

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 680 of 2020

BETWEEN:

[1] ICELA GILLETT

Claimant/Counter-defendant

and

[1] ADOLFO SANTOS RODRIGUEZ

[2] NARDO CHE

Defendants/Counter-claimants

Appearances:

Andrew Bennett for the Claimant/Counter-defendant

Brandon Usher for the Defendants/Counter-claimants

2023: October 31
November 24
2024: January 2

DECISION

[1] **FARNESE, J.:** Ms. Gillett lost control of a vehicle she was driving when it was struck from behind by a vehicle driven by Mr. Che. Mr. Rodriguez, Mr. Che's employer at the time, owned the vehicle that Mr. Che was driving. Ms. Gillett claims that the collision was caused by Mr. Che's negligence. She argues that had Mr. Che been driving at a safe distance and in a safe manner, he would have been

able to slow down and stop to avoid colliding with her vehicle. Ms. Gillett asserts that Mr. Rodriguez is vicariously liable for Mr. Che's negligence. The defendants deny that Mr. Che was negligent and counterclaim on the basis that Ms. Gillett caused the accident when she negligently changed lanes and lost control of her vehicle. The parties seek damages for the damage to their respective vehicles, but agreed to separate the issue of liability from damages.

- [2] The weight of evidence supports the conclusion that Ms. Gillett and Mr. Che's negligence equally caused their vehicles to collide. Ms. Gillett failed to shoulder check before she moved into the left lane to overtake the cyclist. Then, surprised to see a vehicle approaching, she hastily reacted by touching her breaks to return to her lane, causing her vehicle to lose control. Mr. Che did not leave sufficient room between his vehicle and Ms. Gillett's to avoid the crash. Mr. Rodriguez is vicariously liable for Mr. Che's negligence.

Issues

- [3] Each party is claiming the other is wholly responsible for the accident through their negligence. As there is no dispute that drivers owe a duty of care to other drivers on the road, the court must decide whether: (1) Ms. Gillett and/or Mr. Che breached their duty of care; (2) there is a causal link between the breach and the damage; and, (3) if Mr. Che has been found to have breached his duty, Mr. Rodriguez is vicariously liable.

Analysis

Breach

- [4] Ms. Gillett was travelling towards Hattieville when she came upon two cyclists travelling in the same direction. Mr. Che was behind her. She began to overtake the cyclists on their left when she changed her mind and lost control of her vehicle. Ms. Gillett argues that she saw Mr. Che approaching at an unreasonable speed, which caused her to decelerate and move back into the right lane behind the cyclists. She lost control of her vehicle in the process.

- [5] Mr. Che argues that he was travelling approximately 40-50 mph when Ms. Gillett changed lanes. Mr. Che testified that a third vehicle, a grey car, was present immediately before the accident. He says the grey car approached from behind him, pulled into the left lane to overtake his vehicle and Ms. Gillett's as Ms. Gillett moved into the left lane to pass the cyclists. He says Ms. Gillett smashed on her brakes and swerved to get out of the way as the grey car sped past both vehicles. Mr. Che also braked and moved his vehicle to the left lane to avoid Ms. Gillett, but she lost control of her vehicle causing her to also move into the left lane where they collided. He says the wet road also hampered his ability to stop.
- [6] Mr. Rodriguez also testified. Because the decision was made during case management to only bring the question of damages to trial if a finding of liability is made, his evidence is not relevant to the issues currently before the court. He did not witness the accident. I also gave no weight to a police report that assigned fault to Mr. Che. The author of the report was not called to testify, therefore, I do not know the scope of the investigation undertaken before that conclusion was reached.
- [7] The parties dispute whether there was a third vehicle present, how far into the left lane Ms. Gillett moved before she changed her mind, and how fast Mr. Che was travelling. Where there are differences, I prefer the evidence of Mr. Che whose evidence remained consistent under cross-examination. Ms. Gillett's testimony differed under cross-examination in several ways from her descriptions of the events leading up to the collision in her witness statement, statement of claim, and reply and defense to the counterclaim.
- [8] First, in advance of trial she stated that she saw Mr. Che before she began to overtake the cyclists. At trial, she maintained that she first saw Mr. Che after she began to overtake the cyclists. When she was presented with her previous statements, she testified that she saw Mr. Che twice. Second, Ms. Gillett's testimony as to what stage of passing the cyclists she was in when she aborted her efforts varies. At trial, Ms. Gillett testified that she was barely in the left lane

while her earlier statements suggest that she was either completely or well into the left lane when she changed her mind about passing the cyclists. Finally, before trial she stated she lost control of her vehicle because she lifted her foot off of the accelerator and moved back into the right lane. At trial, Ms. Gillett admitted to braking on a wet road when she saw Mr. Che and decided to not pass the cyclists.

[9] I find, on a balance of probabilities, that there was a third vehicle. When questioned, Ms. Gillett confirmed that Mr. Che remained in the right lane until she began to lose control of the vehicle. I find it unreasonable that if a car was fast approaching in the opposite lane, a driver would slow their vehicle and place themselves between that fast-moving vehicle and slow-moving cyclists. Rather, a reasonable driver would accelerate ahead of the cyclists before returning to the right lane. Ms. Gillett's choice only makes sense if there was a fast-approaching vehicle in the lane behind her that she feared would collide with her before she could move around the cyclists.

[10] It is well established that all drivers have a duty to “use that degree of care and caution which an ordinary careful and prudent person would exercise in similar circumstances.”¹ This standard of care is reflected in section 83 of the Motor Vehicles and Road Traffic Act² which creates an offence where a person drives “without due care and attention or without reasonable consideration for other persons using the road.”

[11] I find Ms. Gillett breached her duty to exercise the care and caution of an ordinary careful and prudent person when she failed to perform a shoulder-check before she changed lanes to ensure the road behind her was clear. As section 115 of the Motor Vehicle and Road Traffic Regulations³ outlines:

The burden of ascertaining whether the road is clear in every direction shall rest with the driver of a motor vehicle which alters its speed or direction and the driver of such vehicle shall give way to other vehicles.

¹ Moseley v Spray Lakes Sawmills (1980) Ltd. 1997 Canlii 14730 (ABKB) at para 21.

² The Substantive Laws of Belize, Cap. 230 (Rev. Ed. 2020).

³ The Subsidiary Laws of Belize, Cap 230 (Rev. Ed. 2020).

Changing lanes is a temporary change of direction. Although, Ms. Gillett's testimony was inconsistent about whether she saw a vehicle behind her before she changed lanes, she could not explain why she would have commenced changing lanes if she saw a fast-approaching vehicle. Therefore, I find Ms. Gillett failed to shoulder-check to confirm the road was clear before she began to change lanes.

[12] The weight of evidence supports a finding that Mr. Che breached his duty to Ms. Gillett when he did not leave enough space between his vehicle and Ms. Gillett's given the road conditions and the speed he was travelling. The driver of the rear vehicle involved in a rear-end collision is presumed to be at fault.⁴ Drivers following another vehicle are required to maintain sufficient control to allow them to maneuver the vehicle to safety in an emergency, such as the sudden stopping of a vehicle ahead of them.⁵ Both parties confirmed the road was wet and that their vehicles began to hydroplane when they braked. Drivers must increase the distance between vehicles to accommodate for wet road conditions to be safe.

[13] However, I do not find that Mr. Che was driving at an excessive speed. Ms. Gillett asked that I infer his speed from where the vehicles came to a stop. Ms. Gillett's counsel suggested that Mr. Che's vehicle was further in the ditch than hers, therefore, he must have been going at an excessive speed. Many factors could explain where the vehicles came to a rest including trees, bushes, and rocks in their path, the impact of the crash on the structure of the vehicle, and the weight of the respective vehicles. I also cannot determine from the photo where the vehicles left the road. The distance they travelled may not be accurately reflected in the photo if the vehicles entered the ditch at different angles.

Causation

[14] Having found that Ms. Gillett and Mr. Che each breached their duty to safely operate their vehicle, I have no difficulty concluding that each equally contributed

⁴ *Woitas v Tremblay* 2018 ABQB 588 at para 18.

⁵ *Ibid.*

to the collision. Had Ms. Gillett checked to ensure the road behind her was clear before changing lanes, she never would have aborted the lane change, swerved, used her breaks, and lost control of her vehicle. As a result, her vehicle would not have slowed, Mr. Che would not have taken evasive measures to avoid her, and their cars would not have collided. Similarly, if Mr. Che had left sufficient distance between his vehicle and Ms. Gillett's vehicle, he would have had time to slow and avoid the collision.

Vicarious Liability

[15] Although this issue is of little practical benefit to Ms. Gillett, I, nonetheless, find that Mr. Rodriguez is vicariously liable for the actions of Mr. Che. Employers are liable for the actions of their employees if those actions are done within the scope of their employment.⁶ There is no dispute that Mr. Che is Mr. Rodriguez's employee and Mr. Che was in a work vehicle travelling to Belmopan for work purposes.

Disposition

[16] IT IS HEREBY ORDERED THAT

- (1) The claim is dismissed.
- (2) The counterclaim is dismissed.
- (3) Each party shall bear their own costs.

**Patricia Farnese
High Court Judge**

⁶ Herrera v National Transport Service et al. Claim No. 11 of 2009.