IN THE SUPREME COURT OF BELIZE A.D. 2002

ACTION NO. 469 OF 2002

(G.A. ROE & SONS (Insurance Services) PLAINTIFF
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(AND
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(JERRY JEX dba JEX & SONS DEFENDANT
(BUS SERVICE

Mr. Andrew Marshalleck for the plaintiff.
Mr. Wilfred Elrington S.C. for the defendant.

AWICH J.

17.5.2005. JUDGMENT

1. Notes: Third party risk insurance; claim for benefits by spouse and dependants- the so called "no fault benefit"; court claim by the insurer against a person said to be negligent and liable in law. Section 5 of the Motor Insurance (Third Party Risks) Act, Cap 231 Laws of Belize.

2. The plaintiff, G.A. Roe & Sons (Insurance Services) Limited , insured William Industries Limited, under the Motor Vehicle Insurance (Third Party Risks) Act, Cap. 231, Laws of Belize, in respect of an omnibus of registration No. BZ C1866. On 30.5.1998, about 11.15 a.m. the said bus collided with another omnibus, of registration No. BZ C1838, belonging to the defendant, Jerry Jex (doing business as Jex & Sons Bus Service). As a

consequence Mr. James Lightburn Jr, the driver of the defendant's bus died. The plaintiff insurer paid a total sum of $10,400.00 to three claimants under S: 5(4) of the Act. The claimants were the father, wife and children of the deceased including his children by another woman. The payments are commonly referred to as "no fault benefits".

3. The plaintiff has, by reason of the insurance benefits payments it has made to the claimants, made a claim in this Court to recover from the defendant $10,400.00, under S: 5(11) of the Act on the basis of liability for negligence which the plaintiff said caused the accident. The particulars of the plaintiff's claim were stated as follows:

"(1) A declaration that the collision between the Williamson and Jex buses on the 30th May, 1998 was caused by the negligence of the Defendant and/or the negligent driving of James Lightburn, as servant or agent of the Defendant, and that the Defendant is accordingly liable thereof.

(1) An order that the Defendant pay to the Plaintiff the sum of $10,400.00 pursuant to section 5(11) of the Motor Vehicle Insurance (Third party Risks) Act of Belize.

(2) Interest thereon pursuant to section 165 of the Supreme Court of Judicature Act, and

(3) Costs."

4. The case was presented and defended on only two issues: (1) whether the defendant was negligent in regard to the maintenance of its bus, No. BZ 1838, and or in ensuring that the bus did not go onto the road "while in an unsafe condition", and (2) whether the driver of the bus, as an employee and agent of the defendant, was at the time of the accident, negligent in driving and controlling the bus, and therefore the employer would be vicariously liable for the negligence.

5. The evidence adduced on both sides was very short and precise. Most facts were common. It was admitted that on 30.5.1998, about 11: 15 am at about 6 ½ miles on the Northern Highway, the two buses collided. The plaintiff said the collision was caused by the negligence of the defendant's driver, Mr James Lightburn Jr. The defendant of course denied that the collision was caused by the negligence of its driver, that it was negligent in "properly maintaining the tyres of the ... bus" and that it, "permitted the bus to be used while in an unsafe condition".

6. Apart from the common facts, the defendant did not contest that: (1) leading to the collision, its bus leaned on one side as if it had "a tyre blow out"; (2) its bus crossed onto the path of the plaintiff's bus; and (3) that the claims for no fault benefits were properly made and duly paid. Instead the defendant adopted the probable inference from the evidence for the plaintiff that there had been "a tyre blow out", and the defendant confirmed it by the testimony of its only witness Mr. Jerry Jex that he saw, after the accident, that a tyre had bust. The defendant used that to explain that its bus was not being

driven in a negligent manner.

7. The plaintiff adduced only two items of evidence towards proof of negligence. The first was that a tyre on the defendant's bus burst and caused the bus to cross onto the lane on which the insured bus was correctly being driven. The second was the statement of Elba Mohamed Ali, witness for the plaintiff, that "the bus was coming kind na fast".

8. The statements that "the bus was coming kind na fast" was not sufficient to prove negligent driving. A negligently fast speed has to be determined in relation to so many other facts such as the speed of other vehicles on the road at the time, the state of traffic, condition of the road and visibility at the time. There was no attempt by the plaintiff to prove those other facts. No other facts as to the manner Mr. Lightburn drove were proved. I accept the submission by Mr. W. Elrington, S.C., learned counsel for the defendant, that the fact that Mr. Lightburn signalled by hand to the driver of the insured bus to take the other lane showed that Mr. Lightburn exercised care to warn that he was faced with an emergency. He was mindful of the safety of the other bus and passangers.

9. As regards the duty of the defendant to keep the tyres on the bus in good condition and to ensure that the bus did not go on the road with bad tyres, there has not been any evidence at all. The plaintiff never adduced evidence to prove the condition of the tyre before or after the accident. A finding of negligence cannot be made without evidence.

10. Mr. A. Marshalleck, learned counsel for the plaintiff, relied on the case of ***Barkway v South Wales Transport Co [1950] 1 ALL ER 390,*** for the proposition that the fact that a tyre on a vehicle gets "a blow out" (or a vehicle overturns or a wheel comes off) while a vehicle is being driven is evidence on which a finding of negligence may be found. That however, is true only if there has been no satisfactory explanation. On the facts in this case a finding of negligence cannot be made because the defendant led unchallenged exonerating evidence of regular inspection of the tyres on the bus, and that the tyres had been bought new and put on the bus not more than 6 moths earlier.

11. This is not a case disclosing primary facts: (1) of the management and control of the bus, and (2) that the accident was so improbable without the negligence of the owner of the bus or of the driver so that *res ipsa loquitur* rule in the rules of evidence in proof of liability in negligence can be applied - see the time honoured case, ***Scott v London and St. Katherine Docks Co. (1865) 3 HRC 596***. The full facts of this case have been disclosed. There was a tyre bust which was a mishap since the tyre had not been in a bad state. As the result of the tyre bust the bus veered onto the wrong lane and collided with the insured bus. The incident was an accident without negligence. The defendant is not liable in negligence for the accident.

12. The plaintiff's claims for: a declaration of negligence on the part of the defendant; and for the sum of $10,400.00 and interest is dismissed with costs to be paid to the defendant.

13. Delivered this Tuesday the 17th day of May 2005

At the supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court