

IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO. 462 OF 2005

	(SU CHEN LEE	CLAIMANT
	(
BETWEEN	(AND	
	(
	(CRESCENCIO RAMOS	1ST DEFENDANT
	(ELITE SECURITY & INVESTIGATION	
	(LTD. Trading as ELITE SECURITY	2ND DEFENDANT
	(By Original Claim)	
	(CRESCENCIO RAMOS	1ST CLAIMANT
	(ELITE SECURITY & INVESTIGATION	
	(LTD Trading as ELITE SECURITY	2ND CLAIMANT
BETWEEN	(SU CHEN LEE	1ST DEFENDANT
	(JUN MING TSAI	2ND DEFENDANT
	(By Counterclaim)	

Coram: Hon Justice Sir John Muria

26 September 2008

***Mr. N. Dujon* for Claimant**

***Mr. P. Zuniga S.C.* for Defendants**

J U D G M E N T

CLAIM – claim for damages arising out of accident – negligent driving by defendant’s driver – claimant’s vehicle a wreck – value of vehicle prior to accident – vehicle sold as a wreck - loss of use of claimant’s vehicle – damages awarded on value of vehicle prior to accident less amount obtained for sale of the wreck – loss of use of vehicle per day awarded from date of accident to the date of judgment

CLAIM – interest claim on damages – no rate of interest specified – appropriate rate a matter of Court’s discretion – interest awarded from date of action or claim to date of

judgment – interest rate after date of judgment provided under section 167 of Supreme Court of Judicature Act (Cap.91) – claimant entitled to costs of claim.

COUNTER-CLAIM – *accident caused by negligent driving by the defendant's driver – no evidence of fault or contributory negligence by claimant's driver – defendant's counter-claim dismissed*

Muria J.: This is a claim by the claimant for damages arising out of a accident on Western Highway, between Miles 47 and 48 during which an armoured truck Reg. CY-A-3070 driven by the first defendant collided with the claimant's Isuzu Pick-up truck Reg. CY-C-16344 driven by one Jun Ming Tsai. Both Vehicles sustained damage due to the collision. The second defendant has counterclaimed for damages to his vehicle also. Each party is laying the fault on the other.

Brief factual circumstances

It would be helpful to set out briefly the factual circumstances of the case before proceeding further in this judgment. At about 9:00 a.m. on the 15th November, 2005, Jun Ming Tsai (Mr. Tsai) was driving his wife's (claimant) pick-up truck from Belmopan City to Belize City. At the time it was raining. On the way, Mr. Tsai stopped by the junction of the Hummingbird and Western Highways to pick up a woman (Ms. Bernice Arzu, the claimant's witness) and proceeded towards Belize City. Just as he was ascending the gradient in the road he saw the defendant's truck coming

down the road and around a curve traveling to Belmopan in the opposite direction. What happened next is a matter of dispute. However, the fact remains that a collision between the two vehicles occurred. Both vehicles came to their rest, as result of the collision, on the same side of the road (the Claimant's side of the road). It is also common ground that the road was wet at the time as it was raining.

The Issue

Both parties in this case alleged fault on the part of the other. The principal question, therefore, to be first determined as submitted by Mr. Dujon: Who cause the collision? The other issues relating to value of the vehicles and damages are off-shoots of the main issue of causation.

The Evidence

The evidence for the claimant came from Su Chen lee (claimant), Mr. Jun Ming Tsai (driver), Ms. Bernice Arzu and Eli Sanchez. The defendants called Crecensio Ramos (2nd defendant's driver), Seferino Choc and Crisanto Ack.

I must mention that one of the claimant's witnesses, a Police Officer, CPL 115 Lloyd Molina, did not attend to give evidence despite being served with a witness summons. There was no explanation for the officer's non-attendance. This is regrettable to say the least as the court expects police officers to be the first to obey such court process. Mr. Dujon did not seek to take that issue further and proceeded with his client's case without the police officer's evidence.

The Claimant gave evidence that the vehicle driven by her husband Mr. Jun Ming Tsai that morning of the accident was hers and that when she learned of the accident she went to scene of the accident and found her vehicle in a wreck state. She stated in her Witness Statement that before the accident, the vehicle was fitted with new tyres and was in an excellent condition. She regularly used the vehicle to go to and from work and to take care of other family and social responsibilities. She estimated the loss to her of \$100.00 per day of the use of the vehicle.

It is the Claimant's case that she could have got \$24,500.00 for the vehicle prior to the accident. She was, however, advised by the mechanic who inspected the vehicle that it would cost more than \$24,500.00 to repair the

vehicle. She ended up selling the vehicle as a wreck for only \$2,500.00 to one Mr. Liu Ting Tu.

The evidence of Mr. Tsai is that on Tuesday the 15th day of November 2005 at about 9 o'clock in the morning he was driving his wife's (the claimant) Isuzu pickup truck, License No. CY C16344 from Belmopan to Belize City. It was raining at the time.

At the junction of the Hummingbird Highway and the Western Highway Mr. Tsai stopped by a tree to give a lady who was waiting there, a lift. The woman was Bernice Arzu who was later to be one of the claimant's witnesses. Ms Arzu got into the front seat of the pickup beside the driver who then proceeded to move off along the Western Highway on his side of the road (right hand side). He had gone only a short distance up the gradient in the road and was just about to change into third gear and attained a speed of about 35 mph, when he saw a red truck coming along the Highway in the opposite direction down the slope and around the curve ahead of him at what he considered a very high speed for the wet conditions.

He said that the truck proceeded to come over on to his side of the road and appeared to be out of control. He saw the driver fighting with the steering wheel trying to get back onto his side of the road. Having seen that, Mr. Tsai tried to take evasive action by swinging further to his right. Unfortunately, the truck slammed into the left front portion of the pickup and continued along its entire left side, causing it to spin around and end up facing the direction of San Ignacio some 20 feet off the right shoulder, when facing Belize City.

In cross-examination, as to the suggestion that he was busily talking to the woman he picked-up when the accident occurred and as to where the collision took place, Mr. Tsai said:

Q. Did you ask her anything?

A. Just asked her where she was going.

Q. Then what happened?

A. She came in, I changed to 3rd gear and then something happened (Collision) as agreed.

Q. You were traveling?

A. I was going 35 kmh/20mph.

Q. Were you talking to the lady in the truck?

A. No.

Q. You said truck (on coming) came to your side?

A. True.

Q. You said the other vehicle was speeding?

A. Yes.

Q. You saw the driver in other vehicle, trying to steer vehicle?

A. Yes. I tried to avoid the truck, there was a little curve. I was on my side of the road. The curve was to the left.”

Ms. Bernice Arzu’s evidence was short and straight forward. She stopped Mr. Tsai’s blue pickup at the junction of the Western and Humming bird Highways. She got into the vehicle and sat at the right passenger’s seat. They then set off. It is worthy of note what she stated in her Witness Statement:

“5. It was not long after we left I saw a vehicle which is a red truck coming towards us in the opposite direction on our side of the road so Jimmy swerved to the right to avoid the accident but this truck still came and collided into us.

6. As a result of this the pickup spun around and ended up off the said right side of the road pointing in the direction of San Ignacio.

7. I sustained a cut would to left side of nose, cut would to forehead and pain in the neck and eye.

8. Also the driver of the truck a dark skin male person, slim built came over and say that he was sorry.”

I would also mention that Ms Arzu’s evidence stood fast despite the firm but fair cross-examination by Mr. Zuniga S.C. on behalf of the defendants.

The defendants staunchly denied any blame for the accident.

The suggestion by the defendants’ witnesses is that the collision occurred on the defendants’ side of the road, and that it was caused by Mr. Tsai who came onto the defendant’s side of the road. This, it was further suggested by Crescencio Ramos was because he (Mr. Tsai) was busy having conversation with the woman passenger sitting in the passenger’s seat in front of the vehicle beside the driver.

Mr. Ramos further stated that after the collision which occurred on his side of the road, the claimant’s vehicle moved back to its side of the road and continued on into the bush.

Mr. Ramos agreed in his testimony that he was running late on that particular morning to get to Belmopan, to drop off security personnel. He did not dispute it was raining and the road was wet. However, he did not agree to the suggestion put to him in cross-examination that because he was running late he had to drive faster than usual. He agreed he was doing about 20 mph or about 40 kmph coming down the slope on the road just before colliding with the claimant's vehicle. Mr. Ramos confirmed that both the vehicle he was driving and the claimant's vehicle ended up on the same side of the road (claimant's side) as a result of the collision. It would be helpful to note part of the 1st defendant's evidence, as elicited in cross-examination, as follows:

Q. Were you late that morning?

A. Yes, I was late.

Q. Because you were late, you drove faster?

A. No, Sir.

Q. And faster than usual?

A. No, Sir. The road was bad.

Q. You decided to make up time?

A. No, Sir

.....

Q. You agree there is a slope there and your vehicle was coming down the slope?

A. Yes.

Q. Were you on the curve?

A. I was already cleared of the curve as I was coming down.

Q. Were you trying to turn to your right?

A. Yes.

Q. If you came too fast, you would swerve to the left?

A. If I was coming too fast, yes, but I was not.

Q. Would it take you to the right due to weight of vehicle and travelling fast?

A. I was not travelling very fast.

Q. You were 18 inches from the line on the side of the road?

A. I was on the right-hand side of the road. The line is that on the right-hand side of the road.

Q. Were you holding onto your side of the road?

A. Yes.

The other vehicle came to my side, hit my left side of my vehicle.

It then moved back to his left side.

Q. How fast were you driving?

A. Less than 20 mph.

Q. What happened to the other vehicle?

A. It hit my bumper (left front bumper) and continued to the bush.

Q. The other vehicle came up the hill?

A. Yes.

.....

Q. You were coming down at 20 mph in an armoured truck?

A. Yes.

Q. The other vehicle, came to your side and hit your vehicle?

A. Yes.

Q. Are you agreeing that your vehicle went some distance after the accident?

A. Yes, but not 170 ft.

.....

Q. Only reason for travelling that distance was because you travelled fast?

A. No, I was not travelling fast.

Q. I also suggest, for you to go to the left side of the road, because you were drifting to left side of the road?

A. No. I was always on my right hand side of the road.

Q. Did you come out of the vehicle, did you do anything?

A. I came to the road, and went to see the vehicle.

Q. Did you see any body?

A. I saw a Chinaman and then a lady.

.....

Q. Where was the pickup?

A. It was on the left side of the road. My vehicle was also on that same side after collision.

.....

Q. Was your vehicle rammed into the pickup?

A. No, Sir. It came onto my side and hit my front left bumper. If my vehicle rammed into it, it would not be like that.

The 1st defendant called Seferino Choc and Crisanto Ack to support his case that the accident was caused through the fault of the driver of the Claimant's vehicle and that the accident occurred on the defendant's side of the road. In some respect, the evidence of Mr. Choc and Mr. Ack support the first defendant's evidence. However, when it comes to material issues of causation and the location of the accident, the evidence of the two defence witnesses did not fare well with the picture that the defence is putting forward in this case.

Mr. Choc's evidence is that they were late by almost two hours to report to security duties at Belmopan, although he denied the suggestion that the first defendant was driving fast because they were running late. He confirmed that it was raining and the road was wet. He agreed that the accident occurred immediately after the curve as they were driving down the slope on the road.

What is more telling of Mr. Choc's evidence is that according to him the accident occurred when their armoured vehicle was partially off the pavement on their right side of the road. He put the distance as 18 inches off the road. The suggestion, of course, is that the Claimant's vehicle veered across the road and hit the front left of the defendant's armoured vehicle which was, not only on its right side of the road, but 18 inches off the road further to the right. There are two difficulties in accepting that suggestion and the evidence supporting such a suggestion. First, the resultant damage to both vehicles does not support the claim that the Claimant's vehicle veered across the road hitting the front left of defendant's vehicle. It is plain from the damage to Claimant's vehicle that the defendant's vehicle rammed into the Claimant's vehicle from the left front side and along its left side of the body of the vehicle. It clearly demonstrates the opposite of what the 1st defendant, and Mr. Choc were saying happened.

The second difficulty, with the defendant's story is that both vehicles came to rest on the Claimant's side of the road. It does not take much of an imagination to reject the suggestion that the Claimant's vehicle veered across the road, hit the front left of the defendant's vehicle which was coming down the hill and 18 inches off its right side of the road, and then swung back to its side of the road before resting on its side of the road again. The Court simply do not accept the defendant's evidence that the accident occurred on the defendant's right side of the road nor does the Court accept the suggestion that it was caused by the fault of the Claimant's driver.

Crisanto Ack's evidence does not help the defendant at all. Not only that he put the position of the armoured vehicle in which he was travelling as

wholly on the road but that the collision took place in the middle of the road. He also said that when they were coming down the wet road, they were doing 30 mph. It is therefore not surprising that he said he saw the Claimant's pick up truck when they were only 15 yards away and the first defendant took no action to avoid it. This is shown by his answers in cross-examination:

Q. Where did the accident happen?

Middle of the road?

A. Yes, Sir

.....

Q. How fast were you travelling?

A. 30 mph as we were coming down the hill from 40 mph.

Q. Your vehicle ended up on the other side of the road?

A. We got knocked on the left bumper and that caused us to pull off the road.

Q. How far when you saw the pick-up came onto your side of the road?

A. 15 yards.

Q. Did you see Ramos took actions to avoid the pick-up?

A. No.

Mr. Zuniga S.C. submitted that the defendant's evidence should be accepted, as the evidence of the defendant witnesses are corroborative of each other. I take it that Counsel was referring to the defendant's witnesses who all said

that the Claimant's pick-up veered to the defendant's side of the road and collided with defendant's armoured truck on the defendant's side of the road, hitting the front left bumper of the defendant's vehicle. While the defendant's witnesses support each other on this aspect of the story as to show the accident occurred, unfortunately it does not stand up to the unshaken evidence of the Claimant's two witnesses (Mr. Tsai and Ms Arzu) whose evidence must be preferred. The corroborative aspects of the defendant's story were also weakened when tested in cross-examination which further strengthens the Claimant's case.

The defendant also pivoted their case on the suggestion that Mr. Tsai was busily having conversation with Ms Arzu and caused the driver to not be attentive to the road and on coming vehicle. The suggestion was firmly denied by both, the driver and Ms Arzu. Unhesitatingly I do not accept the evidence of the defendants on this aspect of the case also.

On the evidence, I am satisfied that the claimant was on his correct side of the road that morning of the accident.

The sum of total of the defendant's story creates a picture which on the evidence cannot stand up to the case advance for the Claimant and supported by the evidence before the Court. Even without the Police Officer's evidence, the evidence of Mr. Tsai and Ms. Arzu clearly rings the truth of what happened on that morning of the accident on that curve of the road on the Western Highway.

Given the evidence of adduced at the trial, particularly from the defendants' witnesses, I conclude that there are four factors (causation factors) which caused the accident in the present case. I am satisfied that on the balance of probability that these factors of causation in this case are: the defendants' lateness for duty; the 1st defendant speeding as a consequence thereof; the wet condition of the road; and the inability to negotiate the curve as he was descending the slope on the road, just before the impact.

On the evidence before the Court, from both the claimant's and defendants' witnesses, it is probable that the first defendant was speeding to catch up with the time for work that morning of the accident. This probability becomes more real when one considers the fact that the defendants had to travel to Belmopan and had to be in Belmopan by 8:00 a.m. (Mr. Ramos' evidence). They were late by almost two (2) hours already (Mr. Ack's evidence). The accident occurred at about 9:00 a.m., clearly indicating that the defendants were indeed already late. The 1st defendant was descending the slope and at the curve and wet road at varying speed (from 40 mph to 30 mph, by Ack's evidence, 25 mph by Ramos' and Choc's evidence) and colliding with claimant's vehicle. Following the accident both vehicles came to rest on same side of the road (the claimant's side of road). The damage to the claimant's vehicle was not only to the frontal left side, but along the entire left side, dented inward, of the body of claimant's vehicle. It does not take much of an imagination to see and conclude that the portrayal of the accident as conveyed by defendants' witnesses belied any truth in what they were saying in their evidence.

I am further satisfied that the 1st defendant was driving at a fast speed as he was running late for work. Even accepting that on coming down the slope and curve on the road which was wet, he reduced his speed from 40 mph to 30 mph, in the circumstances of this case that amounts to speeding. See *McGeough v Thompson Holiday Limited* [2007] EWCA Civ. 1509. Because of that, the 1st defendant was unable to effectively negotiate the curve as he was coming down the slope of the wet road. As a result the defendant came on to the claimant's side of the road and collided with claimant's vehicle, sending both vehicles to rest on the same side of the road.

The nature of damage to the claimant's vehicle clearly demonstrates that the defendant's vehicle hit the claimant's vehicle and continued alongside it thereby resulting in the damage further to the side of the claimant's vehicle.

I am satisfied, not only on the balance of probability, but I am sure that the 1st defendant was at fault. The accident was caused by the negligent driving of the 1st defendant and I so find.

Value of Claimant's Vehicle

The Claimant's vehicle following the accident was sold for \$2,500.00 since it was a wreck. The Claimant now claims \$24,500.00 for her vehicle, the value for which she could have received for her vehicle prior to the accident. There was no challenge to her evidence that the value she could have obtained for her vehicle prior to the accident was \$24,000.00. The objection by the defence is that there is no 'reliable evidence' on the status of the vehicle before the accident. So that the suggestion that the estimation

by Mr. Eli Sanchez that the value of the vehicle was \$24,500.00 prior to the accident cannot be accepted. It would be hearsay. For my part, I take it that the figure suggested by Mr. Sanchez, having inspected the damage done to the vehicle, was the cost of what it would take to put the vehicle back to the position was before the accident. It only goes to confirm what the Claimant stated in her evidence (para. 7 of claimant's Witness Statement) that prior to the accident she would have got \$24,500.00 for her vehicle.

Thus in this case, the value which the Claimant could have got for her vehicle prior to the accident was \$24,500.00. See *Amoah and Another v Hammond* [1992-1993] GBR 993. She is entitled to that amount less the amount she obtained (\$2,500.00) for selling her damaged vehicle as a wreck.

There is the claim by the claimant of \$100.00 per day for loss of use of her vehicle. However apart from the claimant's claim there is very little to support the claim of \$100.00 loss of use per day of vehicle. There is however the undisputed fact that because of the accident the vehicle was a total wreck and it was a total loss to the claimant save for the wreck to the value of \$2,500.00.

Nevertheless, a claim for the loss of use of a vehicle is maintainable provided it can be substantiated. As with all claims of this nature, the discretion to grant it or not lies with the court. In this case, and in the light of the fact that the claimant had lost total use of her vehicle, I can exercise the Court's discretion and grant the claimant some measure of compensation for such loss. In the circumstances, I feel \$50.00 per day for loss of use of

her vehicle is reasonable. This sum is to be assessed from the date of action to the date of judgment.

Rate of interest

There is also the claim by the claimant of interest upon any damages awarded to her. There is no suggestion of any agreement between the parties as to the applicable rate of interest to be adopted. In the absence of any such agreement, the Court is bound to apply the rate of interest provided by law. The Court has a discretion under section 166 of the Supreme Court of Judicature Act as to the rate of interest to be awarded in such a case as this. See *Dominica Agricultural and industrial Development Bank v Mavis Williams (No.2)* (29 January 2007) EC Court of Appeal Civil Appeal No.20 of 2005.

The rate stipulated in section 167 of that Act provides for the interest of 6% per annum *from the time of entering up judgment until the same is satisfied*. There is nothing, however, to preclude the Court from applying the same rate of interest to an award from the date of the action to the date of judgment. Thus in the discretion of the Court I feel it would also be an appropriate rate to apply in this case and I so hold. See *Re European Central Rly* (1877) Ch.D. 33; *Ex p Fewings* (1883) 25 Ch.D 338; and *Economic Life Assurance Society v Usborne* [1902] A.C. 147.

Conclusion

As I have already found, on the evidence, the only reasonable conclusion that the Court can come to is that, the accident was caused as a result of the 1st defendant's negligent driving.

I do not find any evidence to support any suggestion that the claimant's driver caused or contributed in any way to the accident. In the circumstances, the defendants' counter-claim must be dismissed.

There will be judgment for the claimant in the sum of \$22,000.00 plus the sum of \$50.00 per day for the loss of the use of her vehicle from the date of accident to the date of judgment. The claimant is entitled to an interest at the rate of 6% per annum from the date of action to the date of judgment on the above amounts awarded to her.

The claimant shall also be entitled to her costs of this claim to be paid by the defendants.

Order accordingly.

Sir John Muria