



4. Mr. Marin says that he was at all times on his right hand side of the road, and that Mr. Lightburn suddenly swerved into his lane of traffic, and hitting him, injuring and knocking him unconscious, causing personal injury and damages. He has a witness to the accident – Mr. Pablo Uh.
- 5 Mr. Lightburn claims that Mr. Marin drove his motorcycle over the median line in the road and into his lane of traffic, hitting his vehicle on the left side, causing damage, making him lose control, jump the median lane into his left hand side, plunge down a bank, into bushes and hitting a tree. He claims for damage to his sedan caused by Mr. Marin.

#### **THE CLAIM AND COUNTERCLAIM**

6. Mr. Marin, brought a claim in negligence against Mr. Lightburn and Albert Vacario, seeking the following reliefs:
  - (1) General Damages for personal injury and loss arising from an accident along the Otro Benque Road in Orange Walk Town on March 28<sup>th</sup>, 2018 at about 9:30 p.m.
  - (2) Special Damages of \$5,524.00.
  - (3) Interest on damages claimed at such rate and for such period as this Honourable Court deems just.
  - (4) Costs.
  - (5) Such further others that may be just in the circumstances.
7. Mr. Lightburn, denied the claims and counterclaimed against Mr. Marin as follows:
  - (1) Damages for damage to the Defendant's property described as a White Lincoln Zephyr 4 door sedan with VIN 3LNHM26106R616918.
  - (2) Interest pursuant to the Supreme Court of Judicature Act.
  - (3) Cost.
  - (4) Such further others that may be just in the circumstances.
8. Mr. Marin has denied negligence and the reliefs sought by Mr. Lightburn; and filed a Notice of Discontinuance on 27<sup>th</sup> September, 2019 discontinuing the Claim against the Second Defendant, Albert Vacario,

## THE ISSUES

9. Both Parties agree that the issues here are simple and two-fold :
- a. How did the accident on 28<sup>th</sup> March, 2018 along the Otro Benque Road occur, and whether the accident was caused by the First Defendant's negligence or was caused or materially contributed to by the negligence of the Claimant?
  - b. Whether damages are to be paid and what is the quantum of damages to be paid by either the Claimant or the Defendant depending on the court's finding as to liability.

**How did the accident on 28<sup>th</sup> March, 2018 along the Otro Benque Road occur, and whether the accident was caused by the First Defendant's negligence or was caused or materially contributed to by the negligence of the Claimant?**

10. I agree with the Claimant's submissions as to the matter of the burden of proof. The UK case of *Henderson v Harry E. Jenkins*<sup>1</sup> Lord Pearson held that : "*In the action for negligence, the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants and if he is not satisfied the plaintiff action fails.*"
11. The Claimant submits - and I agree - that in relation to contributory negligence, the burden of proof is on the Defendant to prove that the Claimant was negligent by causing the accident or by materially contributing to the accident. Lord Justice Denning, in *Jones v Livox Quarries Ltd*<sup>2</sup> noted that: "*A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself and his reckonings he must take into account the possibility of being careless.*"

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<sup>1</sup> [1963] 3 All E.R. 756 at p. 766

<sup>2</sup> [1952] 2 QB 608

12. In any claim of negligence, such as this one following an RTA, drivers of a motor vehicle (including a motorcycle) in accordance with the **Motor Vehicles and Road Traffic Act**<sup>3</sup>, owes a statutory duty of care not to drive recklessly or carelessly and to exercise reasonable care when driving a motor vehicle on a road. Both Mr. Marin and Mr. Lightburn were indisputably under such a duty of care to other users of the road.
  
13. Sections 82(1) and 83(1) of the Act, respectively, state as follows:

*“82(1) Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, commits an offence and is liable to a fine of two hundred and fifty dollars or to imprisonment for six months, or to both, and in the case of a second or subsequent conviction, either to a fine of five hundred dollars or to such imprisonment as aforesaid, or to both such fine and term of imprisonment.”*

*“83(1) Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence and is liable to a fine of one hundred dollars and to be disqualified for holding or obtaining a Belize Driving Licence for such period as the court shall think fit.”*
  
14. According to Mr. Marin, Mr. Lightburn failed to discharge his duty of care to exercise reasonable care while driving his 2006 White Lincoln Zephyr sedan at the time of the accident on the night of 28<sup>th</sup> March, 2018 along the Otro Benque Road.
  
15. I found Mr. Pablo Uh, a pedestrian on the scene, and the sole eyewitness of the RTA to be credible, forthright and consistent. He testified that while there was a speed bump in front of Mr. Marin’s motorcycle, there was no speed bump in front of the other vehicle.

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<sup>3</sup> Chapter 230 of the Substantive Laws of Belize, Revised Edition 2011

16. He also said that that he was looking forward at the road and at that time he saw the collision occur. Mr. Uh maintained this position in spite of the suggestion during cross examination that he didn't see the accident happen.
17. Mr. Uh's evidence is that he was walking on the right-hand side of the road heading towards Orange Walk Town when the motor vehicle (driven by Mr. Lightburn) drove past him at a fast speed on the right-hand side of the road; and that he saw when the vehicle driven by the Defendant suddenly swerved into the left lane in which the Lifan motorcycle ( driven by Mr. Marin) was travelling, and collided into the motorcycle. At that point he was about 200 feet away.
18. Mr. Uh remained adamant, even under cross-examination, that the swerve did not happen after the collision, and that the swerve did happen before the impact of the sedan with the motorcycle.
19. Mr. Marin admitted that after a long day, leaving via a 5.00 am bus, to report at work at at 630 am, at Bowen and Bowen as a sales operator all day, then catching a Tillett bus to Orange Walk Town where he had arrived at about 9.20 pm; going for his motorcycle, and then stopping at Katt's Bar for about 2 hours to have 2 beers before heading home. The accident happened at about 10.45 pm. Mr. Marin also admitted that he was tired.
20. Mr. Marin was adamant under cross examination, however, that he was neither so tired nor so impaired that he was the one who swerved into Mr. Lightburn's lane, causing the impact. He maintained that there was no motor vehicle ahead of him that he was trying to overtake at the time of the accident. I also accept that after the accident he was unconscious for a time, and in the aftermath, he was in pain and on medication which did not help his recall of exactly what had happened to him.
21. Mr. Marin is, however, even with those limitations, a credible witness and his case is helped by two critical witnesses giving evidence, the first being the unequivocal

eyewitness account given by Pablo Uh which supports his account and which a broader picture of the entire incident that either driver could give.

22. The second is the evidence from Mr. Lightburn who said that he was driving back late to Belize City, in a sedan which he admitted was a “salvage” vehicle purchased at Co-Part, which is an auction house for used and salvaged vehicles, and that there was no evidence of the condition of the vehicle prior to the accident. Mr. Lightburn admitted that the vehicle had a salvage certificate, although he denied knowing that the vehicle was a total loss, he did eventually admit that the vehicle could not be registered in the United States of America. I did not find Mr. Lightburn to be a reliable witness.
23. The evidence of the physical damage to Mr. Lightburn’s Zephyr is quite telling. Mr. Lightburn admits he lost control of his vehicle after impact with the motorcycle. He claimed that was the moment when he swerved across the median line of the road into the left lane. He claimed that the impact of the motorcycle on the left side of the sedan was because Mr. Marin swerved into him after trying to overtake a vehicle that was in front of his motorcycle. I do not find this credible. Mr. Uh stated clearly that there was no vehicle in front of Marin.
24. I have accepted as fact, the account of Mr. Uh that it was the Lincoln Zephyr sedan swerved suddenly into the left lane where the black Lifan motorcycle was traveling, and hit the oncoming motorcycle. After the impact, Mr. Lightburn lost control of the vehicle, plunging down the slope, into the bushes and hitting a tree, after which the airbag deployed and the entire front hood was damaged. The vehicle’s front left rim was shattered, and I do accept that all of this occurred after the sedan had suddenly swerved into the lane of traffic where the motorcycle being driven by Mr. Marin was traveling.
25. I find that the Claimant has proved his claim to the required standard, and I find that the road traffic accident was caused by Mr. Lightburn and that it was not neither caused nor materially contributed to by Mr. Marin.

**Whether damages are to be paid and what is the quantum of damages to be paid by either the Claimant or the Defendant depending on the court’s finding as to liability.**

- 27. Having found that the cause of the accident was the actions of the Defendant driving the sedan and that the Claimant did not cause or contribute to the accident; I turn to the issue of damages and quantum.
  
- 28. Mr. Marin is claiming for general damages for pain, injury, loss and damage; as well as special damages in the sum of \$5,524.00, interest and costs.

**Special Damages**

29. First the matter of special damages, the particulars of which are as follows:

i.	Medical and treatment Expenses	\$ 2,494.00
ii.	Cost of Motorcycle	\$ 2,670.00
iii.	Cost of Transportation	<u>\$ 360.00</u>
		<u>\$ 5,524.00</u>

- 30. Mr. Marin exhibits in his witness statement<sup>4</sup> in relation to the medical and treatment expense, receipts to prove the expenses totaling \$2,494.00.
  
- 31. In relation to the claim for cost of the motorcycle, Mr. Marin gave evidence that he purchased the motorcycle in April 2016 for \$2,670.00 and exhibited a copy of the Bill of Sale<sup>5</sup>. He further exhibited a quotation of \$2,028.00 for the repair of the damages to the motorcycle<sup>6</sup>.

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<sup>4</sup> Witness Statement of Alfredo Marin, paragraph 28, Receipts marked “AM7-AM18”  
<sup>5</sup> Ibid, paragraph 2, Bill of Sale marked “AM1”.  
<sup>6</sup> Ibid, Paragraph 31, Quotation marked “AM25”.

32. Finally, Mr. Marin provided the court with receipts for his cost of transportation.<sup>7</sup>
33. These were not challenged in any material way in cross examination, and the Claimant has proven the special damages pleaded. The Defendant's written submissions concede special damages in the sum of \$5524.00 if the Court ruled in favor of the Claimant's claim. I therefore award medical and treatment expenses amounting to \$2,494.00; as well as \$2,670.00 for the cost of the motorcycle; and \$360.00 for cost of transportation, for a total of \$5,524.00

### **General Damages**

34. Turning to the matter of general damages, both Counsel has provided extensive written submissions on the matter, however, the evidence of both medical experts in this claim, Dr. Ricardo Bush, and Dr. Andre Sosa was permitted by agreement between the parties. Neither attended, and neither was examined. This is unsatisfactory given the type of assessment of general damages that this Court is being asked to undertake.
35. Dr. Ricardo Bush is a medical practitioner and orthopaedic surgeon who was the attending physician who treated the Claimant for his injuries and made a medical report dated 1 October.
36. Mr. Marin also submitted further evidence via a witness statement and medical report of Dr. Andre Sosa. As the Defendant's written submissions point out, Dr. Sosa mentions "he had reportedly suffered... left knee fracture", but the left knee fracture is not mentioned in the medical report from Dr. Bush. Also, Dr. Bush said says that Mr. Marin sustained a "slight fracture on left hip" and concludes in the second paragraph of his report that the Claimant does not need surgery, Dr. Sosa says the hip injury is irreversible and that hip replacement surgery is necessary. There is no evidence of the cost of hip replacement surgery.

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<sup>7</sup> Ibid, Paragraph 32, Receipts marked "AM26-AM37"

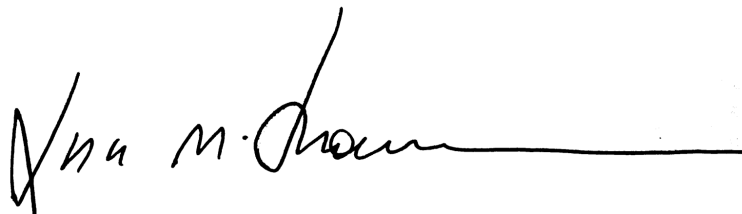


37. Dr. Sosa quite pronounces 50% incapacity for injuries to the left elbow, but the Claimant in his testimony, under cross-examination, said that he is back at work doing the same job, but said that his functions are limited.
38. In the circumstances, I will set a further date for Assessment of Damages. The Doctors should attend for cross-examination on witness statements and medical reports, and counsel thereafter may provide further written submissions.

## **ORDERS**

39. The following Orders are made:
- (a) The Claimant's claim succeeds and the Defendant's counterclaim fails;
  - (b) The Defendant shall pay specific damages in the sum of \$5524.00 to the Claimant within 30 days of the date of this decision;
  - (c) Interest thereon from the date of the accident until judgement is payable at the rate of 6% per annum; and thereafter at the rate of 10% per annum if special damages are not paid in full within 30 days of the date of this decision;
  - (d) Costs are to be paid by the Defendant to the Claimant as agreed or taxed; and
  - (e) General Damages shall be addressed at an Assessment of Damages hearing to be set by the Court.

**DATED THIS 18<sup>th</sup> DAY OF AUGUST 2021**

A handwritten signature in black ink, appearing to read "Lisa M. Shoman", followed by a long horizontal line extending to the right.

**LISA M SHOMAN  
JUSTICE OF THE SUPREME COURT**