

IN THE SUPREME COURT OF BELIZE 2003

ACTION NO. 452 OF 2003

BETWEEN: ADOLPH LUPP GmbH+CoKG CLAIMANT  
BELIZE

AND

1. YOLANDA RECTOR DEFENDANTS  
2. RUDY GALLEGO

Mr. Phillip Zuniga S.C., for the claimant.  
Mr. Aldo Salazar for the defendants.

AWICH J.

23.9.2009

J U D G M E N T

1. *Notes: negligence; duty of care expected of a driver. Counterclaim.*
2. The claimant, Adolf Lupp GmbH+CoKG-Belize, claimed that the first defendant, Ms. Yolanda Rector, is liable in negligence to the claimant and also that the second defendant Rudy Gallego, deceased, was and now his deceased estate, is liable in negligence to the claimant.
3. The ground for the claim against the first defendant is that, the first

defendant on 23.1.2003, drove motor vehicle of registration number C- 17469 without the due care, attention and skill required of a driver, and that as the result the vehicle collided with a vehicle of registration number CY-C14645, owned by the claimant, which vehicle was damaged, and the claimant incurred repair expenses.

4. The ground for the claim against the second defendant (now his deceased estate) is that the deceased was the owner of vehicle No. C- 17469, and the employer of the first defendant at the time. The point of law in issue is vicarious liability of an employer, in this claim said to be the second defendant.
5. The claimant prayed for: an award of \$11,873.67, the costs of repair to its vehicle, general damages, interest on the sums awarded, and costs of the claim.
6. The particulars of negligence claimed by the claimant were as follows:
  - “(i) Driving at too fast a rate of speed having regard to all the circumstances.

- (ii) Failing to keep any or any sufficient or proper lookout.
- (iii) Failing to keep the said motor vehicle in a safe and/or straight path.
- (iv) Making a left turn and/or attempting to make a left turn when it was manifestly unsafe so to do.
- (v) Failing to apply brakes in sufficient time or at all.
- (vi) Failing to stop, slow down or otherwise control the said motor vehicle so as to avoid the said collision.
- (vii) Driving without due care and attention and without due consideration for other road users”.
- (viii) Driving in a dangerous and/or reckless manner”

7. In their joint memorandum of defence both defendants denied the claim of negligence against them. They, however, did not say anything in reply to the claim that the first defendant was a, “servant and or agent”, of the deceased. According to the rules of pleading, the court must take it that the defendants admitted that the first defendant was a servant and or an agent of the second. It follows that vicarious liability would attach to the estate of the deceased, if negligence was proved against the first defendant.

8. In addition to their defence, the defendants counterclaimed that the claimant, by its servant or agent, Mr. Dean Roches, was liable in negligence to the defendants. They averred that Mr. Roches, an employee in the claimant's business, drove its vehicle No. CY – C-14645 in negligent manners and caused the collision and damage to vehicle No. C-17469, owned by the deceased and driven by the first defendant at the moment of the collision. The defendants then counterclaimed special damages and general damages for damage caused to the vehicle of the deceased, and for injury suffered by the first defendant.
9. Mr. Roches, witness for the claimant, and Ms. Rector, witness for the defendants, gave conflicting descriptions of how the collision occurred. They were the two drivers involved in the collision. Aid must be had of other items of evidence to resolve the conflict.
10. It was a common fact that the collision occurred on the Burrel Boom Road at the junction with the road to Fresh Pond Village, a minor road. When a police officer arrived at the scene the vehicle (or at least vehicle No. CY-C-14645) had been removed from the spot of the

collision; the officer did not draw a map of the scene. Much will depend on the testimonies of witnesses other than on real evidence.

11. The testimony of Mr. Roches for the claimant, gave this account. He was driving at about 40 miles per hour on the right side of the Burrel Boom Road in the direction of Burrel Boom; Ms. Rector was driving in the opposite direction from Burrel Boom on her right side of the road. When he was about 4 yards to the junction with the road to Fresh Pond Village, Mr. Roches said, the vehicle driven by Ms. Rector suddenly turned to the left to enter the road to Fresh Pond Village; and the collision occurred.

12. On the other hand, the testimony of Ms. Rector was that, she travelled along the right side of the road, she signalled to turn into the road to Fresh Pond Village, and slowed down to a stop on her right lane. She had noticed a dump truck stop on the road to Fresh Pond Village, waiting to join the Burrel Boom Road. Then suddenly she saw the vehicle driven by Roches approaching at a high speed from the opposite direction. It had enough road space to continue straight on its side of the Road, but it braked and veered towards the vehicle

driven by Ms. Rector and collided with it, thereby causing damage to the vehicle and injury to Ms. Rector.

13. Two matters helped confirm the testimony of Ms. Rector. Witness Jareth Alfaro gave a testimony which generally confirmed the testimony of Ms. Rector. Mr. Alfaro confirmed that there was a truck which had stopped on the road to Fresh Pond Village ready to enter the Burrel Boom major road. The witness was in that truck. He also confirmed that the vehicle driven by Ms. Rector had signalled and slowed down to a stop at the junction ready to turn into the road to Fresh Pond Village onto her left, when the vehicle driven by Mr. Roches came and collided onto the stationary vehicle in which Ms. Rector was waiting to turn off.

14. The other help to the testimony of Ms. Rector was in a statement made by Mr. Roches himself to the Police. He stated that he saw the stationary truck and the vehicle driven by Ms. Rector when he was ten yards away. In court he said he was 4 yards away. Then the vehicle driven by Ms. Rector made a turn into the road to Fresh Pond Village, but stopped before it entered the road because the driver realized that

the vehicle in which Mr. Roches was driving was too close. Mr. Roches' vehicle then collided with the vehicle driven by Ms. Rector.

15. The testimony of Mr. Roches stood alone without any confirmation. It is my finding of fact that Mr. Roches was travelling too fast in the circumstances, and was inattentive, he did not see the vehicle driven by Ms. Rector in time, and seemed not to have noticed that it had stopped and waited.
  
16. My decision is that Mr. Roches did not exercise the degree of care, that is, reasonable care in the circumstances, expected of a qualified, skilled and experienced driver. He failed to travel at the slow speed appropriate in the circumstances, and to exercise the degree of proper lookout for other traffic. He was expected, as a driver, to exercise care in those particulars. He also failed to exercise the proper skill to keep his vehicle on a straight path on his proper lane. The standard expected of him was that of a skilled and experienced driver. He failed in his duty of care towards the two defendants. Mr. Roches, and therefore his employer, the claimant, is liable on the counterclaim for negligence towards the two defendants.

17. The claimant will pay special damages of \$1,287.46 computed at case management conference conducted by a judge, and general damages of \$2,000.00, to the estate of Rudy Gallego, for loss of use of the vehicle and inconvenience for the short time taken to do repair work. In addition the claimant will pay \$1,000.00 general damages to Ms. Yolanda Rector, for the pain she suffered as the result of the collision. Interest at 6% per annum is payable on the sums awarded from 23.12.2003.
  
18. The claim of Adolph Lupp GmbH + Co KG – Belize is dismissed. The claimant will pay costs of the claim and counterclaim, to be agreed or taxed.
  
19. Delivered This Wednesday the 23<sup>rd</sup> day of September 2009  
At Belize City  
Belize

Sam. L. Awich  
Judge  
Supreme Court