



amputated. A little later, the foot was also amputated. It is not clear from the evidence whether that was connected with the injuries sustained in the accident.

2. The plaintiff has brought court action claiming general damages for the pain caused, permanent disability, loss of amenities and special damages. The special damages were cost of hospitalization and medicines and transport expenses.
3. The defendant memorandum of defence filed was extremely vague the plaintiff could have applied for it to be struck out. From the testimony of the defendant details emerged. The defendant admitted that he was the driver that evening when the accident occurred. He deny any negligence in law.
4. Only two eye witness testified, namely the plaintiff and the defendant. There has been no evidence of the scene of the accident. Their accounts of the incident are dramatically different. It is my duty to assess the two testimonies and decide whether that of the plaintiff established a case to the standard of a balance of probability.
5. The plaintiff said the following. He had alighted from a bus, a woman ran across the road ahead of him and he crossed over. While he was on the left side, a vehicle he had seen "400 yards" away knocked him on the left shoulder and he fell. The vehicle ran on his right leg. He said the vehicle was traveling at about 45 mph. The plaintiff was 72 years old then. The account given by the defendant was that he was traveling at about 35 mph, it

was getting dark and it was drizzling. He saw a pedestrian about 30 to 35 feet walking from the right to cross the road. He brakes and moved to the left. The pedestrian hit onto the right side of the front of the vehicle and fell down. The defendant got out, stopped another vehicle and assisted in putting the plaintiff into that vehicle.

6. The law imposes a duty on a driver to exercise reasonable care to avoid injuries to other road users and those on premises adjoining the road and their properties. The standard of the duty is that of a person possessing a special skill , that is, of a skilled and competent driver exercising his skill. The question in this case is whether the actions of the defendant, in all the circumstances of this case, fell short of that the standard of the ordinary skilled and competent driver exercising his skill.
7. Both the plaintiff and the defendant say it was getting dark, it was drizzling and the driver had light. Although they gave different measurements as to distance between the plaintiff and the vehicle when the plaintiff first saw the vehicle, and when the defendant first saw the plaintiff, they each pointed out the bottom of the stairs case down the court building as the distance. My estimation was 30 to 35 yards away. A significant point there is that the defendant must have kept a proper lookout if that was also the distance at which the plaintiff first saw the vehicle.
8. The speed at which the defendant had a duty to drive given the conditions prevailing was a reasonable speed, not too fast in the circumstances. The plaintiff gave the speed as 45 mph, but the defendant gave it as between 30

and 35 mph. Whether 30 to 45 mph was too fast must be relative to the prevailing circumstances. The road was a highway. The bus from which the plaintiff had alighted had gone. There were no other vehicles. It was dark and drizzling. Visibility was up to impossible to stop a vehicle traveling even at 45 mph within 30-35 yards in a wet condition. I do not accept that the defendant was traveling unreasonably too fast for a skilled and competent driver.

9. Of great significance is my findings of facts is that the defendant must have walked into the road when the vehicle was too near. He said that a woman had run ahead of him, across from his side. That suggested that the woman ahead of the defendant considered that the vehicle was rather too near her to cross without having to run. Yet the plaintiff coming after the woman, proceeded to walk into the road. It must have been too near for the driver to completely avoid any contact with the defendant. From the medical evidence the impact of the contact could not have been very strong. The injury to the arm, the point of contact was described as minor injury. The grave injuries to the leg was caused when the plaintiff had fallen and the vehicle went over the leg.
10. The defendant said he swerved to the left to avoid knocking the plaintiff, but when in the middle of the road “the plaintiff hit into to the vehicle”. I think the swerving to the left was not unreasonable if it was to avoid contact with the plaintiff.
11. It is my decision that the plaintiff has not led sufficient evidence to prove

any breach of the duty of the defendant to drive exercising the ordinary skill of a competent skilled driver. The claim in negligence is dismissed with costs.

12. Pronounced this ..... the ..... day of December, 2004.

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court