

IN THE SUPREME COURT OF BELIZE, A.D. 2002

ACTION NO. 481 OF 2002.

(ORLIN SMITH **PLAINTIFF**
(
BETWEEN (AND
(
(ERASMO FRANKLIN **DEFENDANT**

Mr. Michel Chebat for the Plaintiff.

AWICH J

JUDGMENT

1. *Notes: Negligence; motor accident, the vehicle crossing from the correct side of the road and right across the other side - res ipsa loquitur applied.
Special damages awarded and general damages awarded for pain and suffering, loss of amenity and disability to work in usual occupation resulting in loss of earning.*
2. The plaintiff's claim is in negligence. He claimed the sum of \$9,161.72 as special damages, and in addition, general damages. His case was that on 19.1.2002, at Santa Elena, Cayo District, while he stood on the edge of the road in front of a shop, the defendant who was driving a motor vehicle No C-14755, negligently crossed over from the right hand-side of the road and his vehicle hit the plaintiff. As the result the plaintiff suffered bodily injuries which included fracture of the right tibia and fibula bones in his leg, and extensive skin loss. He was hospitalised from 20.1.2002 to 22.5.2002. He incurred expenses for and relevant to the medical treatment. The injuries have resulted in loss of ability to work as a construction labourer, his usual

occupation.

3. The defendant admitted, in his memorandum of defence, that the vehicle he drove knocked down the plaintiff on 19.1.2002, however, the defendant denied that he drove negligently. He contended that the collision was the result of the negligence of the plaintiff. The defendant's attorney who had appeared in Court on 12.5.2004, the first date assigned for trial, did not attend the adjourned trial on 8.9.2004, although notice of the adjourned date had been served and acknowledged by signature on 13.5.2004.
4. The plaintiff testified and called a witness. Both gave a straight forward account of the collision. The defendant's vehicle which travelled on the right hand-side lane, the correct side of the road, and eastward, crossed over to the left side, the wrong side, and onto the edge of the road where it knocked down the plaintiff who was standing there in front of a shop he had been into. Those facts established lack of due reasonable care by a reasonable competent driver to ensure that the vehicle remained on the correct lane. It was negligent driving. Only the defendant knew why that extraordinary diversion from the correct side of the road took place. As he did not attend the trial the prima facie evidence of negligent driving remained unexplained and unjustified. It is a clear case of *res ipsa loquitur*. The plaintiff has proved by the standard of balance of probability, his case in negligence.
5. The plaintiff has also proved the expenses incurred for and relevant to his

medical treatment from the time of the accident to the date of the trial of this case, in the sum of \$9,161.72. He is entitled to award of special damages in that sum. He has further proved the factors to be taken into account when assessment of general damages is made namely: the injuries; the pain and suffering occasioned; the permanent disability in that now he cannot stand for a long time without suffering pain; the loss of ability to work as a construction labourer and therefore loss of future income; and loss of amenity. He is entitled to an award of general damages for those.

6. I adjudge the defendant liable in negligence. I award \$9,161.72 special damages. For the injuries, pain and suffering, permanent disability and loss of future earnings, I award general damages of \$37,000.00. The total award is \$46,161.72. I further award costs of the suit to be agreed or taxed, to the plaintiff.

7. Pronounced this Tuesday the 5th day of October 2004.

At the Supreme Court,

Belize City.

Sam Lungole Awich

Judge

Supreme Court