

THE SUPREME COURT OF BELIZE 2004

ACTION NO. 3 of 2004

BETWEEN: JULIE BAPTIST CLAIMANT

AND

VICTOR CALIZ DEFENDANTS
REBECCA SUAZO

Ms. D. Arzu for the claimant.
Mr. L. Willis, for the defendants.

AWICH J.

5.11.2009

J U D G M E N T

1. The claimant is Julie Baptist, administratrix of the deceased estate of Tanya Lamb. Ms. Baptist is the mother of the deceased. She made this claim on behalf of the estate of the deceased, for her own benefit and the benefit of Anket Lamb, aged 5 years, son of the deceased. The claim is made under the Law of Torts Act, Cap. 172, Laws of Belize. It is in negligence which is said to have caused the death of

Tanya Lamb, and loss of maintenance support to her son and mother.

The reliefs claimed are damages, interest thereon and costs.

2. The first defendant is Victor Caliz, the driver of motor vehicle of registration No. C11914, which collided with Ms. Lamb. The second defendant is Ms. Rebecca Suazo, the owner of the vehicle driven by Mr. Caliz. It was averred that Ms. Suazo was the employer of Mr. Caliz, and Ms. Suazo was vicariously liable for the negligence of Mr. Caliz.
3. The basic common facts are these. On 23.2.2003, in the area of the cemetery, Western Highway, Belize City, the deceased and one Mindy Sanchez, alighted from a stationary bus of registration No. C17487, and proceeded to cross the road to the opposite side. The bus was properly parked on the far right side of the road. As the two girls proceeded, they were knocked down by a pick-up vehicle of registration No. C 11914. It was being driven by Victor Caliz, the first defendant. The vehicle was owned by Rebecca Suazo, the second defendant. Both girls suffered injuries. Ms. Lamb died of her injuries. Miss. Sanchez was treated at a hospital and recovered. She

is not a claimant in this claim, but she testified as the third witness for the claimant.

4. The particulars of negligence averred were the following:

- “i) Driving at too fast a rate of speed having regard to all the circumstances;
- ii) Failing to keep any or any sufficient proper lookout;
- iii) Failing to keep the motor vehicle in a safe and/or straight path;
- iv) Driving on the incorrect side of the roadway;
- v) Overtaking or attempting to overtake when it was manifestly unsafe to do so;
- vi) Failing to apply brakes in sufficient time or at all;
- vii) Failing to stop; slow down or otherwise control the said motor vehicle so as to avoid collision;
- viii) Driving without due care and attention and without due consideration for other road users;
- ix) Driving in a dangerous and/or reckless manner.

5) Further and/or in the alternative the first Defendant by his wrongful act and/or neglect and/or default drove motor vehicle registered C11914 in such a manner so as to cause the said motor vehicle to violently collide into the said Tanya Lamb”.

5. ***Determination.***

The admissible facts in the testimony of Ms. Baptist were not probative of how the accident occurred. She was not present when the collision occurred. The testimony of Miss. Sanchez also did not prove the facts that showed want of reasonable care on the part of the first defendant, although it proved the occurrence of the accident. Her testimony fell short.

6. Ms. Sanchez testified that they alighted and proceeded to cross the road from the front side of the bus, Ms. Lamb was in front of her. Then the pick-up came at a high speed and knocked them down. She answered in cross-examination that they got off the bus and went in front of the bus; she could not see what was coming from the direction of Belmopan. Both the bus and the pick-up were travelling

from the direction of Belmopan to Belize. At the time of the accident the witness was only twelve years old.

7. Francis Gilbert Gomez, the second witness for the claimant, did not advance proof of what happened at the moment of impact. He said that he saw two people alight; he did not pay much attention; he was working on the roof of his house nearby. Then the witness heard a loud bang, but did not see the moment of the bang, the impact; he saw two people fall down. He also said that he saw the pick-up come at a high speed. When asked whether the vehicle was heading in the direction of Belmopan, the witness answered that he was not sure. I do not consider his testimony reliable about the speed of the pick-up and the point of impact.
8. In all, the evidence led for the claimant did not prove excessive speed, failure to keep proper lookout, overtaking when it was unsafe, or the other improper and negligent manners of driving averred. On the other hand, the evidence for the defendants that, the two girls ran across the front of the bus and crashed on to the left side of the pick-up was borne out by the damage on the vehicle.

9. Whereas the defendant, a driver on a highway, owed a duty of care to the two girls using the road, and to other road users and property, there has been no proof that he failed to exercise reasonable care expected of a skilled and experienced driver – compare *Bourhill v Young* [1943] AC. 92, and *Searle v Wallbank* [1947] A.C. 434
10. The claimant did not plead the principle of, *res ipsa loquitor*, which is that, the fact of the evidence speaks for itself, so as to overcome the burden of proof of negligence cast on the claimant. That deprived learned counsel Mr. L. Willis, for the defendants, of the opportunity to conduct the defence case with that in mind. Notwithstanding, I have considered it, but I could not find, on the evidence adduced by the claimant, negligence based on the principle of *res ipsa loquitur*. The claimant certainly proved that the pick-up was under the control, that is, management of the first defendant. But in my view, she failed to prove the second requirement that, the accident was such that in the ordinary course of things could not happen if those who had management of the vehicle used proper care – see *Scott v London and St. Katherine Docks Co.* (1865) 3 H & C 596 or [1861-73] All ER Rep. 246.

11. The claim of Julie Baptist, administratrix of the estate of Tanya Lamb, brought against Victor Caliz and Rebecca Suazo in negligence is dismissed.
12. There was, in any case, utterly no basis on which to claim that Mr. Caliz was an employee or agent of Ms. Rebecca Suazo. She did not leave her vehicle with him or authorize him to drive it on that occasion, and he was not driving the vehicle on her errand. The House of Lords case, *Morgans v Lunchbury and Others [1973] AC. 127*, applies. Compare, *Hewitt v Bonvin [1940] 1KB 188*, and *Ramcharran v Gurrucharran [1970] 1All W.R. 749*, all usefully cited by learned counsel Mr. L. Willis for the defendant.
13. Costs to be agreed or taxed are awarded in favour of Ms. Suazo against Ms. Lamb. In the circumstances, I award no costs between Ms. Lamb and Mr. Caliz.
14. Delivered this Thursday the 5th November 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court