

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

Claim No. 266 of 2011

BETWEEN	(KENT SANTOS	1ST CLAIMANT
	(TRAVIS SANTOS	2ND CLAIMANT
	(FREDERICK GARBUTT	3RD CLAIMANT
	(AND	
	(DAVID PENNER	DEFENDANT

BEFORE the Honourable Madam Justice Michelle Arana

Mr. Kareem Musa for the Claimants

Mr. Oswald Twist for the Defendant

J U D G M E N T

The Facts

1. This is a Claim for Damages arising out of a traffic accident which occurred on the 16th day of April, 2010 on the Western Highway between Mile 42 and Mile 43.

The Claimants' Case

2. The Second Claimant Travis Santos states that he was driving a 2001 Ford Ranger Pickup Truck (belonging to the First Claimant Kent Santos) heading towards Belmopan when the Defendant's servant or agent Shawn Armstrong who was travelling in the opposite direction towards Belize City, suddenly turned across the highway into a feeder road causing the attached trailer and 40 foot lampposts to jet across the highway into the path of Travis Santos' vehicle.

3. Travis Santos stated that he had no choice but to veer abruptly off the highway to avoid death and this resulted in damage to the truck he was driving, and he and his passenger the Third Claimant Frederick Garbutt sustained injuries, with Frederick Garbutt remaining in a comatose state for one week as a result of the injuries he suffered.

4. The Claimants called four witnesses including the Second and Third Claimants as well as the mechanic who repaired the vehicle after the accident, Andrew Estell, and an eye witness, Walter Gillett, who had

been travelling behind Travis Santos at the material time. The Claimants also put into evidence a police report of the accident but no police officer was called to testify. No sketch plan was provided.

The Defendant's Case

5. The Defendant's case is that he owns a truck with license plate BMP A-0121 which is fully licensed and insured with Atlantic insurance Company and that Shawn Armstrong is his employee and the driver of the truck. He states that neither he nor his employee was involved in any accident with the Claimants. The Defendant David Penner and his employee Shawn Armstrong were the only witnesses called by the Defence.

6. Shawn Armstrong states that upon entering the Western Highway he saw a black Ford Pickup which had run off the right hand side of the road while travelling east to west. He said that the distance was about a quarter of a mile from the feeder road that he had turned into. He said that he exited the highway and entered the feeder road. Later that same day, the police came to where he was working at

King's Children Home to enquire about a traffic accident. Armstrong said he told them he had seen a pick up on the right hand side of the road but that he did not know how the pickup got there.

The Issue

7. The sole issue for determination is whether the accident arose out of the Negligence of the Second Claimant Travis Santos, or that of the Defendant's servant or agent Shawn Armstrong, or whether both parties contributed to the accident.

8. I found the witnesses for the Claimants to be witnesses of truth. Travis Santos testified that the trailer carrying the 40 foot long lampposts suddenly travelled across the highway blocking the path of the vehicle that he was driving. On the question whether he should have taken other (evasive) action such as applying brakes or blowing his horn, Travis Santos was subjected to and withstood rigorous cross-examination by Learned Counsel for the Defendant Mr. Twist as follows:

“Q. My suggestion to you, Witness, is that you could have gone to the shoulder of the road if you had slowed down, one, or applied your brakes.

A. There is no time to do that.

Q. At 200 feet?

A. When I first saw it, it was 200 feet. Upon reaching, it is not going to be 200 feet.

Q. So you had no time to brake or to slow down?

A. I had to make a split decision, either pull away or get hit by the lamp post.

Q. No. My question to you: You had no time to brake or slow down?

A. That’s not your first reaction. You think about saving your life first.

Q. My suggestion to you is that that truck did not block your path. That is my suggestion to you.

A. That’s wrong.

Q. And even if the truck had swung into that feeder road, you could have swerved without causing your truck to flip.

A. I did swerve but I can't tell you what happened after that.

How could I make the truck don't flip?

Q. My suggestion to you is what caused the truck to flip is that when you swerved the shaft broke either because it was weak or not good.

A. Because I had to pull away to get away from the lamp post. I wouldn't be here today.

Q. From the distance you saw that truck down in the incline of the hill, if you had either slowed down or stopped, then what happened to you would not have happened to you.

A. I didn't see the lamp post in the back so how am I supposed to slow down and I have no obstruction in my path? Why am I supposed to slow down and my hand is clear to proceed? I didn't know he had a trailer in the back. Until he turned, then I knew he had a trailer in the back.

Q. Yes but you continue at the same 55 miles per hour like if somebody chasing you.

A. No. When he turned and that come on my hand, I had to swerve out to save my life. That is exactly what happened."

9. I found Mr. Santos to be a very forthright and honest witness. His version of the events is also supported by that of the driver Walter Gillett who was travelling behind him in the same direction at the material time. Mr. Gillett testified that he is a driver of 24 years experience and on that day he was driving a six wheel delivery truck along the highway about 100 feet behind the Ford Ranger pickup that Mr. Santos was driving and when he saw the truck (being driven by Shawn Armstrong) coming in the opposite direction, he continued at his same speed because he did not get the impression that that truck would turn. I find a specific area of the cross examination of this witness to be particularly instructive:

“Q. Tell me, having seen the truck, why is it that you applied brakes?

A. The reason why I applied brakes because I was trailing behind this Ford Ranger and he approximately about 50 feet away is when the truck coming in the opposite direction take a turn off the highway.

Q. That dah weh I tell you. You applied brakes because you saw the truck took a right turn off the highway.

A. Not because the truck do the turn. **It's when the truck done do the turn, then the trailer turn across the highway with the lamp posts.** I thought the driver in the pickup was going straight... that's when I applied brakes cause I no want get in ah the same accident."

10. It is very clear to me from this evidence on a balance of probabilities that it was the driver of the truck carrying the lampposts, Shawn Armstrong, who caused this traffic accident. Mr. Gillett had sufficient time to apply his brakes because he was further away from the oncoming truck. Mr. Santos was not as fortunate and had to take drastic and immediate action to swerve away from the truck carrying the lamp posts.

11. Mr. Armstrong was not driving with the care and attention required of a driver on a highway, especially a driver of a vehicle transporting 40 feet lamp posts. This is obvious from the fact that he did not even

realize that this accident had occurred. Even when he did realize it, he did not render assistance as is required of him by law because as he stated in his opinion he was not involved in any accident. In his witness statement he testified that:

“Before turning right I looked in my rear view mirror and there was nothing behind me. I then look in front of me and there was no other vehicle coming in front of me. After having verified that there was no vehicle or person in front or back of me and still in my lane I turn into the feeder road and arrived at King’s Children’s Home compound.”

He later stated that upon re-entering the Western Highway he saw a black pickup truck which had run off the road on the right hand side, but he did not know how it got there. His version of the events directly contradicts that of Travis Santos and Walter Gillett. I accept the evidence of the Claimants as true, and I find Shawn Armstrong negligently caused this accident.

The Law

12. I agree with the submission of Counsel for the Claimants that the negligence of the Defendant's agent Shawn Armstrong is rooted in the fact that he violated the Rules of the Road Part VII of Chapter 192 of the Subsidiary Laws of Belize which stipulate as follows:

"S.114(3) He shall not cross a road or turn in or commence to cross or turn in a road or proceed from one road into another road or drive from a place which is not a road into a road or from a road into a place which is not a road unless he can do so without obstructing any other traffic on the road and for this purpose he shall be held to obstructing any other traffic on the road and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto."

13. On the issue of vicarious liability, the law is clear that the master is responsible in law for liability incurred by his servant or agent in the execution of his duties. Mr. David Penner testified that Shawn Armstrong was working for him on the 16th April, 2010 delivering and installing lamp poles for Mr. Penner at King's Children's Home in

Cotton Tree Village. It was also established that the truck being driven by Mr. Armstrong belonged to Mr. Penner. There is no question that Mr. Penner is therefore vicariously liable for this accident caused by Shawn Armstrong as his employee.

14. Damages awarded to the Claimants to be assessed or agreed.

15. Costs awarded to the Claimants in the sum of \$3000.00.

Michelle Arana
Supreme Court Judge

Dated this 8th day of June, 2012