

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 555 of 2008

ATILIANA DURAN

CLAIMANT

AND

THE ATTORNEY GENERAL

DEFENDANT

Hearings

2011

8th July

5th August

21st October

14th December

2012

1st February

9th March

28th March

Dr. Elson Kaseke and Mr. Bryan Neal for the claimant.

Ms. Illiana Swift for the defendant.

LEGALL J.

JUDGMENT

1. The claimant was originally represented by Dr. Kaseke who after several periods of illness, which resulted in several adjournments, died; and was replaced by attorney-at-law, Mr. Neal who took over

the conduct of the case. The facts of the case reveal that Matias Duran was the father of six year old Kristen Duran, (the minor) and the brother of Atliana Duran who brought this claim as next friend of the minor. Matias Duran was 28 years old and employed by the government as a Customs Officer stationed at the Phillip Goldson International Airport.

2. On 6th March, 2010 Matias Duran went to a night club named High 5 at Orange Walk Town to have a drink. At about 12 midnight, he had consumed a quantity of beers and appeared to be intoxicated. Sometime later, he got into an altercation with a security officer at the night club, the specific reason for the altercation was not disclosed in the evidence. The altercation escalated to a fight between Matias Duran and the security officer. The police intervened and Matias Duran was taken into police custody and placed on the flooring of the tray of the police pickup truck BMP-B-0071 which was at the scene. Sitting also on the flooring of the tray of the truck was another person – Shawn Richards – allegedly taken into police custody as a result of the same altercation, but who was handcuffed to the rail of the truck. Matias Duran was not handcuffed. There was also a police constable sitting on the edge of the tray of the truck – Constable Locario – and two other police officers sitting in the front seat of the cab of the truck, one was the driver – P.C. Ramirez – and the other was a passenger – P.C. Ayala. The back seat of the cab of the truck was empty. The police pickup truck then left the High 5 with the passengers for the police station. On their way to the station, there are disputed accounts as to what happened.

3. One version of what occurred was that Matias Duran fell from the police vehicle while it was moving and suffered serious injury to his head which resulted in intra crania bleeding. He died on 7th March, 2010 at the Northern Regional Hospital at Orange Walk, where he was taken after the alleged fall. The cause of death is stated as intra cranial bleeding and pulmonary edema by Dr. Bernard Bulwer who was not called as a witness in this case. The claimant brought these proceedings against the defendant as representing the State for the following:

- “(1) Damages for the negligent death of Matias Celestino Duran (“the deceased”) who died while in police custody on the 7th March, 2010, by falling from a police vehicle which was then driven by Police Constable Enrique Ramirez, and suffered extensive head injuries causing head trauma and intra crania bleeding.
- (2) Interest at the statutory rate of interest from 7th March, 2010 until payment.
- (3) Costs.”

4. Two witnesses testified for the claimant as to how the injuries to the deceased were caused. Atiliana Duran states that the deceased was drinking; he appeared intoxicated; there was a fight with the security officer; she tried to control the deceased; and he was placed in the tray of the truck. She testified that as the police was taking him to the station, she followed behind in a taxi; and though she could not hear what was being said in the police vehicle, she testified as to what she saw. She said that at about after 1:00 a.m. on 7th March, 2010, “the

deceased dropped from the vehicle. The taxi was about 200 feet away.” Later on in her testimony she also swore that “I saw the deceased fall from the police vehicle.” This witness also swore that she could not deny that “the deceased attempted to escape.”

5. Shawn Richards, called by the claimant, testified that the deceased had said that he was not going to get locked up for nothing; “so he wah jump out.” Richards continued:

“Matias then stood up as if he wanted to jump. I told him to hold it down because the police would lock him down since I had seen Charro in a taxi following the police vehicle. At that time, Matias sat down on the side of the police vehicle, on the edge and not on the pan. At that time, the police vehicle increased speed. Matias, who was sitting on the edge of the back of the police vehicle on my side of the vehicle, again said he was going to jump out. I saw him take his feet out onto the outside of the tail gate. At that time, the police officer who was at the back of the police vehicle with us said “if you what jump, then jump boy. Tha no my life.” I then saw Matias jump out of the vehicle.”

6. The claimant’s case is that the police officers, servants of the State, were negligent in that they failed to handcuff the deceased to the truck or otherwise secure him, seeing that he was intoxicated. Also they failed to secure the deceased in the tray of the truck so that he would not fall down and suffer injury or death. Moreover, says the claimant,

the officers were negligent when they placed the deceased in the tray of the truck even though they knew he was intoxicated. The police officer Locario, the claimant states, was negligent or acted unlawfully because he encouraged the deceased to jump out of the truck by telling the deceased “if you whan jump then jump boy. Tha no my life.” It was also alleged that P.C. Ramirez was negligent when he put the intoxicated deceased in the tray of the truck without securing the deceased therein to ensure his safety.

7. Richards had given a statement to the police prior to giving his witness statement. In his police statement dated 8th March, 2010, more than one year prior to the date of his witness statement, not only he did not mention that Constable Locario told the deceased if you want to jump, then jump; but his description of the jumping differed in some respects. In his police statement this is what he said, among other things: –

“Whilst I was in the vehicle the police then brought the deceased and placed him inside the vehicle along with me, the driver then drive en route to the police station with both of us. Whilst we were been carried to the station in the police vehicle, the deceased was using a series of bad language to me and the officers, he was cursing us out. When we reached by Friendship Chinese Restaurant, I saw the deceased stand up. When that happened, the officer told him to sit down and he told the officer unu, and he said fock us. He jumped out the police vehicle from the right side he landed on the ground, and the officer knocked on the vehicle and it stopped.”

8. A further problem with Richards' evidence which also goes to his credibility, is that he admitted that Cpl. Ayala told him while he was at the station that the police needed him because of what happened, and that the police would release him if he gave a statement of what happened. Richards swore in his witness statement that the corporal wrote the police statement for him and he signed it and was released. In the police statement there is no mention of what the corporal told him or that the corporal wrote the statement.

9. The other version was given by police officers for the defendant. Cpl. Graciano Bricenco testified that the deceased was his cousin and he was in his company on March 6, 2010, and that his cousin had drank at least fourteen beers. He swore that at about 2:00 a.m. on March 7th, 2010 his cousin, under the influence of alcohol, attempted to enter the disco at the night club, when the deceased got into the altercation with the security. He said he restrained his cousin and told P.C. Ramirez' to take him into custody at the police station so he could "cool off." He swore that the deceased calmed down when he was put in Ramirez's custody and walked peacefully to the police pickup truck. Ramirez also testified that the deceased "calmed down and peacefully allowed me to escort him to the police vehicle." This witness also testified that he saw the deceased "jumped out of the police transport on the right hand side."

10. In cross-examination Ramirez stated that he did not put the deceased in the back seat of the truck because P.C. Locario was taking care of

the prisoners in the tray of the truck. He said he had not handcuffed the deceased because he was not considered a threat and was not behaving disorderly at the time. He testified in cross-examination that he looked in the rear view mirror of the vehicle and saw Matias jumped from the vehicle. He said the deceased was not sitting on the edge of the tray of the vehicle.

11. Cpl. Ayala in his witness statement swore that he looked at the side view mirror of the truck and saw the deceased sitting on the rail of the truck and at that moment he saw the deceased “threw himself backwards and landed on the pavement of the road.” In cross-examination, he said that though the back seat of the truck was vacant, the police usually put persons detained in the tray of the truck. He testified that it depended on the behaviour of the person whether or not he would be handcuffed; and in the case of Matias he was calm and behaving in a good manner on being led to the truck. He said P.C. Locario was at the tray of the truck to observe the prisoners. He also testified that he had seen Matias sitting on the rail of the vehicle but it was a matter of seconds between when he saw Matias on the rail to when he jumped.
12. The question is whether the officer or officers was or were negligent on the facts of this case. Did the officer or officers exercise reasonable care to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury or death to the deceased? But before deciding the issue of negligence, the court must bear in mind the well known and often articulated views of Lord Pearson with

respect to the burden of proof in the celebrated *Henderson v. Harry E. Jenkins 1969 3 A.E.R. 756 at p766.*

“In the action for negligence, the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants and if he is not satisfied the plaintiff action fails.”

13. Even though the credibility of Richards’ evidence is shaken, there is evidence above in this case that Matias jumped from the police vehicle. In a case closely akin to the facts of this case, *Sacco v. Chief Constable of South Wales QB ENF 95/1831/1* which was brought to the attention of the court by learned counsel for the defendant, Ms. Swift, plaintiff who was intoxicated and abusive was arrested by the police and placed in a police van. On the way to the police station, the plaintiff in an attempt to escape, jumped from the van which was travelling about 25 miles per hour and suffered serious injury to his head. He brought a claim against the police officers for negligence on the ground that they owed him a duty of care and they acted in breach of that duty when they failed to realize that the plaintiff might try to escape, and they also failed to assign a policeman to travel with the plaintiff in the rear of the van to see he did not injure himself by

jumping out of the van. The judge at first instance rejected the plaintiff's claim and held that if the defendants did owe a duty of care to the plaintiff that duty had not been broken. In dismissing an appeal against the judge's decision, Schiemann LJ says that the plaintiff seems "to be the author of his own misfortune. He did something which he knew, or must be taken to have known, was dangerous. In so far as his appreciation of the dangers involved was lessened by his intake of alcohol, that was his own fault."

14. In this case before me a reason was given for not handcuffing the deceased because he was calm and not behaving in a disorderly manner at the time. He was not placed in the back seat of the vehicle because there was P.C. Locario in the tray of the vehicle to observe the persons in police custody. This is not a case where the persons were left alone at the tray of the vehicle. Atiliana testified that she could not deny that Matias attempted to escape. There is much evidence which I accept, that the deceased jumped from the police vehicle. The burden is on the claimant to prove that the officer or officers was or were negligent or failed to exercise reasonable care. On the evidence above, I am not satisfied, on a balance of probabilities, that the claimant has proven that the police was negligent in this matter.
15. Costs are in the discretion of the court, and the court is entitled in this regard to consider the conduct of the parties. In the exercise of that discretion, I do not make any order as to costs.

16. I therefore make the following orders:

- (1) The claims in the claim form dated 2nd August, 2010 are dismissed.
- (2) There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
28th March, 2012