

IN THE SUPREME COURT OF BELIZE A.D. 2007

CLAIM NO. 268 OF 2007

BETWEEN: 1. JUAN CARLOS ESTRADA
2. FERNANDO QUIB CAAL CLAIMANTS

AND

FABIAN RIVERO DEFENDANT

Mrs. Agnes Segura Gillett for the claimants.
Mr. Hubert Elrington for the defendant.

AWICH J.

19.3.2010

J U D G M E N T

- Notes: Negligence – a claim in negligence based on a motor accident on a highway; whether the defendant exercised reasonable care to avoid injury to other road users and their property; excessive speed in the circumstances of a wet road and a curve; causation - whether the damage occasioned was remote. Damages – hire of another vehicle for doing the business interrupted; whether cost of hire is remote. General damages for the truck that would cost too much to repair, are measured by the market cost of replacement of the truck with a truck of similar condition and value.*

2. On 5.6.2006, a truck of registration No. TOL–A 483, and a Mitsubishi SUV, of registration No. C 22638 collided at Miles 28, Northern Highway. The defendant, Fabian Rivero, said that another vehicle, yellow in colour, was also in the collision. The truck was driven at the time by Fernando Quib Caal, the second claimant. It was owned by Juan Carlos Estrada, the first claimant. The Mitsubishi was driven by Fabian Rivero.

3. The claimants blamed the defendant for the collision. They have made a claim in negligence. They asked for special damages, general damages, interest and costs.

4. *The facts.*

The primary issues are of facts. Two of the four witnesses for the claimants gave one common account of the collision. One witness was the first claimant; he was not present at the time of the collision, his testimony was about damage to the truck and losses incurred. The fourth witness was a police officer who went to the scene and carried out investigation. The defendant testified for himself and gave a completely different account of the collision. He called a second

witness whose testimony was lacking as to the actual moment of the collision.

5. The evidence adduced for the claimants was the following. The truck was travelling behind a yellow or cream vehicle, in the direction of Belmopan from the direction of Belize City. It was loaded with twenty head of cattle and was travelling at about 40 m.p.h. The yellow vehicle overtook the truck. Then the Mitsubishi emerged out of a curve ahead at a high speed on its wrong side of the road, its left handside lane, which was the right handside lane of the truck and the yellow vehicle. To get back onto its correct right handside, the Mitsubishi swerved too sharply and too far across its right handside. To get back onto the road, it swerved again back, but all across onto its left handside where it collided with the truck. The truck overturned and slid across the road on its left and rested off the road.

6. The defendant in his testimony recounted the collision contrary to the testimonies for the claimants. He related the following. He and Michael Gordon were travelling in the direction of Belize from Belmopan. He was the driver. He saw a line of vehicles travelling in

the opposite direction, that is, the direction of Belmopan. As they approached, he said, “a yellow vehicle darted from behind that line of traffic, overtaking in my path. The yellow vehicle hit my vehicle, slammed me against another vehicle and caused me to lose control of my vehicle”. He added that he lost consciousness.

7. Mr. Gordon was not called as a witness. No explanation was given for not calling him. However, one Lindsford Castillo was called as a witness by the defendant. He and his wife were travelling in the line of traffic heading in the direction of Belmopan. His statement about the moment of the collision was: “There was a line of vehicles (may be two or three) ahead of us; nevertheless I was able to see far enough to recognize there was a traffic collision”. He continued that when they reached the scene he saw that the vehicles in the collision were a grey Mitsubishi SUV and a cattle truck. He and his wife rendered assistance. That is the material part of his testimony.

8. ***Determination.***

The statement of Mr. Castillo was honest, but ambiguous. It could mean that he saw the collision happening, or that he saw the result of

the collision soon after it had happened. He did not recount the actual occurrence, that is, how the vehicles came to collide. I concluded that Mr. Castillo did not see the moment of the collision or the moment just before, he saw the state and positions of the vehicles immediately after the collision.

9. The less probable account of the collision was that given in the testimony of the defendant. It was contradicted by the witnesses for the claimant including the police officer. I regarded the police officer as an independent witness. The police was called and arrived at the scene soon after the collision. They found the yellow or cream vehicle and the driver, Mr. Paul Jones, at the scene. Later Police Officer Ernel Dominguez contacted Mr. Jones, and had the yellow vehicle inspected. The officer testified that there was no damage or any other signs of collision on the yellow or cream vehicle.

10. I accept the account of the collision in the evidence for the claimants. It was wet and drizzling after it had rained. The defendant emerged from a curve too fast, and on the wrong lane where he found himself facing a line of vehicles. It is probable that the yellow vehicle had

just completed overtaking the truck and returned to its right lane in front of the truck. I accept that in an attempt to avoid the line of traffic, the defendant swerved too suddenly and too far across his right handside lane, and back, but right across to his left again and hit the truck. It overturned and was badly damaged. Its load of cattle except one head escaped.

11. A driver on a highway owes a duty of care to other road users and those on adjoining property, and their property. The duty requires the driver to drive with reasonable care in the circumstances prevailing at that time, so as to avoid reasonably foreseeable injury to the people, and damage to property.
12. The usual care that the driver exercises requires him: to ensure that the vehicle he will take on the highway is in a safe mechanical condition, it is roadworthy; to have skill and competence in controlling the vehicle, and to apply the skill and competence when he drives; to keep proper look-out for other road users and anything on the road; and to travel at a speed that is safe in the circumstances prevailing at that time, not at “excessive speed”.

13. The evidence showed that the defendant travelled too fast, given that it was wet and drizzling. That is why he was unable to keep to his right lane when he manoeuvred the curve. As a driver he would know that the road would be more slippery than normal, and there was need to adjust to a speed that would enable him to stop before reaching other traffic within his vision. At the speed he was travelling, the defendant was unable to control the vehicle when he swerved to get back onto the correct lane, and again swerved to regain control.
14. the defendant also approached the curve at an excessive speed; the duty of care requires a driver to approach a curve at such a speed that will allow him to keep to his correct lane and to stop and avoid other traffic that may emerge from the curve, unless it is impossible in the circumstances, notwithstanding the exercise of reasonable care.
15. The defendant failed in his duty of care he owed to other road users and their property, in particular, to the two claimants and their property. The defendant was negligent, the collision with the cattle truck was the result of the negligence of the defendant. It was within

the category of foreseeable results of lack of reasonable care. Mr. Rivero is liable in negligence, to the claimants.

16. *Causation and damages.*

As the result of the collision, the truck belonging to Juan Carlos Estrada, the first claimant, was damaged beyond repair, the cost of repair would be higher than the market purchase price of a similar vehicle of the same mechanical condition. The claimants adduced evidence to that effect. The defendant did not adduced evidence to contest that. Nineteen head of cattle out of the twenty on the truck escaped. Eight were captured, so the first claimant lost eleven head of cattle. The damage to the truck and the loss of the eleven head of cattle were foreseeable losses and not remote.

17. The sum of \$55,000.00 being the market price of a similar truck to replace the truck that has been damaged beyond repair, is awarded to the first claimant as general damages. The sum of 15, 432.38 being the purchase price of one bull and the lost heifers is awarded as special damages to the first claimant.

18. The first claimant hired people and a small aircraft to search for the strayed cattle, at the total cost of 7,950.00. Given the total purchase price of \$27,259.00 for the nineteen head of cattle that strayed, and the business value of them, it was not unreasonable for the first claimant to spend a total of \$7,950.00 for searching for the cattle. It was a prudent effort to minimize loss. The cost of searching for the cattle is not remote, it is recoverable by the first claimant as special damages as well.
19. The claimants have also claimed \$106,800.00, the cost of hiring a truck to convey cattle in the business of the first claimant. The period for the hire was about seven months. A reasonable period I do allow, given the high cost of hire, is two months. The proportional sum is \$30,514.00. To allow a higher sum would be to compensate for impecuniosity of the second claimant, which cannot be regarded as foreseeable loss – see *Liesbosch Dredger v SS Edison [1933] A. C. 499* and, *The Soya [1956] 1 W.L.R. 714*.
20. The total sum that I award to the first claimant as special damages is \$53,896.38. For general damages, I award the sum of \$55,000.00, the

replacement value of the truck. The grand total damages is \$108,896.38.

21. Cost of these proceedings, to be agreed or taxed, are awarded to the claimants. Interest will be charged on the total sum awarded, at the rate of 6% from today until full payment.

22. Fernando Quib Caal was cited as the second claimant, but particulars of the claim do not advance any claim for damages for his benefit. He was the driver of the truck. Fortunately he was not injured in the collision. He could have been left out of the claim and used simply as a witness.

23. Delivered this Friday the 19th day of March 2010.
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court