

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

ACTION NO. 441

**AURORA AWE
CIRA ANNA FLOR MORO
(Widow and Intended Administratrix
of the Estate of Floyd Moro Sr.)
JANINE MARINA MORO
FLOYD ANGEL MORO JR.
(By their next friend Orlando Habet)
ORLANDO HABET**

PLAINTIFFS

BETWEEN AND

**ARTHUR HOY JR.
ARTHUR HOY SR.**

DEFENDANTS

—
BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Michel Chebat for the plaintiffs.
Mr. Rodwell Williams S.C. for the defendants.

—
JUDGMENT

On the morning of August 20th 2001, just after 10 o'clock, a tragic motor accident took place between Mile 20 and Mile 21 on the Western Highway. The accident resulted in the loss of two lives, namely, one of the drivers of one of the motor vehicles who died on the spot in his driving seat, and the other, one of his passengers who succumbed to her injuries later on the same day at the Karl Heusner Memorial Hospital (K.H.M.H.).

2. The collision was between a Toyota Camry being driven from Camalote Village to the Philip Goldson International Airport in Ladyville and a Mazda MPV van being driven from Belize City to Central Farm in the Cayo District.

3. As a result of the collision, Aurora Awe, the first plaintiff in this action, sustained serious and severe personal injuries. These are stated in the Statement of Claim as follows:

“Particulars of Injuries of the 1st Plaintiff

Polytrauma, Systemic Inflammatory Response Syndrome, Head Injury Grade I/II, Closed Chest Trauma, Acute Lung Injury, Open Fracture of left Femur, Right Tibia, Right Humerus; Closed fracture to left Tibia, Left Femur; Dislocation of left Radio ulnar Joint, Decompensated Diabetes Mellitus; Permanent Residual disability of 100% of total person.”

4. Aurora Awe, is the mother of Floyd Moro Sr., the driver of the Camry car who died in his seat in the collision. His wife, Cira Anna Flor Moro, the second plaintiff in this action was also in the Camry car and involved in the collision. She also sustained severe personal injuries in the collision. These are stated in the Statement of Claim as follows:

“Particulars of Injuries of the 2nd Plaintiff

Polytrauma, bilateral fracture of forearm; bilateral fracture to both femur, Fracture to right tibia, severe contusions to thorax. Permanent disability of 60% of left leg.”

5. She sues in this action as well as the widow and Intended Administratrix of the estate of Floyd Moro Sr., her deceased husband.
6. The other vehicle in the collision, the Mazda MPV van, was owned by the second defendant and being driven at the time of the collision by his son, the first defendant.

7. It is as a result of the collision between the two vehicles on that day that this action is brought. The claim in negligence by the plaintiffs is for damages for the personal injuries including damages for the special damages they suffered as a result of the collision. The action also includes a claim for damages for the death of Floyd Moro Sr. (the driver of the Toyota Camry who died on the spot) by the second, third and fourth plaintiffs as his dependents. These are his wife Cira Anna Flor Moro, and their two minor children, Janine Manira Moro and Floyd Moro Jr. This is pursuant to sections 9, 10, 11 and 13 of the Torts Act – Chapter 172 of The Laws of Belize, Rev. Ed. 2000. The fifth plaintiff, Orlando Habet, sues as the next friend of the two minor Moro children.

8. The defendants Arthur Hoy Jr. and Arthur Hoy Sr. for their part, deny the plaintiffs' claim for negligence and aver instead, a counterclaim in negligence on the part of the late Floyd Moro Sr. (the deceased driver of the Toyota Camry car). For this the second defendant, Arthur Hoy Sr., has advanced a counter-claim of \$17,750.00 for the total constructive loss of his Mazda mini-van MPV, a 1991 model.

How did the collision occur? And who is to be blamed and to what extent?

9. Crucial to a resolution of the claims in this action is a determination of how the collision occurred on the day in question. From the testimony in this case there was some drizzle of rain in the morning of 20th August 2001 and it was around the time Hurricane Chantal was threatening the country

It is almost invariably the case, that what exactly happened and how it happened at the precise moment of a vehicular traffic collision can only be a matter of reconstruction. Motor vehicular collisions almost always happen in a flash. This is so unless there

are independent eye-witnesses who saw the collision and were not themselves involved one way or the other in it. For those who were themselves involved, the possible trauma from the collision along with the passage of time after it, may well have dimmed recollection as to the precise sequence or details of events of the collision.

10. It is with this caveat that I listened carefully to the evidence in this case and tried as best to analyze how the collision could have occurred. In this case, the court had the benefit of the testimony of some of the persons in each of the two vehicles in the collision.

The first person to testify was Aurora Awe, the first plaintiff. She testified as to how in the morning of 20th August 2001, she, together with her son Floyd Moro, her aunt Daniela Polanco, her daughter-in-law, Anna Flor Moro (the second plaintiff) were in a Toyota Camry driving towards Belize City. She testified that her son Floyd Moro, was at the wheel of the car. She was sitting behind her aunt who was in the front passenger seat; with her daughter-in-law beside her in the back seat. She testified that it was raining and that towards Miles 20 to 21, she saw a van driving hard with speed towards the right side of the road where they were in the Camry car. The van was going towards Belmopan. She said she saw the van coming towards them, then she heard a bang as it crashed into them. She testified that she felt wet and noticed blood all over her. She was emphatic that the car she was in was on the right side of the road. She said she was later taken in a truck to Belize City but she was all the while conscious and was calling out for her aunt and asking for her son. She also testified that her son died in the collision as did her aunt later.

Under cross-examination by Mr. Rodwell Williams S.C. for the defendants, Mrs. Aurora Awe was also emphatic that the car she was in and driven by her son was on the right side of the road

coming towards Belize City, and that the other vehicle was coming straight at them. She further testified that her son tried to avoid the other vehicle, but it was more on their side of the road and that was why it collided into the car they were in.

11. The other witness who was present at the time of the collision was Cira Anna Flor Moro (the second plaintiff in this action). She testified that she was in the car being driven by Floyd Moro Sr. (her husband) on the day in question and that there were also in the same car Aurora Awe, the first plaintiff who has already testified and Tiadara. They were heading towards Belize City. After a brief stop to buy gas in Roaring Creek she recalled exchanging glances with her husband. That was all she could remember until, she said, she woke up later in a Guatemala hospital in pain. This was presumably because she lost consciousness at the point of collision between the two vehicles. She had nothing material to add as to how the collision occurred.
12. Only the first defendant Arthur Hoy Jr. gave evidence for the defendants as to an eye-witness' account of how the two vehicles collided. He was driving the Mazda minivan MPV on that day in question. Although he testified that one Anthony Somerville was with him in the van at the material time, this gentleman was not called to testify; he apparently was not hurt in the collision although Mr. Hoy said that he drifted in and out of consciousness at the collision. So the court had only the benefit of the first defendant's own eye-witness testimony as to the defendants' own version as to how the collision occurred. I say "eye-witness testimony" advisedly, as there were other witnesses for the defendants who claim to have seen the collision. More on this later.
13. Mr. Hoy Jr. testified that he was driving between 35 to 40 m.p.h. and that he was driving cautiously and kept to the right hand side of

the road going towards Belmopan. He said that on nearing Miles 20 – 21 on the Western Highway as he was approaching a curve, he noticed the other vehicle, the car, in his peripheral vision coming in the opposite direction. He testified that as the white car and the van he was driving got closer to each other, he noticed the car veering off its lane and going towards his. He also testified that his vehicle was on the far right hand lane of the road when the collision between the two vehicles happened. Under cross-examination by Mr. Michel Chebat for the plaintiff Mr. Hoy said that he had only obtained a valid driver's licence two years before the accident; and that he was not familiar with that stretch of the road the accident happened on. He further testified that he did not try to brake as the road was wet, but he leant left onto the road into the curve and did not stop or slow down.

14. From the evidence, the collision between the two vehicles happened on a stretch of the Western Highway popularly referred to as the "Twilight Zone" as a result of the number of vehicular accidents that happened on this stretch of road.
15. I have already referred to the caveat that is necessary in trying to determine how the motor vehicular accident might have occurred, given the limitations of eye-witness' account without the benefit of an independent account of how the collision actually happened.
16. From the evidence in this case however, I am persuaded that the blame for the tragic accident in this case falls more on the defendants. I am helped to this conclusion by the testimony of Sgt. Raymond Berry as well. He was the investigating officer of the accident. He testified that he visited the scene of the accident shortly after it happened on 20th August 2001. He stated that at the scene he noticed the car was off to the left hand side of the road

going towards Belmopan (that would be on the right hand side going towards Belize City), and that the Mazda mini-van was on the right side of the road towards Belmopan and both vehicles were facing each other. He however testified that he noticed debris from both vehicles on the left side of the road towards Belmopan. This would be the side of the road the Toyota Camry car was.

Sgt. Berry also testified that he drew sketch plans of the scene of the accident. These were tendered in evidence as Exhibits RB 1 and 2. He also testified that the point of impact between the two vehicles was on the left hand side of the road towards Belmopan. That is, on the right side of the road coming towards Belize City, where the Toyota Camry was. He also testified that the mini-van was on the yellow line (the median line) dividing the road, while the car was about eleven feet away from it but facing it. Crucially, he testified that the point of impact in a collision between two vehicles is determined by heavy concentration of debris on the road and that in this case, the debris was more on the left side of the road towards Belmopan. That is, on the side of the road the car was heading towards Belize City. The concentration of debris is not necessarily conclusive of the point of impact between vehicles involved in a collision, but it is very suggestive of it.

17. Although other witnesses testified, they were not, I find, eye-witnesses to the actual collision between the two vehicles. None of them was present or saw the moment of collision between the two vehicles. They arrived at the scene after the collision and so could not say unequivocally which vehicle was at fault. This in my view is so, notwithstanding the testimony of Mr. Simeon Castillo who gave evidence for the defendants. He stated that on the day in question the weather was cloudy and there was a drizzle. He said

he encountered the accident at Mile 20 and that he was traveling from Cayo to Belize City in his Toyota pick-up. The impression conveyed by Mr. Castillo's testimony was as if he saw the collision. But after careful analysis I find it not easy to accept his testimony in its entirety as an eyewitness account. He himself said he encountered the accident, which meant after the collision had taken place. He testified that it was the car which overtook him as he was traveling in the same direction from Cayo. He said he was going at 65 m.p.h. and he saw the car go over to the side of the road the van was. After the collision, he said the car spun around twice and went off the road into the bushes. Mr. Castillo said he saw all this while he was driving at 65 m.p.h. and was only ten feet away.

I find it difficult however in the circumstances to accept in full Mr. Castillo's testimony.

18. Mr. Jeffrey Garcia also testified for the defendants. He testified that on the day of the collision, he was a traffic officer and was on patrol duty in a vehicle together with Mr. Anthony Pollard and they were traveling to La Democracia to conduct a vehicle check point. They were heading from Belize City to La Democracia. He testified that at about Miles 20 and 21, he saw a white vehicle coming from the opposite direction, which swerved off its right hand side, passed the vehicle they were in and hit another vehicle that was traveling behind them. The remarkable aspect of Mr. Garcia's testimony, if I may say so, about the collision is that he was able to see through a small window to the back of the vehicle he was in! Mr. Chebat for the plaintiffs was able to put in evidence a written statement made by Mr. Garcia, which he did not recall making. This statement, which was in evidence, contradicted Mr. Garcia's evidence about the position of the vehicles after the collision. Mr. Garcia on the

whole did not make a favourable impression on me as a witness of truth.

19. Mr. Anthony Pollard also testified for the defendants. He testified that on the day in question, he was, together with Mr. Garcia, who as I said had already testified on highway patrol duty on the Western Highway in a vehicle and around Miles 20 and 21 he observed a white car (the Toyota Camry) coming in from the direction of Belmopan. He said he noticed the car drift over the yellow line on the road. He further said that as a result he put on the signal light on his vehicle to alert the driver of the white car which soon pass them. He also testified that looking into his rearview mirror, he saw the car slam into the front of a vehicle (the Mazda mini-van) that was traveling behind them about sixty yards away.

I must say that I find Mr. Pollard's testimony on the whole like that of Mr. Garcia's unsatisfactory. In the first place, there is the material contradiction between the two of them as to what was done when they said they observed the Toyota Camry swerving from its side of the road in the opposite direction. Mr. Garcia said that they did nothing whereas Mr. Pollard said that he put on the warning light on his own vehicle to warn or alert the driver of the Toyota car. Surely, a passenger in the vehicle such as Mr. Garcia could not have missed that. There is also the discrepancy about the speed of their patrol vehicle. Pollard said he was doing 25 m.p.h. but Garcia said it was more like 35 m.p.h. They both however said that they observed the collision from the back of their moving vehicle: one from the small window at the back and the other from the rearview mirror. I wonder how much time they had themselves to concentrate on the road ahead of them where they were heading. In the result, I am unable to accept their testimony

as to how the collision occurred. The collision between the Toyota Camry and the Mazda mini-van took place behind them and they could not have seen how it actually happened. This stands to reason.

20. I find as well unsatisfactory and not entirely credible the testimony of Mr. Robert Popper who also testified for the defendants. He was the taxi driver hired to take other members of the Moro family to the Philip Goldson International Airport from Camalote Village, while the others traveled in the Toyota Camry car which was involved in the collision that has given rise to this case. Mr. Popper testified that while he was driving at about 50 m.p.h., he was overtaken by the Toyota Camry and about less than three or four minutes he saw a van coming in the opposite direction and the car and the van collided. He further stated that the collision happened mostly on the side of the road the Mazda minivan was on. However, under cross-examination by Mr. Chebat for the plaintiffs, Mr. Popper admitted that he was about three hundred yards or so away from where the collision occurred and that it happened on a curve in the road. Most significantly for his credibility however, when it was put to this witness that he had approached the plaintiffs' family and offered to make a statement on their behalf, he admitted going to San Ignacio and speaking to the first plaintiff but what he said was misunderstood. Quite how he was misunderstood he did not say. I therefore do not entirely accept his testimony as to how the collision happened.

21. Mr. Arthur Hoy Sr., the second defendant, testified also about the debris and the position of the vehicles after the collision as well as the damages his vehicle, the Mazda mini-van, sustained. Mr. Winston Flowers also testified for the defendants mainly as to the

damage to the Mazda mini-van. In his opinion, the van was worth \$20,000.00 and was irreparable.

22. Such was the state of the evidence in this case.

Determination as to liability

23. As I have already indicated at paragraph 16 above, in my view, from the evidence, I am persuaded that the blame for the collision in this case falls more on the defendants.

24. However, on a balance of probabilities, I find on the evidence that both drivers in this case were somehow contributory to the causative negligence that has given rise to this case. They were both, albeit, to a differing degree, as I shall state in a moment, committing the same acts of negligence, namely, driving at a speed which was too fast in the circumstances (the evidence is that it was drizzling on that day in question with Hurricane Chantal threatening and that the road was wet); failing to stop, to slow down, to swerve or in any other way to manage or control their respective vehicles so as to avoid the collision, especially on a stretch of the highway that had a curve in it. The causative negligence committed by them was, of course, in differing degree. I will explain that later.

25. I am however, unable, on the state of the evidence, to find that Floyd Moro, the deceased driver of the Toyota Camry, and the son of the first plaintiff and father of the two minor third and fourth plaintiffs, was wholly without some responsibility for the collision. Three of the witnesses for the defendants whose evidence though I am unable to accept entirely, however did testify that he was driving at a speed. Indeed, Mr. Popper testified that while he was driving in the same direction at about 50 m.p.h. Floyd Moro overtook him and the collision occurred soon after. Surely to overtake a car

going at 50 m.p.h. meant that you must be doing more than 50 or 55 m.p.h which is the limited speed on highways in Belize.

26. Nevertheless, I am equally not able or prepared to hold that both drivers, that is, Floyd Moro of the Toyota Camry car, and Arthur Hoy Jr., the first defendant and driver of the Mazda mini-van, were equally to blame for the collision along the principle of Baker v Market Harborough Industrial Cooperative Society Ltd; Wallace v Richards (Leicester) Ltd. (1953) 1 W.L.R. 1470 (1953) 97 S.J. 861 (C.A.) The principle of this case, a decision of the English Court of Appeal which I respectfully accept, is that in a two-vehicular collision, if it is not clear which of the drivers was, from the evidence, negligent, and absent special circumstances, then both should be equally held to be liable. This principle was recently applied again, by the English Court of Appeal in Cooper v Hatton, also known as Hatton v Cooper decided on 3rd day May 2001; (2001) E.W.C.A. Civ. 623 (2001) WL 415486; (2001) R.T.R. 36, following its earlier direction in Howard v Bemross (1973) R.T.R. 32; 1973 W.L. 40174 (C.A. (Civ. Div.)).
27. Every case, of course, turns on its own facts. On the evidence in this case I am of the considered view that the facts are outside the principle of Baker supra. I cannot say or find that the balance of probabilities, on the evidence, was in favour of each driver being negligent to the same degree. I realize, of course, that Baker was not creating a rule of law as to how responsibility for road traffic accidents is to be decided or apportioned, but rather a guide by proper inference from the evidence, how this could be done. I bear in mind the fact that both drivers in this case had a rendezvous, as it were, to make on that day. In the case of Floyd Moro, the driver of the Toyota Camry, to get to the Philip Goldson International

Airport and in the case of the first defendant, the driver of the Mazda mini-van, the threatening Hurricane Chantal which necessitated the evacuation of planes to Central Farm for safety, where he was heading to meet the second defendant, his father.

28. However, by reasonable inference from the evidence in this case, I find and hold that the defendants must and should bear a greater share of the causative negligence in this case through the driving of the first defendant. I do so for the following reasons:

- i) *The clear and unambiguous testimony of the first plaintiff Aurora Ave, as to how the Mazda mini-van driven by the first defendant came on to the occupants in the Toyota Camry car;*
- ii) *This coupled with the testimony of **John Pinelo Jr.** who arrived at the scene shortly after the collision to the effect that the front part of the Mazda mini-van was on the median line while the Toyota Camry was on the shoulder of the right hand side of the road facing Belize City. This was also supported by the testimony of **Ralph Robertson**, clearly showing that it was not in the lane of the mini-van that the collision took place;*
- iii) *The account given by the first defendant of how the collision occurred and where on the road it took place does not accord in my view, with the facts. He testified that on the approach of the Toyota Camry car which he said was coming “pretty fast” he pulled off to the right of the road – more off to the shoulder and that was, according to him, when the impact happened.*

The evidence on the other hand is that the Mazda mini-van driven by the first defendant was not off to the right of the road heading to Belmopan, but rather on the road near to or on the median line on the road, and that there was more debris on the side of the road the Toyota Camry was, that is, on the left side of the road heading to Belmopan. This in my view, was more suggestive that the impact took place on the Toyota Camry's side of the road and that it was, in fact, moved off to the shoulder by the force of the impact but still on its own side of the road heading towards Belize City;

- iv) The sketch plans in Exhibits RB 1 and 2 and Sgt. Raymond Berry's clear testimony about the concentration of the debris from the collision being more on the side of the road the Toyota Camry was on. This is generally indicative though not conclusive of the point of impact of a collision;*
- v) The admission of the first defendant in cross-examination that he did not swerve, slow down or stop as the road was wet and that this was in or just after a curve in the road where the collision happened and his unfamiliarity with that part of the road;*
- vi) The absence of any testimony from Anthony Somerville who was in the Mazda mini-van with the first defendant at the time of the collision and therefore, undoubtedly an eye-witness. No reason was offered for his unavailability though it was adduced in evidence that he was with the first defendant in the Mazda mini-van at the time. I find the unavailability of*

testimony from Mr. Somerville in this case a major flaw in the defendants' case. At least it doesn't support the plank on which they presume to build their case; and

vii) The unsatisfactory testimony of the witnesses for the defendants regarding how the Toyota Camry car crossed into the lane of the Mazda mini-van.

29. It is for all these reasons that I find and hold that the defendants must bear a greater share of the responsibility for the accident.

30. But the driver of the Toyota Camry, Floyd Moro, should as well, as I have said, bear some responsibility. Admittedly, without question, this was a tragic collision. It is however the position that all drivers on the road must take reasonable care not only for their own and their passengers' safety but also for that of other road users as well.

Detailed evidence has been given in this case as to how the collision occurred, although I find some of it unsatisfactory and therefore unable and not prepared to find on this evidence, that the collision was caused by the driver of the Toyota Camry alone or in equal measure as the first defendant. I find on this evidence nonetheless, some reasonable inference that he did (Floyd Moro) contribute to the collision by speeding. There was some evidence of skid marks by Mr. Orlando Habet who came on the scene after the collision and Mr. Ralph Robertson. There was as well, some evidence of speeding on the part of Floyd Moro given by some of the witnesses for the defendants. I have recounted how Popper said that he overtook him while he was going at 50 m.p.h.

31. Therefore, even with the unfortunate and extremely regrettable death of Floyd Moro the driver of the Toyota Camry in the collision,

I cannot in the circumstances absolve him wholly of any responsibility for the collision: he must and should, in the circumstances bear some share for it.

32. In this regard, I welcome and record the candour of Mr. Michel Chebat, the learned attorney for the plaintiffs. He readily conceded that, on the evidence, it was open to the court to find some measure of contributory negligence on the part of the deceased driver of the Toyota Camry, in the circumstances of the collision, on 20th August 2001.
33. Therefore, having considered all the evidence and circumstances of this case, I am of the view that the deceased driver of the Toyota Camry car should bear at least one-quarter of the responsibility, in round figures, 25%, as contributory of the negligence that caused the collision. This figure, of course, is not scientific or actuarially based, but I consider it reasonable in all the circumstances of this case. Therefore, whatever damages are awarded the plaintiffs will take this figure into account.

Damages

34. I now turn to the question of damages in this case. In this regard, I must commend Mr. Rodwell Williams S.C. the learned attorney for the defendants. By a combination of sensitivity and proper advocacy, as befitting his status, he conceded during the course of the trial the issue of special damages and the particulars of damages.
35. I have already at paragraphs 3 and 4 of this judgment set out the particulars of the injuries the first and second plaintiffs suffered as a result of the collision. In consequence of this the first plaintiff claims the sum of \$273,263.42 as special damages; and the second plaintiff claims as special damages the sum of

\$112,101.12. Receipts and medical reports on them were tendered in evidence in this case.

In the light of the commendable concession by Mr. Williams S.C. for the defendants, and on the strength of the receipts tendered in evidence, I accordingly award the sums of \$273,263.42 and \$112,101.12 as special damages to the first and second plaintiffs respectively.

General Damages

36. I now turn to the issue of general damages suffered by the first and second plaintiffs as a consequence of the collision.

First Plaintiff

The Medical Report on the first plaintiff was tendered in evidence as Exhibit FS 1 by Dr. Francis Smith, an orthopedic surgical practitioner. He testified as to the injuries and treatment of the first plaintiff. She was at the time of the trial in a wheelchair and Dr. Smith testified that her injuries were extremely painful and he estimated her residual disability at 60% of total person. A medical report on the first plaintiff by the medical Chief of Staff of the K.H.M.H. dated 8th January 2003, was also admitted into evidence as Exhibit AA 1, as well a translated copy of a medical report in Spanish relating to her treatment in Guatemala where she had to go for surgeries was also admitted into evidence as Exhibit AA 2.

It is not in doubt that Mrs. Aurora Awe sustained serious injuries in the collision which were extremely painful. She was 66 years old at the time.

The particulars of her injuries are set out in the Statement of Claim which I have reproduced above at paragraph 3 of this judgment.

In the light of these injuries and the pain and suffering she has had to endure and the fact that as a result she is now in a wheelchair and the doctor testified that her residual disability is about 60% of the total person, I award her the sum of \$200,000.00 as general damages for her pain and suffering and loss of amenities.

The Second Plaintiff

37. Cira Anna Flor Moro was 32 years old at the time of the collision. She is the widow of Floyd Moro, the driver of the Toyota Camry who died in his seat in the collision.

She sustained severe personal injuries as a result of the accident. The particulars of these are already stated in paragraph 4 above. She gave evidence at the trial of this action and testified that on the day of the collision she was traveling with her husband and Aurora Awe and Tiadara, heading for the international airport. It is reasonable to deduce that at the time of the collision she lost consciousness only to recall waking up in Guatemala in severe pain.

She testified that she sustained a broken foot, two broken hips, two broken hands and a broken jaw. She received several treatments in Guatemala. She also testified that before 20th August 2001 she was 100% fit but since then she uses a walker and a wheel chair as a result of the accident.

38. In the light of the evidence and the nature of the personal injuries sustained by Mrs. Cira Anna Flor Moro, I award her the sum of \$150,000.00 for her pain and suffering and loss of amenities.

39. Although it is a global sum I have awarded as general damages respectively to the first and second plaintiffs, in assessing the level of the awards I bore certain considerations in mind, in particular,

the nature and extent of the injuries they sustained, the nature and gravity of the resulting physical disability they each must now live with, the pain and suffering they have had to endure and their loss of amenities flowing from their injuries, which by all accounts can only be described as serious.

Claims for Damages under the Torts Act in respect of the death of Floyd Moro

40. This action is also brought on behalf of the 2nd, 3rd and 4th plaintiffs as dependents in respect of the death of Floyd Moro. The 3rd and 4th plaintiffs are his minor children and the action is joined by the 5th plaintiff Orlando Habet as their next friend. This is pursuant to sections 9, 10, 11 and 13 of the Torts Act – **Chapter 172 of the Laws of Belize - Rev. Ed. 2000**. Section 12 of this Act provides for the assessment of damages under the Act, without however providing a formula. The objective however, is to compensate the dependents of a deceased person by way of an award of damages proportioned to the injury resulting from the death of that person for the benefit of the dependents. This is to compensate them for their loss of dependency. For this purpose, the Courts often make a determination of the value of that dependency,
41. In this case, from the evidence, Floyd Moro was 38 years old at the time of his death on 20th August 2001. His two minor children, Janine Marina Moro and Floyd Angel Moro Jr., were 16 and 11 years old respectively. Mrs. Cira Anna Flor Moro, his widow and the 2nd plaintiff, testified that at the time of his death, Mr. Moro was a cabinet maker earning about **\$40,000.00 per annum**.
42. Although I was not addressed on this issue by either Mr. Chebat for the plaintiffs or Mr. Williams S.C. for the defendants, nor did I have the benefit of any submissions, I think however that in all the

circumstances, it is reasonable to take a multiplicand of \$40,000.00 (the annual figure of the dependency in this) and a multiplier of 7 (the number of years the dependency could reasonably be expected to last). I have however, taken into account that a lump sum is being awarded.

43. I therefore determine and award on a multiplicand of \$40,000 and a multiplier of 7 the sum of \$280,000.00 as representing the value of dependency in this case.

I shall award interest at 6% on this sum from the date of the accident – 20th August 2001, to the date of trial of this action – 24th March 2004.

44. The damages in this respect shall be divided between the 2nd to 4th plaintiffs in the following proportions:

Cira Anna Flor Moro - 45%

Janine Marina Moro - 20%

Floyd Angel Moro Jr. - 35%

45. I award as well the sum of \$5,650.00 for the costs of the funeral expenses of the late Floyd Moro Sr.

46. In sum therefore, bearing in mind what I have said in paragraphs 31, 32 and 33 of this judgment regarding the contributory negligence of Floyd Moro Sr. in this case, the damages I have awarded on full liability basis against the defendants would therefore be reduced by 25% which I find, on the evidence in this case, represents the contribution or liability of Floyd Moro Sr. for the all together unfortunate and tragic collision that gave rise to this action.

47. In the result, in respect of the defendants' counterclaim for the value of the Mazda mini-van, I adjudge and award them 25% of their claim of \$17,750.00 for the loss of the mini-van.
48. Finally, I award the costs of this action in the sum of \$10,000.00 to the plaintiffs.

A. O. CONTEH
Chief Justice

DATED: 16th February, 2006.