

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

**CLAIM NO. 711 OF 2008**

**BETWEEN**

**(DAVID CONNELLY**

**(FRANCES BROWN**

**(and**

**(JULIO IGLESIAS**

**(VEGA'S DISTRIBUTORS LTD.**

**CLAIMANTS**

**DEFENDANTS**

-----

**BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA**

**Mrs. Deshawn Arzu Torres of Young's Law Firm for the Claimants**

**Ms. Naima Barrow of Barrow and Company for the Defendants**

-----

**J U D G M E N T**

1. On the 17th April 2008, Frances Brown was driving her Suzuki Sidekick with License Plate SC-C-5488 along the Stann Creek Valley Road at around 7:10 a.m. heading home from Hope Creek Village. She testified that as she was approaching her home at 6 1/2 miles on

the Stann Creek Valley Road she indicated that she would turn left into her driveway. She said in her witness statement that she first checked her rear view mirror and saw the First Defendant's truck a quarter mile behind her. She said that as there was no oncoming traffic, she pulled her vehicle towards the middle of the road and as she was about to turn across the highway the truck collided into the rear of her Suzuki. She became unconscious and was later hospitalized as a result of injuries suffered in this accident. She filed this claim for damages on 23<sup>rd</sup> October, 2008 and the matter was heard on 14<sup>th</sup> October, 2011. The only other witness called on behalf of the Claimants at trial was David Connelly who testified that he was the owner of the vehicle that Ms. Brown had been driving.

2. At the trial, the Defence called three witnesses including the First Defendant Julio Iglesias. Both Ramon Quiroz and William Luna stated that they were passengers in the vehicle which was being driven by Mr. Iglesias on the day of the accident and they saw the red vehicle swerving in the middle of the road immediately before the accident occurred. The delivery truck which was being driven by Mr. Iglesias was heavily loaded with goods that he was transporting for his employer the Second Defendant, Vega's Distributors.

### **3. The Issue**

The only issue to be decided by this Court is whether the accident was caused by the negligence of the Claimant or of the Defendant.

4. Under cross-examination by Counsel for the Defence, Ms. Brown admitted that she knew the Rules of the Road in Belize required that she pull over to the side of the road and not stay in the middle of the road when making a turn. She said ***“If there is an oncoming vehicle which would not have hit me, I would have pulled in. I frequently have pulled in in the past on that side of the road. In fact—I didn’t need to because I had access to our driveway.”*** She was asked repeatedly by Counsel for the Defence as to the position of her vehicle on the road when she was hit and she answered ***“in the middle of the road”*** as she was preparing to turn.

5. The Rules of the Road under the Motor Vehicle and Road Traffic Act Chapter 192 Section 114 are as follows:

***“Each driver of a motor vehicle shall comply with the following rules:***

***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 traffic on the road and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto.***

**114(4) (a) When turning from one road into another road to the right he shall keep as close as possible to the right side of each road.**

**(b) When turning from one road into another road to the left he shall drive round and to the right of the point intersection of the center lines of the two roads and shall keep as close as possible to the right side of each road, unless otherwise directed by a police constable on duty."**

6. Ms. Brown clearly understood what the rules were but decided not to follow them because she believed she did not need to at that point in time since the road appeared to her to be clear and she had access to her driveway.
7. I also accept as true the evidence from the three witnesses for the Defence that Ms. Brown's vehicle had been swerving in the road immediately prior to the accident. Mr. Quiroz said under cross-examination:

***"What happened when I saw the car swerve, it looked like the car wanted to do a left turn and then automatically a couple of seconds after, it just swerved right, it just came right back into the road and then that's when the driver started to slow down.***

**THE COURT: Which driver?**

**THE WITNESS:     Our driver. The truck driver."**

8. Under cross-examination, Mr. Luna was asked by Counsel for the Claimant:

***"At any point in time did your driver stop since you all allege that you saw swerving in the middle of the road?"*** Mr. Luna responded, ***"He started to gear down and pressed the brakes, yes."***

9. Mr. Iglesias also testified that he saw the red vehicle swerve several times on to the left hand side of the Hummingbird Highway and then back to the right, without any indicators on. He said that before he could bring his truck to a complete stop the red car had swerved back on to the right hand side of the highway and collided into the front of his truck.
10. I also accept as true the evidence from witnesses for the Defence that there was a vehicle coming in the opposite direction at the time of the accident and that there was a ditch on Mr. Iglesias' right hand side. The unchallenged evidence of all three witnesses is that the accident occurred at a part of the Hummingbird Highway which is straight and free from any obstruction and Ms. Brown, as driver of the red Suzuki, had no obstructed view of the road ahead and behind. Their evidence as to how the accident occurred was tested by cross-examination and remained unshaken.

11. While it is true that Mr. Iglesias owed a duty of care to other road users not to drive negligently, it is also true that Ms. Brown owed the same duty of care. Mr. Iglesias said that on seeing the vehicle swerving in front of him he tapped his brakes but was unable to stop completely because Ms. Brown's vehicle had immediately swerved back into his path. I do not believe that Mr. Iglesias was speeding since in my view if he had been speeding, the impact on the Suzuki (which is a much smaller vehicle than the freight truck) would have been much greater given the enormous size of the freight truck, which also happened to be fully loaded with various goods at the time. Looking at the photographs of the freight truck and of the damaged Suzuki, I see significant damage to the rear of the red Suzuki but the rest of the body of the Suzuki appears to be relatively intact. I therefore find that Mr. Iglesias was travelling at a safe distance away from Ms. Brown's vehicle and not speeding and that the accident was caused by Ms. Brown's swerving back and forth across the highway and failure to properly follow the rules of the road in driving her motor vehicle.

12. I therefore find on a balance of probabilities that this unfortunate accident was caused by Ms. Brown's negligence in failing to obey the rules of the road. I find that she attempted to carry out a turn across the road in such a manner as to obstruct traffic and failed to steer or

control the red car she was driving so as to avoid colliding with the delivery truck. The Claim is therefore dismissed.

13. As this is a claim for damages where the claim form did not specify the amount claim, I order that Prescribed Costs shall be paid to the Defendants by the Claimants in a sum to be agreed between the parties in accordance with Rule 64.5(2)(b)(ii) of the Supreme Court Civil Procedure Rules 2005.

---

**MICHELLE ARANA**  
**SUPREME COURT JUDGE**

**Dated this 29<sup>th</sup> day of February, 2012**