



regard for other road users”, including the claimants. They claimed that as the result of the negligence, the taxi car collided with two trucks, motor vehicles of registration numbers A-2016, and CZL-3134, both owned by the first claimant; and thereby caused damage to the two trucks, and injuries to the three claimants.

2. The claimants also claimed in negligence against the second defendant, Robert Wagner, that he was the owner of the taxi car, and the employer of the first defendant. The claim was based on the responsibility and vicarious liability of an employer.
3. Both defendant entered appearance. The first defendant subsequently failed to file defence. On 22.3.2004 a default judgment was entered against him. The second defendant filed a defence in which he denied that on 1.10.2000, the date of the accident, he was the owner or employer of the first defendant. He averred that he was not present at the scene of the collision.
4. For the claimants, the first claimant testified that, he was the driver of his truck No. A – 2016 at the time of the collision. One, Moses

Parham was the driver of the second truck No. CZL – 3134, that followed behind the first. The first claimant continued that the two trucks were in a convoy travelling from Belize City towards Belmopan to seek shelter from hurricane. It was raining. He continued that the first defendant was driving in the taxi cab in the opposite direction; he commenced to overtake a vehicle in front of him regardless of the fact that the trucks were on the right lane of him and the road was not clear for him to switch lane. As the result, the first claimant testified, the taxi car collided onto the first truck and then onto the second. He testified further as to the damage caused to the two trucks, the costs of repair, the injuries sustained by the first, second and third claimants, and associated expenses.

5. Evidence was not adduced on behalf of the second defendant about the moment of the collision, the damage and injuries sustained and expenses incurred. I had to accept the evidence for the claimants as to how the collision occurred and as to the damage, injuries sustained and expenses incurred. The evidence stood uncontradicted.

6. The evidence proved that the first defendant was the driver of the taxi cab, and the first claimant was the driver of truck No. A-1620. They each owed a duty of care to other road users and their properties. The evidence further proved that the first defendant failed to exercise reasonable degree of care to avoid damage to the vehicles of the first claimant, and injuries to the three claimants. He failed to exercise the standard of lookout required, given the state of visibility at that moment. It was raining. Obviously the first defendant did not see the truck on the lane to the right at the moment he commenced changing lane so as to overtake the vehicle in front of him. He did not exercise the skill and care expected of a qualified and experienced driver.
  
7. Regarding the case against him as the employer of the first defendant, the second defendant outlined a business arrangement between himself and the first defendant. His testimony was that, he had bought and owned the car No. D-0835, which he licensed to ply as a taxi cab, and he insured it. He said they agreed that the first defendant would run the taxi cab until the first defendant would have paid off the cost of the car and a little more to the second defendant; and that the first defendant was not paid wages. The second defendant further said that

in June or July 2000, the first defendant paid off the sum of money agreed, and the second defendant passed ownership of the car and the business to the first defendant who was to apply to the authorities for transfer of ownership of the car and of the taxi permit. He learnt that the first defendant had done neither by the time of the collision.

8. The evidence that the claimants relied on for proof of ownership of the taxi car, and of the second defendant being the employer of the first, was the record of registration of the car in the name of the second defendant, and of the ownership of the taxi permit. In my view, that evidence is not sufficient proof given the testimony of the second defendant. The claimants needed to prove that there was no arrangement by which ownership of the car and permit were given by the second defendant to the first. In sale and similar transactions, the general rule is that ownership, that is, property in goods passes at the time intended by the parties. It has been proved that in the arrangement between the first and second defendants, property would pass when the first defendant would have paid to the second the costs of the car and a little more money. Registration of transfer would be

evidence confirming transfer of ownership subsequently, not the only proof of transfer of ownership.

9. Whether transfer of the taxi permit was effected or could not be effected under the law does not affect the transfer of ownership of the car, or cessation of the arrangement with, or employment of the first defendant.
10. The claims of all the claimants against Robert Wagner have not been proved, and must fail. The claims are dismissed as against Robert Wagner. The claimants shall pay the costs of the claims to Robert Wagner, to be agreed or taxed.
11. Default judgment has already been entered against the first defendant, Randolph Card. The sums that the court will award as damages must, however, be proved by evidence. I accept that the replacement value of truck No. A – 2016 was proved at \$40,000.00. Out of that, \$2,000.00 must be deducted for the sale of the truck as a scrap. The sum awarded to Kent Garbutt for his truck No. A – 2016, is \$38,000.00.

12. In addition, the court awards to Mr. Garbutt the sum of \$6,000.00 the costs of repairs to truck No. CZL- 3134.
13. Special damages awarded to Mr. Garbutt is \$1,000.00 for transporting truck No. A- 2016, and \$300.00 that he paid for medical treatment of his daughters.
14. The abrasions and pain suffered by Kenia Garbutt were neither serious nor long lasting. Kenisha suffered one swelling and pain in the hip. Again they were neither long nor lasting. To each the court awards the sum of \$1,000.00.
15. Mr. Randolph Card alone will pay to the claimants the costs of this claim upto when judgment was entered against him. The costs are fixed at \$2,000.00, given that he did not file a defence.
16. Delivered this Thursday the 17<sup>th</sup> September 2009  
At the Supreme Court  
Belize City

Sam L. Awich  
Judge  
Supreme Court