

IN THE SUPREME COURT OF BELIZE A.D. 2009

CLAIM NO. 537 OF 2009

	(RHENAE NUNEZ	CLAIMANT
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BETWEEN	(AND	
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	(ANDREW MUNNINGS	FIRST DEFENDANT
	(SANTIAGO CASTILLO LTD.	SECOND DEFENDANT

BEFORE: The Honourable Madam Justice Minnet Hafiz -Bertram

Appearances: Mr. Kareem Musa of Musa and Balderamos for the Claimant
Mrs. Julie-Ann Ellis Bradley of Barrow and Williams for the First
and Second Defendants

JUDGMENT

Introduction

1. This is a claim for damages as a result of a collision which caused damage to the Claimant's 1994 Aerostar Minivan. The first Defendant, Mr. Munnings was the driver of a 2003 Isuzu Truck bearing licence plate A-1669 which reversed and collided into the minivan belonging to Ms. Nunez. The second Defendant, Santiago Castillo Limited is the owner of the Isuzu truck.

The Claim

2. Ms. Nunez claims that on 18th October, 2003 she was parked at Ramon's Service Station situated on the Northern Highway when Mr. Munnings negligently reversed the Isuzu truck into the rear portion of her minivan causing damage to her tail gate and rear bumper.

3. Ms. Nunez, at paragraph 4 of her claim states that upon the impact of the collision her minivan began to leak oil. Further, that she replaced the oil but the vehicle continued to leak profusely causing the total loss of the transmission of her minivan.
4. Ms. Nunez claims that as a result of Mr. Munnings negligence, the minivan sustained damage and subsequently a complete loss. She claims special damages in the sum of \$71,750.00. The particulars being:

- (1) Total loss of motor vehicle valued at \$ 17,000.00
- (2) Cost of using public transport and paying taxi fare for five years \$ 54,750.00

Defence

5. Both Defendants, Santiago Castillo Ltd and Mr. Munnings say that at the time of the accident, Ms. Nunez was not the owner of the minivan. They denied the allegation of negligence.
6. Santiago Castillo also denied that Mr. Munnings was the driver of the Isuzu truck at the time of the incident or was in their employment at the time. In the alternative, they said that Mr. Munnings was on a frolic of his own acting without the authority, permission, knowledge and consent of Santiago Castillo Ltd.
7. Both Defendants denied the alleged loss and damage and say that the same was caused by Ms. Nunez's negligence.

Issues for determination

8. (1) Whether the collision was caused by the negligence of the first Defendant.
- (2) Whether the first Defendant was the servant or agent of the second Defendant.
- (3) Whether Ms. Nunez reported the accident to the Insurers on 19th October, 2003.
- (4) Whether the damage resulted in the total loss of the minivan.
- (5) Whether Ms. Nunez is entitled to \$17,000. claimed as loss for the minivan
- (6) Whether Ms. Nunez is entitled to \$54,750.00 as cost of using public transport and paying taxi fare for five years.
- (7) Measure of damages for damage proven.

Witnesses

9. Ms. Nunez gave evidence on her behalf. The witnesses for the Defence are Mr. Munnings and Ms. Lydia Rubiceli Bradley. There are two expert witnesses, Mr. Dane Smith for the Claimant and Mr. Mervyn McKoy for the Defence.

Permission to call expert witnesses

10. The minivan was not available for inspection as Ms. Nunez sold it before the filing of this claim in 2009. As such, the parties felt that it was necessary to call expert witness in relation to the transmission issue to assist the court to resolve the dispute. The court gave the parties permission to call expert witness in relation to whether it was possible for transmission damage to occur as a result of the collision based on the facts presented to them. Also, if damage had occurred to the transmission, what would be the immediate effects on the minivan. The parties could not agree on one expert and as such, each party called

their own expert. The experts were given a statement of the agreed facts and the facts in dispute which was prepared by Counsel on both sides.

11. The expert for the Claimant, Mr. Smith is 24 years old and has a high school diploma. He said that his opinion on transmission is based on his experience on his job. He is an Automatic Transmission Technician employed by Belize Estate Company and he has been diagnosing and repairing transmissions at BEC for the past four years.

12. The expert for the Defendant, Mr. McKoy is a Certified Automotive Mechanic and Automotive Instructor and has over fifteen years practical experience in the automotive industry. He is a graduate of the Belize Technical College with a Diploma in Automotive Engineering Craft Practice (1996-1998) and he also holds a Certificate in Automotive Mechanic Training Course for Overseas Vocational Instructors and since September 2007 he has been an Automotive Instructor at the Institute of Technical Vocational Education and Training (ITVET).

13. The agreed facts presented to the experts was that the minivan and the truck were parked at the gas station. The truck was in the process of reversing when it came into contact with the rear of the minivan. The collision was solely to the rear of the Claimant's minivan and there were no injuries to the occupants of the minivan. Further, the Claimant drove her minivan from the gas station after the collision. The experts were told that the speed of the truck was not agreed at the time of the collision. The experts were also told of the facts in dispute as shown in the defence which includes that the minivan lunged a few feet forward and "all sort of things" were leaking out of the minivan after the impact. Both of the experts were cross-examined on their report.

Issue 1: Whether the collision was caused by the negligence of the first Defendant.

14. Mr. Munnings during cross-examination accepted that he was at fault for the accident. He admitted that he was not keeping a proper look out as he was unaware that Ms. Nunez vehicle was parked behind his truck and he did not observe the minivan prior to reversing. The court therefore, finds that the collision was caused by the negligence of Mr. Munnings.

Issue 2: Whether the first defendant was the servant or agent of the second defendant.

15. Mr. Munnings evidence is that at the time of the accident he was making a delivery at the Ramon's Service Station for an on behalf of Santiago Castillo Ltd. There is no evidence to the contrary from Santiago Castillo. In fact, Santiago Castillo Ltd. did not give evidence at this trial. Accordingly, the court finds that Mr. Munnings was the servant or agent of Santiago Castillo Ltd.

Issue 3: Whether Ms. Nunez reported the accident on the 19th October, 2003 to the Insurers.

16. A determination of this issue is necessary as it is inextricably linked to other issues before the court. A notice of this claim was served on the Insurers, N.E.M. (West Indies) Insurance Ltd. (NEMWIL). Ms. Lydia Rubiceli Bradley was the office manager of NEMWIL and was responsible for supervising and handling claims. She stated that on 4th February, 2004, Ms. Nunez attended NEMWIL's offices to make a claim arising from an accident that she reported had occurred in October of

2003 involving a truck owned by Santiago Castillo Ltd and the information provided was recorded on a 'Motor Vehicle Accident Report'. See **Exhibit "R.B 1"** for that report.

17. Ms. Bradley at paragraph 5 of her witness statement stated that *as the accident occurred in October 2003 and it was first being reported to the Company in February of 2004, the determination was made to refuse the claim on the ground of delay in notification to the Company.* This was verbally communicated to Ms. Nunez. Thereafter, she informed the insured, Santiago Castillo Ltd. that NEMWIL would not be dealing with the claim and that they should deal directly with Ms. Nunez. See **Exhibit "RB 3"** for letter dated 4th February, 2004 to the Manager of Santiago Castillo Limited.
18. Ms. Bradley further stated in her witness statement that in March of 2007, the Supervisor of Insurance called NEMWIL to inquire about the accident and requested an explanation for the refusal of the claim. Ms. Bradley stated that she forwarded to the Supervisor of Insurance all relevant documents in relation to the matter and the photograph taken of the minivan. See **Exhibit "RB 5"** for email to Supervisor and response from her. Thereafter, Ms. Bradley stated that the Supervisor of Insurance did not contact them again on this matter. Ms. Bradley also stated that they had no further communications with Ms. Nunez until in 2009 when they received the 'Notice of Action on Insurer' with respect to this claim before the court.
19. During, cross-examination, Ms. Bradley was asked why the date was not stated on **Exhibit "RB 1"** which is the accident report and she testified that this form is completed by the Insurer and that it is at the back of that page which is dated. She could not say why the back of the form was not disclosed. She denied the suggestion by Learned Counsel, Mr.

- Musa that the accident was reported by Ms. Nunez on 19th October, 2003. She testified that when Ms. Nunez told her of the date of the accident she immediately called Santiago Castillo's office and spoke to Ruth Jaramillo, secretary to Mr. Castillo about the accident and on the same day wrote them the letter to inform them to settle the damages since the accident was not reported to them at the time when it occurred.
20. In re-examination, Ms. Bradley said that she was sure the accident was not reported on 19th October, 2003 because NEMWIL has a 'claims logbook' and that log book did not show that a claim was reported on that day.
 21. Ms. Nunez's evidence is that the Insurer did not settle the matter with her and she was unable to get any assistance from the Supervisor of Insurance in respect to this matter. At paragraph 25 of her witness statement, she stated that the Supervisor of Insurance wrote to her and informed her that she quoted the wrong date in her statement to the Insurer and so she could not do anything to help her. Ms. Nunez said, *"Incensed by her apparent lack of interest to help me, I tore up the letter and literally broke down."* During cross-examination, Ms. Nunez testified that she went to the Insurance Company the day after the accident and that it is not true that she went months later.
 22. The evidence by Ms. Nunez is that the Supervisor of Insurance did not assist her in the claim made to NEMWIL and this caused her to get so angry that she tore the letter sent to her by the Supervisor. As such, the contents of that letter is not before the court. However, Ms Nunez did say that the Supervisor informed her that she quoted the wrong date in her statement to the Insurer. Ms. Bradley's evidence is clear as to why the Supervisor could not assist Ms. Nunez. She testified that all the information on the accident was forwarded to the Supervisor on her

request so it is obvious that the Supervisor could not assist Ms. Nunez because of the late claim. There is email communication between the Supervisor of Insurance and NEMWIL concerning Ms. Nunez's claim. Further supporting documentary evidence is the letter dated 4th February, 2004 which was sent to Santiago Castillo from the Insurer, NEMWIL which states:

.....

Ms. Rhenae Nunez has informed this company that your Isuzu NKR was involved in an accident with her vehicle sometime last year.

As this matter was not reported to us at the time of the accident, we would appreciate your investigating this matter. Should your driver appear to be at fault, please settle the damages directly with the third party. She may be contacted at

The letter speaks for itself and it clearly shows that the accident was not reported at the time it occurred.

23. I respectfully disagree with Mr. Musa that the second page of the accident report was intentionally omitted by Ms. Bradley. The second page of the report is not the only conclusive evidence as to the date the accident was reported. In my view, the letter to Santiago Castillo clearly shows that this accident was reported four months after it occurred. Further, I have no reason to doubt Ms. Bradley's evidence that NEMWIL has a 'claims logbook' and that log book did not show that a claim was reported when the accident occurred. I find the evidence of Ms. Bradley credible that Ms. Nunez made the report of the accident on 4th February 2004. Accordingly, I find that Ms. Nunez did not report the accident on

19th October, 2003 to the Insurers, NEMWIL and that she reported same on the 4th February, 2004.

Issue 4: Whether the damage resulted in the total loss of the minivan

24. Ms. Nunez is claiming a total loss for the minivan which she testified is worth \$17,000.00. She is claiming a total loss as she claims that the transmission of the minivan was damaged by the impact of the truck which reversed into to the rear of her minivan. To determine whether the transmission was damaged, there are several questions which have to be determined, firstly. Ms. Nunez did not accept that the photograph before the court shows the bumper of her vehicle. By extension, she did not accept the damages shown on the rear bumper as depicted in the photograph. She also stated that she could not recall if the licence plate for the minivan is PFG-20W as shown in the photograph.
25. Further, Ms. Nunez claims that her minivan lunged a few feet forward when it was hit by the truck and all sorts of liquid leaked from the minivan. She did not say how many feet the minivan lunged forward. Also, in her claim she said that her tail gate and bumper were damaged. But, she testified that her bumper and her back door were damaged. The report to the Insurers did not include the tail gate and the backdoor.

Is the photograph that of the minivan?

26. When Ms. Nunez went to report the accident to NEMWIL, the Insurers for Santiago Castillo, on 4th February, 2004, some four months after the accident, a photograph was taken of the minivan and it shows damage to the bumper. The evidence of Ms. Lydia Rubiceli Bradley for the Defendant, is that on 4th February, 2004 when Ms. Nunez went to

NEMWIL to make the report she instructed a member of staff to take a photograph of the damage to the vehicle, which was taken outside of their offices. The photograph was printed and placed on their file. See **Exhibit “R.B. 2”** for the photograph.

27. During cross-examination Ms. Nunez accepted that a representative of NEMWIL took pictures of the minivan. However, when Ms. Nunez was shown the photograph of her vehicle, in particular the damage to her bumper, she said the photograph looks like her vehicle, but not the bumper. Further she said that she does not know if PFG-20W was the licence plate number for the minivan.
28. Ms. Nunez’s evidence is absurd. She admits the photograph was taken and the vehicle looks her minivan but not the bumper. This photograph speaks for itself and the damage to the bumper appears minor. It is not surprising that she did not accept that the bumper is that of her minivan. I find it more alarming that Ms. Nunez could not recall if PFG-20W was her licence plate number although she had the photograph before her. Ms. Nunez’s evidence lacks credibility.
29. I find the evidence of Ms. Bradley credible that on 4th February, 2004 when Ms. Nunez went to NEMWIL to make the report of the accident a photograph of the damage to the minivan was taken outside of their offices and the photograph was printed and placed on their file. I find that the photograph before the court (**Exhibit “R.B. 2”**) which was taken by NEMWIL and placed on their file, is that of the minivan belonging to Ms. Nunez and that the bumper on the minivan is the bumper that was damaged when the accident occurred. Further, the licence plate PFG-20W is that of the minivan imported by Ms. Nunez from Texas.

Damage as shown by the photograph

30. Ms. Nunez's evidence at paragraph 10 of her witness statement is that immediately after the accident she examined the minivan and saw that it had a dent in the back door and the bumper was completely shattered. In her claim, however, she said that damage was caused to her tail gate and rear bumper.
31. The evidence of Mr. Munnings, the driver of the truck is that on the 18th of October, 2003, he was delivering goods at Ramon's Gas Station in Belize City and upon completing the delivery he returned to the truck and prepared to leave the gas station. That prior to entering the vehicle, he did not see any vehicle behind the truck. He started the truck and began to slowly reverse, a few moments later he felt a slight impact and he stopped the truck and went to see what had happened. He stated that he noticed that the minivan was behind the truck and it appeared that the step of his truck, which is attached to the tailgate, had come into contact with the bumper of the minivan. Mr Munnings evidence which I find credible is that he noticed that the bumper of the minivan had several cracks. Further, that the damage to the bumper was the only thing that was caused by the contact with the truck. He said that when he looked at his truck there was no damage.
32. Mr. Munnings evidence is corroborated by the photograph taken by NEMWIL. An examination of the photograph shows that two sections of the inner part of the bumper were shattered. The photograph also shows that the outer part of the bumper was intact and there was no dent to the back door and the tail gate.
33. The evidence of Mr. Munnings is also confirmed by Mr. McKoy whose expertise in Automotive Engineering is helpful to the court. He said that the photograph shows a minor impact. He explained that the bumper is

made of hard plastic and it is brittle so it will fall apart from the impact. Further, that the photograph shows that there was no misalignment of the tailgate nor the bumper. He showed the court the location of the tailgate and this was symmetric and perfectly aligned. I accept the evidence of Mr. McKoy that the photograph shows a minor impact. Further, the evidence of Mr. Munnings which I accept, is that the truck did not have any damage. This further, confirms that the impact was minor.

34. Ms. Nunez has not proven that her tail gate was damaged. Further, I do not find her evidence credible that the back door was dented. I find that the damage as shown by the photograph is to the rear bumper of the minivan.

Did the minivan lunge a few feet forward after the truck reversed into its rear ?

35. When the court visited the site of the accident which is Ramon's Gas Station, Ms. Nunez indicated to the court where she was parked and where the truck was parked. The approximate distance between the two vehicles was not more than ten feet. The truck therefore, could not have reversed a long distance. Ms. Nunez did not indicate to the court at the locus where the minivan landed after it purportedly lunged forward.
36. Ms. Nunez's evidence is that when the truck reversed into her minivan it caused the minivan to lunge a few feet forward. Mr. Munnings nor Ms. Nunez did not give any evidence as to speed of the truck upon reversing. The issue of speed was raised by Mr. Musa during cross-examination of Mr. McKoy, the expert witness for the Defence. He was asked by Mr. Musa whether the minivan would lunge forward if it is hit by the truck travelling at a speed of 10 or 20 miles per hour. Mr. McKoy in answer to

that question said that he cannot see how the truck moving six or ten feet could make it ten miles an hour. In re-examination, Mr. McKoy said that the truck could not have reached ten miles an hour because of its size. In his report to the court he stated that the truck involved in this accident has a very low gear ratio as like other heavy duty vehicles. Therefore, its reverse speed could not have exceeded ten miles per hour in this confined space of the gas station.

37. The court accepts Mr. McKoy's expert evidence that the truck could not have reached a reverse speed of ten miles an hour because of the low gear ratio. There are several reasons for accepting his evidence. The distance between the two vehicles was not more than ten feet. The rear bumper of the minivan had minor damage as shown by the photograph. The truck did not have any damage. Further, at the time of the accident, Ms. Nunez had her three children in the car, one in the front seat and two in the backseat. At paragraph 6 of her witness statement she said that the children were not injured. Nevertheless, during cross-examination she contradicted her evidence as she said that the children were injured but could give no explanation how it is that almost six years later she is now saying that her children were injured. Ms. Nunez credibility has been called into question many times during the trial. There is no evidence to support her claim that the children were injured. For all these reasons, I find that Ms. Nunez's minivan did not lunge a few feet forward when the truck reversed into its rear bumper.

Is there sufficient evidence to determine that the transmission was damaged resulting in a total loss of the minivan?

38. Ms. Nunez's claim is that the impact of the collision on her minivan caused it to leak oil resulting in the total loss of her transmission. The

evidence as shown by the photograph is that there was minor damage to the rear bumper of the minivan. Further, it has been determined above that the vehicle could not have lunged a few feet forward as claimed by Ms. Nunez as the truck cannot reverse at a speed of more than ten miles per hour. Under such circumstances, the question for the court is whether there is sufficient evidence to determine that the transmission was damaged as a result of the impact.

39. Ms. Nunez evidence is that after her vehicle was struck by the truck, it started to leak and since she was not certain what was leaking, the gas attendant at Ramon's gas station where the accident occurred poured coolant into the radiator, transmission fluid for the transmission and some engine oil into the engine. She then drove to Santiago Castillo Ltd and spoke to Mr. Castillo whom she knew from high school. Mr. Castillo assured her that the vehicle would be repaired and sent her to his insurers, Victor L. Bryant. Ms. Nunez said that when she left the offices of Mr. Castillo she again noticed fluids under her vehicle and she realised that the damage to her minivan was more serious than she thought so she called her mechanic Mr. George Elthers who came and towed her vehicle away. The mechanic thereafter repaired the vehicle and the following day she received the vehicle from him. However, in cross-examination she said she received the vehicle on the same day.

40. Ms. Nunez further testified that the following day she drove the minivan to the Insurance Company where a representative from the insurance company took pictures of the vehicle and she gave them the particulars of the minivan. She said that when she was about to leave the Insurance Company the vehicle could not start so she called the mechanic and he towed the vehicle. She testified that the mechanic, who was not called to give evidence, told her that the accident resulted in the complete destruction of her transmission system. She further stated

that since she was unable to pay for repairs of the minivan she towed it home. The vehicle stayed there and rotted and she eventually sold it for \$800.00.

41. Mr. Munnings testified that after the accident he gave Ms. Nunez his license and insurance information and she told him that she “knew my boss good” and she will go to see him at his office. He said that she returned to her vehicle and drove it out of the gas station without any assistance or difficulty. There was no oil leak on the ground where her vehicle was parked and she said nothing about an oil leak nor did she purchase oil or pour any oil into her vehicle before leaving the gas station.
42. Mr. Munnings stated that he later learned that Ms. Nunez was asking for a new transmission and claiming a lot of money for the damage and hence the reason, there was no settlement. He further stated that based on his own observations and knowledge of vehicles, there was no damage to Ms. Nunez’s transmission as a result of the minor collision with the truck and that he considered her claim to be exaggerated and not genuine. He said that the impact was slight because the damage was small and his truck had no damage.

Expert evidence on possibility of damage to transmission

Mr. Smith

43. Mr. Smith’s evidence is that it is possible for the transmission to be damaged if the parking lock is broken. He explained in his report that when an automatic vehicle is parked, the pall or parking lock engages automatically. Further, that this part of the transmission is made of solid metal or aluminium. It is designed with grooves that mesh together when placed in park and can only be disengaged by the vehicle operator via the

shifter lever. Hence, it prevents the vehicle from moving when it is not being operated. Also, he stated that the transmission has internal components such as planetary, retaining rings, clutch packs, an input and output shaft and one-way clutches. These parts he stated are considered hard parts that may be damaged in the event a motor vehicle is hit from the front or the rear.

44. Mr. Smith further stated that these internal components are operational only when the vehicle is placed in drive or neutral, for towing, Further, any other way, would result in transmission and/or drive train damage if a collision occurs. Mr. Smith concluded that in the circumstances, having considered that the minivan was parked and sustained impact to the rear from a delivery truck, it is indeed very possible that it could suffer severe transmission damage.
45. In cross-examination, Mr. Smith said that transmission damage may occur due to normal wear and tear. He also stated that if a transmission is damaged, pouring oil in it would not fix the damage. Also, if the parking lock or the springs are broken this would not cause oil leaks.

Mr. Mervyn McKoy

46. Mr. McKoy stated in his report that for the transmission to be damaged, the rear differential must sustain a direct impact which pushes the drive shaft up which in turn damages the transmission. Further, if that were to happen, the vehicle would be considered a total loss because the structural safety of the vehicle would be compromised and as well it would be inoperable, not be able to move, because the final drive is what actually takes the drive from the transmission to the wheel.

Mr. McKoy also looked at speed in giving his opinion. He stated that the Hino truck has a very low gear ratio as like other heavy duty vehicles, therefore, its reverse speed could not have exceeded ten miles per hour in this confined spaced of the gas station. He concluded that based on the photograph provided the impact to the minivan is considered minor and in his considered opinion could not have caused any internal transmission problem. That, if there was any internal transmission problem, it would indicate to him that the vehicle had a pre-existing defect or/and deficiency.

47. Mr. McKoy during cross-examination told the court that the evidence of Mr. Smith was not accurate. He was asked why he did not do a report on the parking lock as Mr. Smith did and his explanation was that he did not do so because he did not do a physical inspection of the vehicle. He did say however, the parking lock forms part of the transmission and when an automatic vehicle is parked, the parking lock engages automatically. Also that when a vehicle is parked and the engine is turned off and is hit from behind, the likelihood of the parking lock being damaged is higher.
48. During cross-examination, Mr. McKoy further explained that a transmission could be broken based on speed of impact. But, in the case at hand, this is not a ten miles an hour impact. He also reiterated that the maximum speed a truck of that size could reach is ten miles per hour. Further, that if the parking lock is broken, the vehicle can only be driven in one direction.
49. Mr. Musa in cross-examination asked Mr. McKoy whether he considered that transmission damage could be caused by the weight of the delivery truck or the size of the truck. He explained that the size is not relevant and that it is the speed which is relevant. However, he said that he did consider the size of the truck when he looked at the

photograph that was given to him. The reason being if there was a great impact the glass would have shattered and the tail gate would have been damaged, but, the photograph does not show a great impact.

Analysis of the evidence with regards to the transmission

50. It has been proven that on the day Ms. Nunez made the report to the Insurers, NEMWI, she drove her vehicle there and a photograph was taken which showed the minor damage to her bumper. It has been proven also, that Ms. Nunez made the report four months after the accident. This therefore, proves that four months after the accident the minivan was still in a condition to be driven.
51. I find Mr. Munnings to be a credible witness and I believe his evidence that after Ms. Nunez spoke to him, she drove out of the gas station to go to his boss, Santiago Castillo and that there was no oil leaking from her minivan. The totality of Ms. Nunez evidence was shaky and I did not find her to be a credible witness. In her witness statement she said Mr. Munnings came out of the truck after the collision but, in cross-examination, she said that he did not come out of the truck. I believe Mr. Munnings came out of the truck, looked at the damage to the minivan and gave Ms. Nunez his particulars so that she can go see his boss. Further, the court finds the evidence of Mr. Munnings credible that Ms. Nunez drove out of the gas station without pouring oil into her minivan.
52. The report to NEMWIL as shown by the 'Motor Vehicle Accident Report' shows that Ms. Nunez reported that there was damage to the rear bumper and transmission. According to Ms. Bradley's evidence, their mechanic would normally inspect the vehicle in question to see what damage it sustained. In this case, this was not done because Ms. Nunez claim was

denied for lateness. Further, Ms. Nunez sold the minivan so there is no direct evidence that the vehicle sustained transmission damage as a result of the accident. Ms. Nunez gave evidence that her mechanic, Mr. Elthers told her the transmission was damaged. This is hearsay and will not be admitted as proof that the transmission was damaged. Mr. Elthers was not called to give evidence and the minivan was sold so it could not be inspected.

53. As to the possibility of the transmission being damaged as a result of the collision, the court will look at the experts evidence for some guidance. Mr. Smith's evidence is that when an automatic vehicle is parked the parking lock engages automatically. He explained how the parking lock is made and the workings of same and thereafter concluded that having considered the minivan was parked and sustained impact to the rear from a delivery truck, it is possible that there could be severe transmission damage. Mr. Smith, however, did not consider the minor damage to the bumper as shown in the photograph provided to him for the preparation of his report.
54. In cross-examination, Mr. Smith said that if damage is caused to the parking lock or spring, this would not result in leaking of fluids. Further, he said that pouring of oil in the transmission, if it is broken will not fix the problem. This expert evidence rules out the possibility of oil leaks as a result of a damaged parking lock or spring.
55. Learned Counsel, Mr. Musa submitted that Mr. McKoy during cross-examination conceded that it is possible for damage to occur to a vehicle's transmission if the vehicle receives impact from the front or the rear. This does not help Ms. Nunez's case at all. The evidence has to be looked at as a whole and not be truncated. Mr. McKoy indeed accepted that the parking lock of a vehicle engages automatically and when it is parked the

likelihood of the parking lock being damaged is higher. However, he did not agree with Mr. Smith's conclusion that there was a possibility that there could have been severe damage to the transmission of the minivan. He has taken into consideration the reverse speed, the confined space at the gas station and the damage shown in the photograph.

56. Learned Counsel, Mr. Musa also submitted that the experts concurred that a factor to be considered when determining whether a collision to the rear of a vehicle can cause transmission damage is the weight of the truck causing the damage. I respectfully disagree with Mr. Musa as Mr. McKoy did not agree with that suggestion which was put to him during cross-examination. Learned Counsel, Mr. Musa in cross-examination asked Mr. McKoy whether he considered that transmission damage could be caused by the weight of the delivery truck or the size of the truck. He responded that the size is not relevant and that it is the speed which is relevant. Mr. McKoy explained to the court that a transmission could be broken based on speed of impact. He further explained that in the case at hand, this is not a ten miles an hour impact and the maximum speed a truck of that size could reach is ten miles per hour.

57. The court accepts the evidence of Mr. McKoy that it was not possible for the transmission to be broken as a result of the accident. Mr. McKoy who is a Certified Automotive Mechanic and Automotive Instructor has over fifteen years practical experience in the automotive industry. I find his evidence to be helpful in assisting the court with this technical issue. Mr. McKoy's evidence is consistent with the totality of the evidence in this case. The parking lock could not have been broken as suggested by Mr. Smith as Ms. Nunez drove from the gas station after the accident and four months later she drove the said minivan to NEMWIL's office where a photograph was taken showing the minor damage.

58. The court accepts the opinion of Mr. McKoy that the impact is considered minor and could not have caused internal transmission problem. Accordingly, the court finds that Ms. Nunez has not proven that as a result of the collision, the transmission of the minivan sustained damage causing a total loss of her vehicle.

Issue 5: Whether Ms. Nunez is entitled to \$17,000.00 claimed as loss for the minivan

59. Ms. Nunez is not entitled to \$17,000. and she failed to prove that her transmission was damaged causing a total loss to her minivan. There are other weaknesses in this claim so even if Ms. Nunez had proven that her transmission was damaged, she did not prove the replacement value is \$17,000. The court has before it the customs declaration which shows the value of the minivan as \$ 3,000. and that Ms. Nunez was granted duty exemptions. Further, Ms. Nunez testified that she sold the minivan for \$800.00. after the accident. But, again, she provided no evidence that the minivan was worth \$800.00 at the time of the sale and there is no evidence of a sale. Ms. Nunez has not proven that the minivan was damaged beyond repair and that its replacement value is \$17,000.00. As such, I find that Ms. Nunez is not entitled to \$17,000.00 claimed as loss for her minivan.

Issue 6: Whether Ms. Nunez is entitled to \$54,750.00 as cost of using public transport and paying taxi fare for five years

60. It has been proven that the accident did not result in the total loss of the minivan belonging to Ms. Nunez. In fact, that the bumper was the only damage that was caused as a result of the accident. This damage did not

make the minivan inoperable and it has been proven that four months after the accident, Ms. Nunez drove that minivan. As a result, I find that Ms. Nunez is not entitled to the \$54,750.00 as claimed for public transport and taxi fare for five years.

Measure of damages

61. The evidence before the court does not support the claim that the transmission of the minivan was damaged and that there was a total loss of the minivan. It has been proven however, that the rear bumper of the minivan was damaged. I accept the principle as stated by Learned Counsel Mr. Musa that, *“The normal measure of damages is the amount by which the value of the goods damaged has been diminished. This, in the ship collision cases, has invariably been taken as the reasonable cost of repair.”* See **McGregor on Damages, Sixteen Edition at paragraph 1326**. The cost of repair of the bumper as shown by the estimate from Belize Estate Company Limited which is dated 4th August, 2011, about eight years after the accident, is \$1,000. for the front bumper assembly and \$100. for the installation of the front bumper. The front bumper of the minivan was not damaged. It has been proven that it is the rear bumper that was damaged. Nevertheless, the court has no other estimate and will accept the one in evidence which shows a replacement value of \$1,100.00. The court therefore, awards Ms. Nunez \$1,100.00 for the damage to her bumper as a result of the accident.

62. Conclusion

The findings of the court are:

The collision was caused by the negligence of the first defendant, Mr. Munnings.

Mr. Munnings was the servant or agent of the second Defendant, Santiago Castillo Ltd.

Ms. Nunez did not report the accident on 19th October, 2003 to the Insurers, NEMWIL. It was reported on the 4th February, 2004.

Ms. Nunez has not proven that as a result of the collision, the transmission of the minivan sustained damage causing a total loss.

Ms. Nunez is not entitled to \$54,750.00 claimed for public transport and taxi fare for five years.

Ms. Nunez is awarded \$1,100.00 for the damage to the bumper of her minivan as a result of the accident.

63. **Cost**

Ms. Nunez has partially succeeded in her claim. The claim that her transmission was damaged causing a total loss of her minivan was unreasonable as was borne out by the evidence.

There is no evidence from Santiago Castillo, only a defence where they denied the claim. Mr. Munnings evidence is that there was no settlement of the claim because Ms. Nunez was asking for a new transmission. Santiago Castillo should have given evidence as to why they could not settle the claim, instead of denying the claim.

My Munnings has also denied the claim in his defence instead of accepting liability for the bumper.

As such, each party will bear its own cost.

64. **Order**

The sum of \$1,100.00 in damages is awarded to the Claimant for the damage caused to the rear bumper of her minivan. This is to be paid by the second Defendant, Santiago Castillo Ltd.

Interest is awarded at 6% per annum from the date of this judgment until payment.

Each party to bear its own cost.

Minnet Hafiz-Bertram
Supreme Court Judge

Dated this 18th day of October, 2012.