

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 134 OF 2011

BETWEEN

(VELMA GODOY

CLAIMANTS

(FANYA GODOY

(HAKAN GODOY

(MOLLY HALL

(

(AND

(

(LOVINIA CANTO AND MARIO CANTO FIRST DEFENDANT

(Representatives of the Estate of Jason Canto

(CARYL MEIGHAN

SECOND DEFENDANT

Before the Honourable Madam Justice Michelle Arana

Mr. Mark Williams for the Claimants

Mrs. Julie-Ann Ellis Bradley for the First Defendant

Mrs. Andrea McSweeney McKoy for the Second Defendant

J U D G M E N T

The Facts

1. The First Claimant, Velma Godoy, is the registered owner of a red Ford Expedition, registration number TOL–C-4323. The Second and Third Claimants Fanya Godoy and Hakan Godoy are the minor children of the First Claimant, and the Fourth Claimant Molly Hall is her sister. On the 31st January, 2010, at about 5:15 p.m. the Second, Third and Fourth Claimants were all travelling from Belmopan towards Belize City in the Ford Expedition which was being driven by the First Claimant. The First Defendant is the late Jason Canto who was the owner of a gold Grand Jeep Cherokee with registration number C-12826, insured with the Insurance Corporation of Belize. By order of this court dated June 28th, 2012, Lovinia and Mario Canto were appointed to represent the estate of the deceased Jason Canto in these proceedings. The Second Defendant, Caryl Meighan, was with the permission of the owner of the Grand Cherokee also driving in the direction of Belize City from Belmopan at the material time when a traffic accident occurred in the vicinity of Mile 29 and Mile 30 on the Western Highway. The surface of the highway was wet and slippery as it had been raining. There was a black pickup truck filled with oranges parked in the right

lane of the highway heading toward Belize City. The First Claimant slowed down to a complete stop, and in so doing the Cherokee driven by the Second Defendant collided into the rear of the Ford Expedition. As a result of that impact, the Claimant's Ford Expedition collided with another vehicle travelling in the opposite direction and driven by one Godwin Oshon. All vehicles sustained major damage, and some passengers were injured.

The Issues

2. Was there negligence on the part of the First Claimant, or the Second Defendant, or both, and if so, did that negligence cause or contribute to the accident that occurred?

The Evidence

3. There were two witnesses called for the Claimant and two for the Second Defendant. The first witness called on behalf of the Claimant was Ms. Velma Godoy. Mrs. Godoy told the court in her witness statement that she was driving her red Ford Expedition from

Belmopan heading towards Belize City around 5:30 p.m. on Sunday 31st January, 2010. On reaching between Mile 29 and Mile 30 on the Western Highway, she said that she saw a vehicle from a distance on the highway with its front portion facing Belize City and with its left rear wheel off lying behind the vehicle. She said that she slowed down to allow other vehicles facing the opposite direction to pass and that's when she heard a loud bang; she then felt her vehicle run off the road until it came to a complete stop.

4. Mrs. Godoy was cross examined by Learned Counsel for the Second Defendant Mrs. Andrea McSweaney McKoy. It was put to her that at the area of road where the accident took place, there was a decline in the road. Mrs. Godoy replied that she cannot recall. It was also put to her that there was a bridge in that area, and she answered that since two years had passed she could not recall. Counsel also challenged the witness on that portion of her evidence where she relates what happened immediately before the accident.

“Q. At this time, what lane are you in, Ms. Godoy? What lane of the highway are you in when you stopped?”

A. *I was in the right lane travelling from Belmopan towards Belize City.*

Q. *So when you say, 'to allow other vehicles facing the opposite direction to pass,' you are in your right lane, as you say, why is it that you would have had to stop to allow other vehicles to pass, Ms. Godoy?*

A. *Because there was another vehicle coming in the opposite direction.*

Q. *'To allow other vehicles facing the opposite direction to pass.' Ms. Godoy, isn't it true that you had actually swerved -- at this point you had swerved into the left lane?*

A. *No."*

Later on in cross-examination:

"Q. *Now if you are in your correct lane, you don't have to allow other vehicles to pass.*

A. *At that point I did because there was an obstruction in my lane.*

THE COURT: And the obstruction was what?

*THE WITNESS: The orange truck that was broken down
and was partially on the highway.*

*Q. I put it to you that ... the reason you say I did have to
allow other vehicles to pass was because you had
swerved into the left lane attempting to overtake the
orange truck.*

A. I will deny that. I did not swerve.”

The witness was also asked at what pace she was driving and she said that she wasn't driving fast because it was raining and she had her two children and her sister with her.

5. The next witness for the Claimants was Ms. Molly Hall. She was cross-examined first by Learned Counsel for the First Defendant, Mrs. Julie-Ann Ellis Bradley and later by Counsel for the Second Defendant, Mrs. McKoy. Mrs. Bradley questioned the Claimant as follows:

“Q. Do you recall there was an obstruction in the lane that you were travelling?”

A. Yes, Ma’am.

Q. And your sister would have had to go around the obstruction, correct?”

A. Yes, Ma’am.

Q. She started to go around the obstruction?”

A. No, Ma’am.”

Further down in cross-examination by Mrs. Bradley:

“Q. Your sister was obstructing the vehicles coming in the opposite direction before she stopped to allow them to pass?”

A. I’m not getting it.

Q. The vehicles coming in the opposite direction, your sister allowed them to pass you said?”

A. Yes, Ma’am.

Q. She stopped to allow them to pass.

A. *Yes, Ma'am.*

Q. *Your sister at one point entered the lane of the vehicles coming in the opposite direction?*

A. *No, Ma'am."*

The witness was also cross-examined by Mrs. McKoy:

"Q. *You are talking about a vehicle which was coming in the opposite direction '...that we had stopped to give way to'. I am asking what do you mean by 'to give way to'.*

A. *The vehicle couldn't pass, Ma'am, because the -- she had to stop to give way to the oncoming vehicle from the opposite direction.*

Q. *Did she have to give way to those vehicles or could those vehicles pass?*

A. *Those vehicles could have passed but she could have not passed because of the vehicle in front of her."*

6. The first witness called on behalf of the Defence was Godwin Oshon. This witness was initially slated to testify on behalf of the Claimants but at trial Learned Counsel for the Claimants Mr. Williams chose not to call him and informed the court that he would not be relying on that witness's evidence. Counsel for the Second Defendant then applied for and received permission to summon Mr. Oshon as a witness for the Defence. Mr. Oshon was driving a vehicle that was hit by the Ford Expedition after that vehicle collided with the Cherokee. He says he was a Traffic Warden at the time and was conducting a routine highway patrol from the direction of Hattievillage in the direction of Belmopan. Upon reaching the area between Mile 29 and 30, Mr. Oshon said he saw a black two-door pickup parked on the left hand side of the road with its front in direction towards Belize City. He and another traffic warden travelling with him decided to stop and check on that vehicle and proceeded to pull on the right hand side of the road. As they were pulling on the right hand side of the road, he saw a red Ford Expedition coming from the opposite direction followed closely by a Jeep Cherokee. He said he saw both drivers cause their vehicles to slow down and he then saw the Cherokee slam into the back of the Ford Expedition which then caused the

Expedition to slam into the left portion of his vehicle. His vehicle then fell into a ditch on the right hand side of the road. He was asked by Mrs. McKoy to clarify a statement which he had made to police at the time of the accident:

“Q. Mr. Oshon, just below halfway down the page, I’ve marked a sentence that begins, ‘When the Cherokee slammed...’ Could you read that sentence for us, please?”

A. ‘When the Cherokee slammed, the Expedition was attempting to pass the black pickup on its left.’

Q. I just want you to clarify for us, Mr. Oshon, this Expedition was attempting to overtake the black pickup on its left?

A. To pass it, I stated. It was attempting to pass it.

Q. To pass it on its left. And did the Expedition complete that attempt?

A. As I could recall, I don’t think it completed it.

Q. What do you recall regarding that attempt?

A. As it was attempting to pass, it get slammed by the Jeep Cherokee which caused it to slam into us.

Q. *Did the Expedition enter the left lane of the highway, that driver's left lane of the highway?*

A. *I no recall it fully."*

7. Mr. Oshon was cross-examined by Mr. Williams for the Claimants and then by Mrs. Bradley for the First Defendant. Mr. Williams asked him if he could recall, looking at the sketch plan drawn by the police, whether the black truck carrying oranges was more on or off the highway. The witness said he could not recall.

"Q. You said when the Cherokee slammed etc., it was attempting to pass. The question to you is: If as you say the Expedition was attempting to pass the pickup with oranges, from your recollection and from looking at the diagram, would it have been necessary to go over into the other lane to pass this pickup truck with the oranges, Mr. Oshon?

A. *Looking at the diagram, it seems it had enough space in the same lane."*

The witness was also questioned, based on his 12 years experience as a Traffic Warden, to explain the difference between passing and overtaking a vehicle. He answered:

“A. Passing is just passing by the vehicle. Overtaking is when you change the lane completely.”

Q. So is it correct to say, Mr. Oshon, that overtaking from your knowledge and experience, you also drive, would it be correct to say and suggest that there is a vehicle directly in front of you so you are overtaking? You are trying to get in the place of the vehicle in front of you, would that be correct?

A. That would be correct.

Q. And from what you had just said to this court a while ago, this vehicle with the oranges was not directly in front of the Expedition, was it?

A. It was not in front.”

The witness was also questioned as to what he meant by the Expedition was “followed closely” by the Cherokee. He explained that the Cherokee was “up behind it”. When I asked him to explain what he meant, Mr. Oshon said he could not say measurements, but it was close behind.

8. Mr. Oshon was also cross-examined by Mrs. Bradley for the First Defendant on various matters. He was asked whether both vehicles (the Cherokee and the Ford Expedition) were still in motion at the time the accident happened, or whether the Ford Expedition had come to a complete stop. The witness said that both vehicles were still in motion. He was questioned about the location of the black truck and whether it was off the highway. He said it caught his attention because it was part off and part on. He was challenged on measurements of the vehicle size and width of the highway as shown in the sketch plan and the photos of the scene. He estimated the approximate width of the black truck to be about 4 feet and he agreed with Counsel’s suggestion that the Expedition was a much wider vehicle than the black truck filled with oranges and measured about 6 feet in width. He estimated the width of the highway where the

accident occurred to be about 22 feet 8 1/2 inches wide. He was further cross-examined by Mrs. Bradley for the First Defendant as follows:

“Q. ... You will agree with me, Mr. Oshon, that if this truck, the orange truck was broken down on the highway, the orange truck which was stationary at the time, that in order to safely pass the orange truck, the Expedition would have had to come very close to the center of the highway?”

A. Yes.

Q. And in fact in order to safely pass, the Expedition may have had to go into the opposite lane, a portion of it?

A. No because the orange truck was off the -- half off the highway, half off pan the highway.”

He was asked a hypothetical question as follows:

“Q. So if the orange truck was on the highway, you will agree with me that the Expedition in order to pass would have to go somewhat into the opposite lane?”

A. *A little, if it was on the highway.*

THE COURT: If it was on the highway but you are saying it wasn't on the highway?

THE WITNESS: It wasn't completely on the highway.

THE COURT: Completely. You're saying it was partly on the highway and part off the highway.

THE WITNESS: Part on it."

9. Mr. Francis Garbutt was then called by the First Defendant. He is the Mechanic/Auto Dealer of approximately 20 years experience who examined the Jeep Cherokee before and after the accident. He was skillfully cross-examined by Learned Counsel for the Claimants Mr. Williams on the location of the impact on the Cherokee, and more importantly, on the possible speed the Cherokee was being driven at in order to sustain such an impact.

"Q. What area of the Cherokee was mostly damaged? Where did it sustain the brunt of the damage?

A. *In the main sub-frame area which is directly in front of the engine and the two strut supports which are the main components of holding up the vehicle in the front.*

Q. *It was a front on?*

A. *Front on collision, yes.*

Q. *You deal with body vehicles? You deal with vehicles?*

A. *Yes, I deal with vehicles on a --*

Q. *You deal with vehicles which have been the victim or the result of accidents?*

A. *Of many accidents, yes.*

Q. *Many accidents. So this is, I guess, one of your areas. You would have an idea when a vehicle had taken like a hard lash as a result of a --*

A. *Yes, I do.*

Q. *Huh?*

A. *I do. I know when a vehicle has taken a severe impact or if it's a minor impact that can be repaired fairly easily.*

Q. *So you clearly, Mr. Garbutt, would classify this one as a severe impact?*

A. *That was a severe impact, yes, it was.*

Q. *From your knowledge and the years you have been dealing with this bodywork business, would it be correct to say that for a vehicle to have gotten that type of severe damage the driver must have been going at a good speed?*

A. *Pretty much, yes.*

Q. *-- fairly good number to cause that type of damage. In other words, Mr. Garbutt, what I am putting to you is that you could not have been going that slow and could have that kind of damage.*

A. *It wouldn't be damage caused by something like, I would say like under 55 miles per hour.*

Q. *Thank you.*

A. *It had to be around that speed.*

Q. *Thank you very much. It had to be.*

A. *Yeah.*”

10. The final witness for the Defence was Caryl Meighan, the Second Defendant. He testified in his witness statement that he had been driving the Cherokee belonging to the late Jason Canto from Belmopan to Belize City with three passengers. He said he was driving carefully and maintained a speed of 35 to 40 miles per hour as it was drizzling and the road was wet and slippery. He stated that he saw an Expedition clearly in front of him travelling in the same direction directly in front of him and he maintained a distance of approximately seven vehicle lengths behind the Expedition. Mr. Meighan said that he saw the Expedition swerve into the left lane of the highway, attempting to overtake a vehicle in front of it. At the time the Expedition swerved out into the left lane, it was situated at an area of the road which has a gradual descent for approximately 150 yards and thereafter an incline. At this point it is difficult to see traffic coming from the opposite direction. Mr. Meighan stated that suddenly and without any warning or use of indicators the Expedition swerved back into the right lane in front of the Cherokee. He said he quickly applied his brakes but since the

road was slippery the Cherokee did not come to a complete stop, but slid forward into the rear of the Expedition.

11. Mr. Meighan was cross-examined extensively by Mr. Williams on behalf of the Claimants. He was asked about the visibility and weather condition at the time of the accident. The witness said he could have seen about 10 to 15 vehicle lengths ahead of him. He admitted that he was a driver of about 20 years experience and was quite familiar with that highway, and was aware that the speed limit was around 45 to 55 miles per hour when passing through towns and villages. Mr. Meighan was asked at what point in his journey did he see the red Expedition in front of him. He replied that he saw the Red Expedition for the first time at the junction of the Coastal Highway.

“Q. And when you first became aware of its presence, was it moving, stationary, doing what?”

A. It was moving.

Q. It was moving?”

A. *It was already in front of me.*”

The witness was then asked what he meant when he said the Expedition was “immediately in front of the Cherokee”. He stated that he meant it was in his clear view about seven to eight vehicle lengths in front of him. He also said that he estimated the length of a vehicle at approximately 4 or 5 feet. Mr. Meighan said that he kept a distance of 7 to 8 vehicle lengths behind the Expedition, and he slowed down when he saw the Expedition swerve into the other lane as if to overtake:

“Q. ... *You maintained a speed of 35 to 40 miles per hour as it was drizzling. Now, do you mean that you slowed down from this 35 to 40 miles an hour?*

A. *When she --*

Q. *No. When you are saying ‘I slowed down,’ slowed down to what speed of approximately what?*

A. *No. I only slowed down when she tried to overtake.*”

Later on in cross examination:

“Q. So you come down to what speed, Mr. Meighan? To like 5 miles, 10? Help us.

A. Maybe about 15 to 20 miles. It wouldn't be much.

Q. All right. So you come right down to 15, 20 miles an hour. But then, I take it, I'm asking you, did you accelerate again after slowing down to this 15, 20 miles per hour?

A. If I?

Q. Accelerate, speed up again.

A. No, I couldn't.

Q. You couldn't?

A. -- he was right in front of me so I couldn't.

Q. So are we being made to understand -- what you are saying, that at the time -- I'm trying to get exactly what you are saying. Is it that at the time when the collision you were slowed down to like 15 or 20 miles an hour? Is that what you mean?

A. *No. I slowed down when she went into the left lane. That's when I eased on the gas a little bit and then she came back in my lane.*

Q. *So you slowed down to about 15, 20 miles an hour. At the time of the collision, is that the speed at which you were travelling?*

A. *I'd say about that, 20, 25 miles an hour, yeah."*

Mr. Meighan was questioned about his inability to control his vehicle in such a way as to avoid slamming into the back of the Expedition. He said there was nothing he could have done.

The Law

12. *"A driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users (including drivers and passengers in other vehicles, cyclists and pedestrians) or to the property of others. In order to fulfill this duty, he should, for example, keep a proper lookout, observe traffic rules and signals, avoid excessive speed, and avoid driving under the influence of alcohol or*

drugs. It is a question of fact in each case as to whether the defendant has observed the standard of care required of him in the particular circumstances.” **Commonwealth Caribbean Tort Law Third Edition by Professor Gilbert Kodilinye** as cited in the written submissions on behalf of the Claimants.

“The burden of proof in a claim for damages for negligence rests primarily on the claimant, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible...where the evidence relating to negligence is particularly within the control of the defendant, little affirmative evidence may be required from the claimant to establish a prima facie case which it will then be for the defendant to rebut.” Paragraph 62 **Halsbury’s Laws of England Volume 78 (2010) 5th Edition** as cited in the written submissions for the Second Defendant.

13. Having analyzed the evidence in this case, I find on a balance of probabilities that this accident was caused by the negligence of the Second Defendant. I find as a fact that the driver of the black pick-up truck also contributed to this accident because the evidence shows it

did not have on any hazard lights to indicate that it was an obstruction on the highway at that time. I believe the evidence of Mrs. Godoy that the black truck filled with oranges was parked partly off and partly on the highway. This is borne out by the sketch plan drawn by police and witnessed by all the drivers. I believe that she attempted to pass the black truck but decided to yield to other drivers coming in the opposite lane. I do not believe that she was swerving as alleged by Mr. Meighan. I find that she slowed down in her lane because the pickup truck was an obstruction in her lane, and at that moment Mr. Meighan's vehicle crashed into Mrs. Godoy's Ford Expedition. I find that Mr. Meighan was driving the Cherokee at a speed of at least 55 miles per hour, as seen from the severity of the impact which not only damaged Mrs. Godoy's vehicle, but propelled her vehicle into Mr. Oshon's vehicle coming in the opposite lane. This is supported by the evidence of Mr. Garbutt the experience mechanic called by the Defence, who testified that having examined the damage on the Cherokee after the accident, the driver must have been travelling at around 55 miles per hour. I therefore reject Mr. Meighan's statement that he was driving at around 15 or 20 miles per hour at the time of the accident. I also reject his evidence as untrue that he maintained

a distance of seven to eight vehicle lengths behind the Claimant's vehicle. Clearly, if indeed he had kept that distance behind the Expedition, and if he had been travelling slowly at 15 miles per hour, he would have had enough space, and time, even with a slight skid of his own vehicle, to prevent his vehicle from colliding with the Expedition in front of him. I believe Mr. Oshon's evidence that he saw the Expedition being "followed closely" by the Cherokee immediately before the accident occurred. I find that Mr. Meighan drove the Cherokee on a wet, slippery road with limited visibility at a high speed and at a very close distance from the Expedition in front of him which prevented him from properly controlling his vehicle so as to avoid this accident. In all the circumstances, Mr. Meighan failed to exercise the duty of care to other users of the road and he has failed to rebut the presumption of negligence cast on him by the Claimant.

14. I agree with the submissions made on behalf of the Claimants in respect of the issue of vicarious liability. Under Section 3 of the Motor Vehicle Insurance (Third Party Risks) Act, Chapter 231 of the Laws of Belize, owners of motor vehicles are legally obligated to keep their

vehicles covered under insurance policies with respect to third party risks:

Section 3: "Subject to this Act, no person shall use, or cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third party risks as complied with the requirements of this Act."

Even though Mr. Meighan may or may not have been driving the Cherokee on his own purpose, the fact remains that he borrowed the vehicle with the owner's knowledge and consent. Mr. Meighan was therefore an authorized driver and as such the terms of the insurance which the late Mr. Canto held on the Cherokee clearly extends to third parties injured or affected by Mr. Meighan's negligent driving.

15. On the issue of quantum of damages, as there is no evidence from the Claimants as to the nature of the injuries suffered by them or extent of damage to the Ford Expedition or any other loss, the Court has no basis at this time on which to assess the amount of damages to be awarded. I will therefore defer the hearing for assessment of damages to a later date.

16. Costs awarded to the Claimants in the sum of \$5,000.00 to be paid by the Defendants.

Dated this 4th day of October, 2013.

**Michelle Arana
Supreme Court Judge**