

IN THE SUPREME COURT OF BELIZE A.D. 2001

ACTION NO. 230 OF 2001

(1. SHARON JOSEPHINE CASTELLANOS  
(2. ROCHELLE CASTELLANOS (a minor) by  
( MARK CASTELLANOS ( her brother  
( and next friend)

PLAINTIFFS

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(1. ARTHUR HINDS  
(2. CYNTHIA WADE

DEFENDANTS

Mr. W. Elrington SC, for the Plaintiffs  
Mr. Dean Barrow SC, for the Defendants

AWICH J

9. 6. 2004

JUDGMENT

1. Notes: *Negligence:- arising from collision on highway, duty of driver to other road users and those on adjoining land; whether truck was parked in the road without lights or other warning signs. Decision of DPP not to prosecute is not determinant of the question of liability for negligence in a civil claim; SS: 12 and 13 of Summary Jurisdiction (Procedure) Act Cap 99, and S: 169 of the Indictable Procedure Act cap. 96 viewed together with the rule that conviction for a traffic offence is not determinant of liability in civil proceedings; the requirement under regulation 121(3), of Motor Vehicle and Road Traffic Regulations, that when about to stop or slow down on any public road a driver is to do so gradually and make the appropriate traffic signal.*

2. The incident of this case, the motor accident on 8.12.2000, at Almond Hill, 11 miles from Belize City on the Western Highway, was a tragic one. The driver and another in vehicle No C-23927, in which the plaintiffs were travelling died. Naturally it is always the unpleasant duty of attorneys in a case like this to critically probe into the facts, but they have a duty to assist the Court in arriving at a just decision. Equally, it is the unpleasant duty of the judge to objectively weigh the facts free from the emotion of sympathy. Evaluating the evidence necessarily involves critical examination of the testimonies of witnesses. The Court had to do that in order to arrive at the truth or the nearest to the truth.

*The Plaintiffs' Case.*

3. Sharon Josephine Castellanos and Rochelle Castellanos were travelling in vehicle No C-23927, one of the two vehicles involved in the collision. They were injured. They are the plaintiffs. Rochelle is a minor, she sues by next friend, Mark Castellanos. They claimed damages from Arthur Hinds and Cynthia Wade, the defendants, for injuries that the two plaintiffs suffered in the accident and the medical expenses they incurred. Sharon also claimed for loss of income while she was in hospital. The Plaintiffs averred that the collision was caused by negligence on the part of Mr. Hinds who was the driver of the other vehicle, a horse and trailer truck No A-844. Ms. Wade, the common law wife of Mr. Hinds, was the owner of the truck, the claim against her is based on vicarious liability, it was averred that Mr Hinds was an employee or agent of Ms. Wade and that the collision occurred in the

course of employment.

4. The particulars of the negligence averred against Hinds were that he:

“1. parked his vehicle on the highway in the night without giving any or any proper indication or warning of the presence of the said motor vehicle on the said highway;

2. failed to keep any or any proper lookout for oncoming traffic on the highway to warn them that he was parked in the road;

3. failed to ensure that his said motor vehicle was equipped with working brake and park lights at the rear of the said vehicle.”

5. Averment at 4 is not a particular of negligence , it is an averment as to the causal connection between the averred acts and omissions, and the collision and the resulting injuries to the plaintiffs. The particulars of the injuries suffered by the plaintiffs were also averred.

***The Defendants' Case.***

6. The defendants admitted that Mr. Hinds was driving the truck at the time of the collision. They, denied any negligence on his part. They contended that the collision was caused by or contributed to by the negligence of the driver of vehicle C-23927, who is dead. Her estate is not a party to this case. The defendants particularised the negligence of the driver of C-23927 as follows:

“(a) Driving too fast in the circumstances

(b) Attempting to overtake A-844 when the road was not clear and when it was unsafe to do so.

(c) Failing to heed the presence of oncoming traffic before attempting to overtake A-844.

(d) Failing to stop, slow down, swerve or in any other way manage or control C-23927 so as to avoid the said collision.”

7. During the trial Mr. Dean Barrow SC, learned counsel for the defendant, admitted the injuries suffered by the plaintiffs and the special damages that arose therefrom. He said that the issue would be the negligence alleged and therefore liability.

8. The testimony of Rochelle, which testimony was not subjected to cross-examination stood admitted since it was only about injuries and therefore damages. That part of the testimony of Sharon relevant to injuries and damages also stood admitted.

***The Law.***

9. Evidence was led as to the facts that the police were reluctant to charge

Hinds, and that they decided to charge him only two days short of six months, and further, that the Director of Public Prosecutions subsequently withdrew the charge. I have to say that the determination of the case by this Court as to whether Hinds drove negligently cannot be based on the view taken by the Police or the Director of Public Prosecutions, of the collision. Those decisions are purely for the purpose of criminal liability in the case. Were Hinds to be convicted, his negligence for the purpose of determining liability to pay compensation would not be decided on the conviction per se. The facts upon which he would have been convicted would be used as evidence tending to establish liability - see *Hoadley v Dartford District Council [1979] RTR 359*. Sometimes I think that the rule appears inconsistent when viewed together with *SS: 12 and 13 of the Summary Jurisdiction (Procedure) Act Cap. 99, and S: 168 of the Indictable Procedure Act, Cap. 96*, authorising court in a criminal trial to order compensation upon conviction, a power which incidentally is rarely exercised.

10. To adjudge Hinds liable to pay compensation for negligence, the law of negligence requires proof that Hinds owed a duty of care to the plaintiffs at the time and that he did not live up to his duty, and his failure caused the collision and the injuries suffered for which the stated damages are claimable.
11. It was not contested that Hinds, being a driver on the highway, owed a duty of care to other road users and those on land adjoining the highway and their properties. As a matter of law he owed a duty of care, that evening, to

among others, the driver of C-23927 and the occupants of that vehicle, the plaintiffs included. The duty on Hinds was to exercise reasonable care in the circumstances prevailing, that is, to drive and be in charge of A-844 in such a manner as to avoid reasonably foreseeable danger in the circumstances that: it was about 7:30 pm it was dark, there were other vehicles on the highway on a straight portion, and his truck was laden and was moving very slowly or had stopped. The plaintiffs' case is that Hinds failed in his duty of care in the three ways particularised by them. That is what the Court has to decide.

***Determination.***

12. The Plaintiffs' proofs of those particulars of negligence were intended to be found in the testimonies of Sharon Castellanos herself PW1, and of Ms Michelle Hullet, PW2. I dismissed the whole testimony of Ms. Hullet as very unreliable.
  
13. Ms Hullet's testimony was this. She was with her cousin Ms Anette Cooper with whom she "normally went to Tropical Park to feed her dog, she had a house there". Hullet remembered Ms. Cooper's address by street name only. At the time of trial she said that Ms Cooper had left the address and that she, Hullet, did not know where Ms Cooper might be. That is improbable given the degree of acquaintance and a city as small as Belize or even the country. Ms Hullet also said that she came to give evidence only when she overheard by chance when passing Mark and another talking on the street about the incident. She had known Mark as a customer at a store she had worked in. She did not know the name of the store. I found all that highly improbable.

Her testimony about the collision was that she was in a vehicle driven by Ms Cooper, approaching from the opposite direction. She observed the truck stopped in the road, it did not have lights on. She commented about it disapprovingly. They cross-passed the truck and a small vehicle, then they heard a crush. She urged Ms Cooper to return to the crush where they helped take a teenager to the Karl Heusner Memorial Hospital in Belize City. She never mentioned anybody at the scene or at the hospital by description except that they gave ride from the scene to a lady who resembled Ms Wade. Later Ms Cooper learnt that two people died in the accident. She did not inform the police that she might be of help, yet she had important evidence that could help in the investigation. She was willing to volunteer to Mark, but not to the Police. I found it highly improbable that she should present the picture of a very concerned person about the way the truck was left on the road without lights or any warning signs, yet she did not offer the information to the Police. Ms Hullet's testimony was too unsatisfactory to be accepted as evidence of proof of any fact.

14. That leaves the testimony of Sharon Castellanos alone on the question of liability against the testimonies for the defendants. Sharon was completely truthful. Her testimony, in the sequence of the events as she stated, was this. She sat in the back seat behind Alber, her daughter the driver. Rochelle also sat in the back seat. Tyrone sat in the front passenger seat. They were not travelling fast. Suddenly she saw a truck. It was parked on the road on the right handside, it did not have lights on. They were proceeding also along the right handside. She could see other vehicles coming from the opposite direction. Because of the short distance from the truck she knew that they

would hit the truck. Next she was in great pain. She cried for help. Two men helped her out and took her to Karl Heusner Memorial Hospital.

15. Sharon had no hesitation during crossexamination, in admitting that the truck seemed parked, and that she could not say for sure whether it was parked. Further without hesitation, she agreed that because she was in the back seat she did not have a clear view. The witness also mentioned that a vehicle from the opposite direction had just gone passed, it had bright light. I think she told the truth mixed with some conjuncture she heard in discussions over some time after the incident.
16. After crossexamination, what is left of Sharon's testimony cannot prove that the truck was stationary on the road and had no lights on and no reflectors. Photograph, exhibit D9, showed reflectors.
17. In my examination of the testimonies for the defendants, I disregarded the testimony of Mr. Richard Downing DW2, completely. He took photographs of the truck some seven days after the incident and after the truck had been moved to Ms Wade's home. I doubted his confrontational explanation as to why the reflectors were particularly exaggerated and showed more glowing than normal.
18. I accept that the Police examined the truck for road worthiness and if there were faults in the brakes and lights, they would have it in their official report and would be available as evidence if counsel for the plaintiffs required. I also inferred that since the Police allowed Hinds to drive the truck that night



unescorted to Police Station, the lights on the truck and brakes must have been serviceable.

19. Much was made about a woman resembling Ms Wade having been at the scene of the collision when it occurred. I did not see much significance in that. Perhaps it was to confirm the testimony of Ms Hullet that the truck was stationary, a woman was in it and a man was outside. I wonder if Ms Wade might have not preferred to give a story to support Hind's, instead of denying presence. I think neither of the two versions is significant in the determination of the question of liability.
20. In the end there has been no proof that A-844 was stationary, not moving very slowly as Hinds said. There has been no proof that lights were not on or that the brakes were not serviceable. There was therefore no proof that Hinds had a duty in some way to signal or place something like a reflector triangle to warn other traffic of a stationary vehicle on the road.
21. One important aspect of the case remains to be decided. I accept that Hinds did not stop his truck on the road, but slowed it down to about 3 mph. If he slowed down to as slow as 3 mph, did he have a duty to signal his intention to slow down and his continuing to travel at that slow speed? There was no submission on the point and there was very little cross-examination. Most direct were these question and answer:

Q: "Isn't it the practice that when you go that slow you give hazard lights?"

A: People do that when they are in trouble. I only slowed down so that the vehicle would pass - the one with bright lights”.

22. Hinds had earlier testified that when an oncoming vehicle did not dim its high beam light, he slowed down to about 3 mph and moved as far to the right handside of the road as possible and continued at that slow speed until the vehicle with high beam and other oncoming vehicles had passed. He did not mention signalling his intention to slow down or as he continued slowly. Taking his testimony together with his answer in crossexamination, I draw the inference that he did not in any way, whether by hazard lights or other appropriate signal indicate his intention to drastically slow down to as slow as 3 mph on a highway.

23. I am aware that failure to comply with regulations in the Motor Vehicle and Road Traffic Regulations does not necessarily mean that the driver has been negligent, and conversely, compliance does not necessarily mean that he has not been negligent. But on the other hand, failure to comply or compliance is evidence tending to prove negligence or to negate it. So I took it upon myself to check what the Regulations state about slowing down. At regulation 121(3) it is stated:

“(3) [The driver] shall when about to stop or slow down on any public road do so gradually and make the appropriate traffic signal.”

24. That is a responsibility in penal law. It, however, implies a duty generally to

warn of intention to stop or slow down on a public road such as the Western Highway. As to when the failure becomes a breach of a duty in negligence must depend on whether the particular prevailing facts show that the driver could reasonably anticipate danger to other road users if he failed to signal his intention to stop or slow down. That consideration takes into account the general speed of the flow of traffic, how near the other vehicles are and other factors. I do not think the driver is obliged to take into anticipation a driver who is travelling faster than the general speed of the traffic.

25. Although in *Jungnickel v Laig (1966) 111 S.J. 19*, it was held that a driver is under no general duty to give warning of his intention to slow down, I find that in the circumstances of this case Mr. Hinds had a duty to signal by hazard light or other appropriate signal, his intention to drastically slow down to as slow as 3 mph. I also find that the driver of C-23927 was travelling at a speed that was too high to allow her to come to a halt within the range of visibility from her vehicle that evening. The photographs exhibits D9 and D10 which show the two vehicles as they were in the accident also show that the impact was occasioned by great force and therefore high speed. Further the photographs tend to support the contention of Hinds that the driver of C-23927 was attempting to overtake the truck.
26. It is my decision that Mr Hinds was liable and Ms Wade was vicariously liable; she offered no defence to her vicarious responsibility. It is also my decision that the driver of C-23927 contributed to the accident by her negligence. Accordingly I adjudge Mr Arthur Hinds and Ms Cynthia Wade liable to the extend of 50% (fifty) percent of the claim. The claim succeeds

to that extent.

27. The special claim by Sharon Josephine Castellanos is awarded to the extent of 50% which is \$5,845.00. The special claim by Rochelle Castellanos is also awarded to the extent of 50% which is \$142.50. The sums carry interest at 6% per annum from today.
28. I adjourn assessment of general damages to a later date. Parties are required to file written submissions as to quantum within 30 days. In the event that the quantum is agreed parties are to request consent order accordingly.
29. One half costs to the plaintiffs.
30. Delivered this Wednesday the 9<sup>th</sup> day of June 2004  
At the Supreme Court  
Belize City

Sam Lungole Awich

Judge

Supreme Court