was going to turn into St. Thomas Street.

I proceeded to go into St. Matthew Street.

There was a hump at entrance of St. Matthew Street so I had to put on my brake. A car came from behind the vehicle that had flashed me to cross, and hit me on the rear passenger side of my car.

As a result, the hit was so violent that it spun my car in the direction of St. Matthew Street, the car landed on a lamppost facing St. Thomas Street. It was the part where my friend the plaintiff was sitting that ended up near the lamppost.

The vehicle hit the lamppost, my head hit the windshield and I was knocked unconscious.

I regained full consciousness the following day about 3:00 or 4 o'clock in the morning.

I own a computer. After I was able to go out again I took pictures of 1st Defendant's vehicle, using a digital camera. Placed film in computer and got pictures.

Witness shown pictures of 1st Defendant's vehicle and says they are the pictures he took.

Tendered and marked Exh. OZ 1.

I also took some pictures of the Honda Accord.

Witness shown picture and identified it as the picture of his car.

Tendered and marked Exh. OZ 2.

CROSS-EXAMINATION BY LINDO FOR PLAINTIFF:

I got my first licence about February 1999, the year of the accident.

I know terms "Major Road" and "Minor Road".

St. Thomas Street is not a major road, it is a minor road.

St. Matthew Street is a minor road.

Princess Margaret Drive is a major road.

A vehicle flashed its lights at me just before Princess Margaret Drive. The vehicle was moving when it flashed its lights at me, even though it had the right of way; he had indicated to turn left. I believe it was common courtesy for him to beckon me to come.

It was also the distance he was from me that made me believe I could proceed. I proceeded because of the indication from the car ahead of 1st Defendant.

I had stopped when I got the flashing signal.

I am not certain about distance, possibly about 25 – 30 yards. The vehicle was probably about 30 yards, 90 – 100 ft. from end of island in Princess Margaret Drive.

I stopped because it was a major road.

I was about 20 feet from end of island in Princess Margaret Drive.

I saw just the one vehicle at that distance.

I first saw the Trooper when it came from behind the vehicle which was in front of him. The vehicle in front blocked off the Trooper. The road was also dark.

I was at an angle from the vehicle flashing. When I first saw the Trooper it had on its bright light. I did not see the bright light of Trooper as it was blocked by vehicle in front.

Quite possibly the passenger blocked off my vision as well.

Yes, I traveled ahead and all of a sudden, the Trooper and my vehicle made contact.

The Trooper did not run into the vehicle in front, it passed it.

I first saw the Trooper's light when it was almost in collision with me.

I did look right and saw only one vehicle.

The bump was at the entrance of St. Matthew. The bump was not between Princess Margaret Drive and St. Matthew Street.

The car ended up on the lamppost. I am not aware if lamppost broke as I was unconscious after accident – after the collision when I hit the lamppost.

I am not certain where on the lamppost my car made contact. I am not certain where it hit the lamppost.

I disagree that I was coming at high speed.

I did not apply my brakes. If I had, the impact would have been more where Plaintiff was sitting.

Q. If you had applied your brakes the accident would not have happened?

A. It would have still happened.

Q. You did not stop?

A. No, I did not.

Q. You did not swerve to avoid the oncoming car?

A. I did not swerve.

Adjourned to 2:30 p.m. for lunch.

2:30 p.m. - Trial Resumes.

CROSS-EXAMINATION OF 2ND DEFENDANT BY CHEBAT FOR 1ST DEFENDANT:

Yes, I obtained my driver's licence in February 1999. I first obtained a permit, then took written exam. After I passed I went for the practical. It would be fair to say the written exam includes Rules of Road.

Princess Margaret Drive has a median with two lanes on either side.

There is a stop sign at corner of St. Thomas Street and Princess Margaret Drive.

Princess Margaret Drive is a major road.

I stopped at intersection, first looked left and proceeded to median on Princess Margaret Drive.

I looked left and right before proceeding.

I stopped at median. It was at night, I had on my light.

I only saw one vehicle.

Yes, the second vehicle would be more than 120" from where I was.

I don't recall the first vehicle – what kind of vehicle it was.

I am not aware that the flashing light could have been a warning.

Witness shown Road Traffic Rules – Read Rule 116.

It is not true that I did not make sure the road was clear before I proceeded. It is not true that I did not stop.

It is false that I was driving fast and I saw vehicles on my right.

The accident did not happen because I was trying to beat the vehicles on Princess Margaret Drive.

P.W. 4 had no reason to lie that I did not stop.

There was no vehicle coming at the time on the far right hand lane.

I am not aware of any charges brought. I was charged in Magistrate's Court.

It would be false to say that at time of accident I wasn't an experienced driver. I was an experienced driver at time of accident.

RE-EXAMINATION BY DUJON:

There was no reason why I did not apply my brakes.

CASE FOR SECOND DEFENDANT.

ADDRESSES

CHEBAT FOR 1ST DEFENDANT-

The accident is unfortunate.

There is a burden on 2nd defendant to ensure that major road was clear.
He must give way to traffic on major road.

Relies on **Chapter 192, Rule 116.**

The story as told by 2nd Defendant is little less than true.

First defendant's story, the damage to his vehicle is consistent with his being hit.

Dr. Sosa's evidence. The surgery on plaintiff could have been done here or in Guatemala.

Plaintiff should be constrained by reasonable expenses.

Dr. Miguel estimated disability at 40%, the other doctor at 28%.

P.W. 4 was a disinterested witness. He said he did not see 2nd defendant stop at intersection. Was only eyewitness to accident.

First defendant was driving on a major road on which he had right of way.

The evidence would show first defendant not to have been negligent in this matter.

If it is found that 1st defendant was liable it would be less than 25%.

The 1st defendant is counter-claiming against 2nd defendant in amount of \$14,090.00.

DUJON FOR 2ND DEFENDANT

ON DAMAGES

Reasonability – there were other alternatives opened to Plaintiff.

Personal injury pleaded is for amputation of foot and not the leg.

Donations to Plaintiff should be borne in mind.

ON LIABILITY

Does right of way mean no regard for others?

Relies on **Rules 114(1)(d) and 121** of **Chapter 192**.

Report on vehicle by Colton – damage to front of vehicle of 1st defendant.
The 1st defendant must have been traveling at an excessive speed.

It is foolhardy to say 2nd defendant has no blame.

Liang v London Transport Executive (1959).

Submits that at very least 1st defendant was 1/3 liable.

The 1st defendant ran into back of 2nd defendant's vehicle. He could have avoided accident by taking evasive measures.

Therefore submits 1st defendant should be liable for 50%.

Notice of counterclaim by 1st defendant.

Court had rules seven days to serve.

ON COUNTERCLAIM

First defendant's evidence is \$5,460.00 for rental for six months and not \$6,390.00 for seven months.

Receipts were not stamped and should not be receivable in evidence.

LINDO FOR PLAINTIFF:

The two vehicles collided. The two vehicles were managed by 1st and 2nd Defendants.

A duty of care to all other users of the road.

There is here a breach of duty and hence damages.

On evidence, there is sufficient evidence of negligence.

First defendant had a right of way. No stopping or swerving.

As in most traffic accidents both drivers contributed to it.

The evidence of negligence by both drivers is there.

ON QUANTUM OF DAMAGES

It was not unreasonable to seek treatment in U.S.A. – agony of moment decision and professional advice.

The Plaintiff gave evidence as to what was amputated.

On donations – the defendants cannot benefit from their wrong doing.

Refers to **Rodriguez** and **Sanchez**.

Cur Ad Vult

Notices will be sent out for judgment.

A. O. CONTEH
Chief Justice