

**IN THE SUPREME COURT OF BELIZE A.D. 2003**

**ACTION NO. 3 OF 2003.**

<b>(FRANCIS GEGG</b>	<b>PLAINTIFF</b>
<b>(</b>	
<b>(AND</b>	
<b>(</b>	
<b>(</b>	
<b>(JOHN TRUMMER</b>	<b>DEFENDANT</b>

Mr. H. Elrington for the plaintiff.  
Mr. L. Sooknandan for the Defendant

AWICH J.

25.5.2005 JUDGMENT

1. *Notes: Claim in negligence; motor accident, fast speed on a curve, pot-holed road.*
2. On 21.10.2002, at a curve on Corozal to Progresso Road, the plaintiff's vehicle of registration No. BZ-C-7831, collided with the defendant's vehicle, No. CZL-C-9130. The front of the defendant's vehicle hit the plaintiff's vehicle onto the front door and across to the tail end, on the driver side. The plaintiff's vehicle rolled over about three times. The plaintiff has claimed damages in the sum of \$55,000.00 on the ground that the accident was caused by negligence on the part of the defendant, Mr. John Trummer.

3. The particulars of the negligence were that the defendant drove too fast and on the wrong side of the road on a sharp curve. The defendant denied that he drove too fast and on the wrong side, instead he averred and testified that it was the plaintiff, Francis Gegg, who drove too fast and on the wrong side of the road.
4. From the pleadings and the testimonies of witnesses on both sides, it was a common fact that the accident occurred because of a speed too fast. The issue was whether it was the defendant who drove too fast on the curve, or the plaintiff as he approached the curve.
5. It was a clear day. The road surface was covered with malt-gravels and there were pot-holes in the road. The particular point of the road was a very sharp curve of about 80 to 90 degrees angle. Visibility was limited only up to where the curve started, in respect of the plaintiff who was approaching the curve, and up to the end of the curve, in respect of the defendant who was on the curve. So a reasonable speed to avoid accident would be the speed at which each driver would be able to stop within his visibility in the event of an emergency. - see *Harvey v Road Haulage Executive [1952] 1 KB 120*, *Baker v Longhurs and Sons [1933] 2KB 161* and *Morris v Lulon Corporation [1946] 1 KB 114*. The pot-holes also necessitated that a vehicle did not travel so fast, so that the driver would be able to control the vehicle timeously following any bump. Generally the speed at which a driver should travel must be reasonable taking all the factual circumstances into consideration.

6. I accept the testimony of the plaintiff and of his witness Ms Leorelia Santoya, that it was the defendant who emerged out of the curve driving too fast to be able to stop on seeing the plaintiff's vehicle. I also accept that the defendant emerged out of the curve driving on the wrong side of the road. He made much about moving to the middle of the road. Taken in the whole context of the testimony of Ms Santoya, the expression that the defendant's vehicle moved to the middle of the road meant his vehicle crossed over to the plaintiff's side.
7. Additionally, I accept that the defendant admitted his fault to the plaintiff and to the plaintiff's witnesses and later to the police. Further, I accept that the defendant paid the sums of \$150.00 and 600.00 as acknowledgment of his fault.
8. The speed and driving on the wrong side made the driving by the defendant negligent driving. I find him liable in negligence. The accident was caused by the negligent driving. The bodily injury and the damage to the plaintiff's vehicle were reasonably foreseeable consequences of the negligence. The defendant is liable to pay damages due for the damage to and loss of the vehicle.
9. There were no issues as to the facts that the vehicle was written off and that the salvage value was \$4,000.00. The plaintiff had bought the vehicle about a year earlier at \$65,000.00. The value one year later at \$55,000.00 is acceptable, taking into account depreciation. From that sum must be

deducted \$4,000.00 salvage value. Damages being the replacement cost, is \$51,000.00. Of course out of that sum Atlantic Insurance Company may claim \$29,000.00 that it has paid to a bank to settle a loan owed by the plaintiff on the vehicle.

10. The defendant, John Trummer, is adjudged liable to pay damages to the plaintiff, Francis Gegg, in the sum of \$51,000.00, interest at 6% from the date of this judgment, 25.5.2005, until payment and costs of suit to be agreed or taxed.
11. Delivered this Wednesday the 25<sup>th</sup> day of May 2005.

At the Supreme Court  
Belize City.

Sam Lungole Awich

Judge

Supreme Court