

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 612 of 2022

BETWEEN:

STACEY HEMMANS

Claimant

and

MISTY WILLIAMS

Defendant

Appearances:

Allister T. Jenkins, for the claimant

Estevan Perera for the defendant

2023: June 29

September 7

December 21

JUDGMENT

[1] **CHABOT, J.:** The claimant, Stacey Hemmans, was driving her motorcycle on Fabers Road in Belize City when she collided with Misty Williams' vehicle. Both parties were driving in the same direction towards Central American Boulevard. Ms. Hemmans was in the process of overtaking Ms. Williams' vehicle when Ms. Williams made a left turn towards Robinson Lane. Ms. Hemmans alleges that upon colliding with Ms. Williams' vehicle, she was flung about 26 to 30 feet and sustained injuries. Ms. Hemmans

alleges that Ms. Williams' negligence caused the accident. Ms. Hemmans filed this claim seeking compensation from Ms. Williams for her injuries.

[2] Ms. Williams denies the allegations in the claim. Ms. Williams alleges that she turned on her left indicator and slowed down before engaging in a left turn towards Robinson Lane. She looked in all directions and made sure the road was clear before turning. She alleges that she could not see Ms. Hemmans until the vehicles collided. Ms. Williams denies having been negligent, and alleges that the accident was caused by Ms. Hemmans' own negligence. Ms. Williams filed a counterclaim seeking compensation for damage to her vehicle.

[3] For the reasons outlined in this judgment, I dismiss both the claim and the counterclaim as I find both parties to have been equally negligent in the circumstances.

Issues to be determined

[4] The following issues must be determined:

1. Whether the accident, which occurred on the 26th July, 2021 was caused as a result of the negligence of the defendant or the claimant.
2. If the accident was caused by the negligence of the defendant, what quantum of damages is the claimant entitled to?
3. If the accident was caused by the negligence of the claimant, is the defendant entitled to special damages in the sum of \$1,100.00?

Analysis

Whether the accident, which occurred on the 26th July, 2021 was caused as a result of the negligence of the defendant or the claimant

Evidence

[5] It is common ground that Ms. Hemmans collided with Ms. Williams' vehicle, a blue van, when Ms. Hemmans was overtaking the blue van while Ms. Williams turned left to enter Robinson Lane. It is also common ground that the road ahead was clear at the time of the collision. One of the main points of contention between the parties is whether there was another vehicle between Ms. Williams' blue van and Ms. Hemmans'

motorcycle, and whether Ms. Hemmans attempted to overtake one or two vehicles. On this point, I prefer Ms. Williams' evidence and find that there was a white Nissan Altima immediately behind Ms. Williams' blue van and in front of Ms. Hemmans. I further find that Ms. Hemmans attempted to overtake the two vehicles.

- [6] I prefer Ms. Williams' evidence on this point because Ms. Hemmans' evidence in her pleadings, witness statement, and on cross-examination is contradictory and therefore unreliable. In her statement of claim, Ms. Hemmans states that she was driving behind Ms. Williams' blue van and that she proceeded to overtake it. In her reply to the defence, Ms. Hemmans specifically denies Ms. Williams' contention that there was another vehicle between Ms. Williams' blue van and Ms. Hemmans' motorcycle, namely a white Nissan Altima driven by Patrick Garbutt, restating that she was driving behind Ms. Williams' vehicle. Similarly, in her defence to the counterclaim, Ms. Hemmans alleges that she was driving behind Ms. Williams' blue van and was overtaking that vehicle when the accident happened. No mention is made of any other vehicle in Ms. Hemmans' pleadings.
- [7] Yet, in her witness statement, Ms. Hemmans alleges that she "drove up behind the blue van and another motor vehicle that was driving behind the blue van, which were going in the same direction as [her] at the time". She further alleges that "she turned [her] left indicator on to indicate that [she] was about to overtake the blue van and the other motor vehicle and then proceeded to overtake both motor vehicles". This was the first mention by Ms. Hemmans of a second vehicle, and of her attempt at overtaking both vehicles.
- [8] Cross-examined on those contradictions, Ms. Hemmans presented to the court a third version of the events leading up to the accident, namely that after driving up behind the blue van and the white vehicle, she first overtook the white vehicle and became sandwiched between the two vehicles, waiting for an opportunity to overtake the blue van. She then proceeded to do so.
- [9] By contrast, Ms. Williams' evidence was consistent throughout the trial. In her defence, her counterclaim, and her witness statement, Ms. Williams contends that at the time

of the accident, Ms. Hemmans was driving behind a white Nissan Altima, which was driving behind Ms. Williams' blue van. In cross-examination, Ms. Williams explained that she was not able to see Ms. Hemmans because her motorcycle was smaller than the white vehicle. Ms. Williams disagreed with counsel's suggestion that Ms. Hemmans successfully overtook the white car, but was candid in admitting that she could not tell with certainty whether Ms. Hemmans was always behind the white vehicle because she never saw her. Ms. Williams' evidence was corroborated by that of Deon Longworth, who was a passenger of the blue van at the time of the accident. Mr. Longworth admitted to not seeing Ms. Hemmans because she was driving behind the white vehicle. Mr. Longworth did not see Ms. Hemmans overtaking the white vehicle. He only saw the accident. I find both witnesses to be credible based on the consistency of their testimony and their candour. Neither Ms. Williams nor Mr. Longworth attempted to embellish or exaggerate their evidence.

[10] I am therefore satisfied that Ms. Hemmans was driving behind the white vehicle, which is why neither Ms. Williams nor Mr. Longworth ever saw Ms. Hemmans behind the blue van. This also explains why Ms. Hemmans did not see the blue van's left indicator, which Ms. Williams says was on at the time of the accident.

[11] I am also satisfied that Ms. Hemmans overtook two vehicles, the white vehicle and the blue van, and not one as alleged. To overtake two vehicles, I find that Ms. Hemmans had to accelerate. I do not accept Ms. Hemmans' contention in her witness statement that "she was not driving fast"; overtaking a vehicle, let alone two, requires a driver to accelerate to a speed greater than the speed of the vehicles being overtaken. While there is no evidence before me to suggest that Ms. Hemmans was driving faster than the speed limit, I find that Ms. Hemmans was driving faster than Ms. Williams. This finding is supported by Ms. Hemmans' own evidence that she "was flung about 26 to 30 feet in front of the blue van". That she traveled such a distance after the collision suggests that she had gained momentum right before the collision.

[12] I further find that there was a solid yellow line on the road at the site of the collision. Although it is somewhat washed out, the yellow line is visible from pictures entered

into evidence by both parties. Ms. Hemmans is not truthful when she states in her witness statement that “there was also no yellow line on Fabers Road and, particularly in the area where the accident occurred which indicated that overtaking is prohibited”. The pictures show that the yellow line is not visible all along Fabers Road, but was visible at the site of the collision. I also note that Ms. Hemmans admitted in cross-examination to being familiar with Fabers Road. I find that Ms. Hemmans knew or should have known that there was a yellow line on the road at the site of the collision.

[13] I am also satisfied that Ms. Hemmans was aware that Robinson Lane intersects with Fabers Road. In her witness statement, Ms. Hemmans refers to the area as “the intersection between Fabers Road and Robison Lane”, and in cross-examination she agreed with counsel’s suggestion that Robinson Lane intersects with Fabers Road.

[14] The evidence shows that as a result of the collision, Ms. Williams was criminally charged by the Belize Police Department with the offences of negligent driving and failing to signal.

Determination

[15] Based on the evidence, I find that the accident was caused by the negligence of both parties. Ms. Hemmans was negligent by overtaking two vehicles near an intersection. Ms. Williams was negligent in failing to ascertain that the road was clear behind her before turning.

[16] The parties are in agreement in respect of the test applicable to a claim in tort for negligence. Both cite **Clerk and Lindsell on Torts**¹ in which the learned authors set out the test as follows:

(1) The existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the person to which the claimant belongs by the class of person to which the defendant belongs is actionable;

¹ The Common Law Library, 20th ed.

(2) Breach of the duty of care by the defendant, i.e., that he failed to measure up to the standard set by law;

(3) A causal connection between the defendant's careless conduct and the damage;

(4) That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.

[17] The first element of the test has been met. The parties are in agreement that motor vehicle users owe a duty of care while driving on the road. This duty is established in the Motor Vehicles and Road Traffic Act² and in the case law.³

[18] The crux of the issue in this claim is whether it is the defendant, or the claimant, who breached the duty of care she owed the other, resulting in the accident. Ms. Hemmans alleges that Ms. Williams breached the duty of care she owed Ms. Hemmans by driving without due care and attention; failing to keep a proper lookout; failing to stop or otherwise control her vehicle so as to avoid an accident; failing to ensure that the road was clear before making a left turn into another road/intersection; failing to turn on her indicator before making the left turn; and failing to remain on the far right of the road when being overtaken. Ms. Williams alleges that Ms. Hemmans breached the duty of care she owed Ms. Williams by driving without due care and attention; failing to slow down, brake, steer, or otherwise maneuver her motorcycle so as to avoid a collision; failing to keep a proper lookout; failing to exercise proper driving skills and care to avoid the collision; failing to remain in her proper lane; overtaking on a narrow road with a solid yellow line; overtaking two consecutive vehicles; driving above the required speed limit in order to overtake two vehicles; and driving in a dangerous and reckless manner.

[19] In an action for negligence, the burden is on the claimant to prove that the accident was caused by the negligence of the defendant. Since Ms. Williams has filed a

² Cap. 230, Rev. Ed. 2020.

³ See for example *The dran Reid v Issak Banman and anor*, Claim No. 140 of 2020 at paras. 10-12; *Edgar Nissani Arana (Administrator Ad Litem of the Estate of Julia Arana a.k.a. Julia Arzu v Abelardo Jose Mai* Claim No. 322 of 2017 at paras. 116 to 121.

counterclaim alleging that Ms. Hemmans was also negligent, both parties to this claim have the burden of proving, on a balance of probabilities, that the other was negligent.

[20] Sections 114, 115, and 121 of the Motor Vehicles and Road Traffic Regulations⁴ set out the rules of the road in relation to an overtaking and to a turn:

114. Each driver of a motor vehicle shall comply with the following rules:

- (1) (a) He shall at all times keep the vehicle on the right side of the road unless prevented by some sufficient cause.
- (b) When meeting or being overtaken by other vehicles he shall keep as close as possible to the right side of the road.
- (2) (a) When overtaking other vehicles, he shall keep to the left or off side of such other vehicle.
- (b) When being overtaken by other vehicles or when there are other vehicles immediately behind that desire to overtake him, he shall drive as close to the right side of the road as possible so as to allow such other vehicles to pass, and in all cases he shall drive so as to give as much space as possible for the passing of other traffic and shall not speed abreast any other vehicle when such vehicle is overtaking him.
- (c) He shall not drive so as to overtake other traffic unless he has a clear and unobstructed overtake such other traffic unless he sees that the road ahead is clear for a sufficient distance to enable him to overtake and get back to his proper side before meeting any traffic coming from the opposite direction.
- (d) He shall not overtake other traffic when rounding a corner or where roads intersect or fork or where the road passes over the brow of a hill or over a humpbacked bridge or in any other circumstances where the driver cannot see sufficiently far ahead to overtake with safety.
- (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 other traffic on the road and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto.

⁴ Cap. 230 of the Subsidiary Laws of Belize, Rev. Ed. 2020 (the "Regulations").

- (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 into the shared center lane on highways and roadways, which are lanes reserved for making left turns (or U turns when they are permitted), but can be used by vehicles traveling in both directions. On the pavement left turn arrows for traffic in one direction, alternate with left turn arrows for traffic coming from the other direction, unless otherwise directed by a police constable on duty.

115. 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.

[...]

121.-(1) The driver of a motor vehicle shall when approaching turnings and cross roads or coming from any private road or place to any public road, slow down and make the appropriate traffic signal.

(2) He shall when turning across traffic or turning to the left, slow down and make the appropriate traffic signal.

(3) He shall when about to stop or slow down on any public road do so gradually and make the appropriate traffic signal.

(4) He shall when about to quit any place at which his vehicle has been stationary make the appropriate traffic signal.

[21] Pursuant to section 115 of the Regulations, both parties had the burden of ascertaining whether the road was clear in every direction. Ms. Hemmans had this burden because she had to alter her speed to overtake two vehicles. Ms. Williams had this burden because she altered her direction.

[22] I find that Ms. Williams breached section 115 of the Regulations and was negligent in failing to ascertain that the road was clear behind her before turning left towards Robinson Lane. The evidence is that Ms. Hemmans attempted to overtake two vehicles. She successfully overtook the white vehicle before continuing to overtake the blue van. She had almost overtaken the blue van when the collision occurred. The pictures show that the point of impact was near the front wheel on the driver side of the blue van, suggesting that Ms. Hemmans had almost reached the front of the blue

van. Based on the point of impact, I find that Ms. Hemmans was likely in Ms. Williams' blind spot when the collision occurred. Overtaking the white vehicle in a motorcycle would have taken Ms. Hemmans more than a few seconds. Since she was originally driving behind the white vehicle and was presumably going at the same speed, Ms. Hemmans had to accelerate when she engaged in her overtaking of the white vehicle, and then overtake the white vehicle. Having thus accelerated, she was going faster when engaging in the overtaking of the blue van. Ms. Williams had a few seconds to see Ms. Hemmans accelerating in the left lane and overtaking the white vehicle. Had Ms. Williams actually ascertained whether the road behind her was clear right before engaging in a left turn towards Robinson Lane, she would have seen Ms. Hemmans.

[23] Ms. Williams also breached section 114(3) of the Regulations since, having failed to ascertain whether the road behind her was clear, she obstructed traffic by turning left towards Robinson Lane while Ms. Hemmans was overtaking the two vehicles in the left lane.

[24] As noted above, I find that Ms. Hemmans also breached the Regulations. Ms. Hemmans breached section 114(2)(d) of the Regulations by overtaking traffic where Fabers Road intersects with Robinson Lane. This matter illustrates well the *raison d'être* of this rule; while the road ahead may be clear, an intersection creates a risk that the vehicle being overtaken suddenly turns left or right towards the intersecting road without seeing the overtaking vehicle. While this did not relieve Ms. Williams of her duty to ascertain whether the road was clear in all directions, I find that Ms. Hemmans' action in overtaking two vehicles where Fabers Road intersects with Robinson Lane was unsafe, and created the condition for the collision. This is especially so since the yellow line on the road, as well as Ms. Hemmans' general familiarity with Fabers Road, should have alerted Ms. Hemmans of the danger ahead.

[25] In submissions, Ms. Hemmans' attorney argues that Ms. Williams cannot rely on section 114(2)(d) of the Regulations because it had not been specifically pleaded by Ms. Williams. I disagree. Ms. Williams has pleaded and consistently maintained that Ms. Hemmans failed to drive with due care and attention. While Ms. Williams did not

specifically invoke any section of the Regulations, I find that the allegation that Ms. Hemmans failed to drive with due care and attention encompasses any breach of the rules of the road as codified in the Regulations. It has been clear from the outset of this matter that the accident occurred at the intersection of Fabers Road and Robinson Lane. Ms. Hemmans could not have been taken by surprise by Ms. Williams' reliance on section 114(2)(d). I also note that Ms. Hemmans herself did not plead any specific sections of the Regulations in her statement of claim or in reply. Accepting her contention would mean that she, too, would not be able to rely on any breach of the Regulations to support her contentions.

[26] I did not give any weight to a report of the Belize Police Department dated 4th May 2022 in which it is stated that the "Police Investigation revealed that Misty Williams is at fault". I did not give any weight to this report because it was made 10 months after the accident; does not provide any details as to the investigation process and how the Police came to their conclusion; and the author of the report was not called as a witness in this matter.

[27] I find that Ms. Williams and Ms. Hemmans were equally negligent as they both breached the rules of the road as codified in the Regulations and, by doing so, failed to discharge their duty of care towards the other. The damage they both allege to have sustained was caused as much by their own negligence as by that of the other party. As a result, both the claim and the counterclaim are dismissed.

IT IS HEREBY ORDERED THAT

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

Geneviève Chabot
High Court Judge