

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV56 of 2023

BETWEEN:

[1] FRANCISCA SANCHEZ aka YOLANDA SANCHEZ

(Administratrix of the Estate of Policarpo Francisco Mario Sanchez)

Claimant

and

[1] JASMINE GILBERT TILLET

[2] CARIBBEAN TIRE WHOLESAL LIMITED T/A CARIBBEAN TIRE

Defendants

Appearances:

Mr. N.V. Dujon SC for the Claimant

Mr. Estevan Perera instructed by Ms. Chelsea D. Sebastian

2023: December 18;

2024: May 27.

JUDGMENT

Trial – Fatal Accident – Dependency Claim – Estate Claim – Negligence – Res ipsa loquitor – Burden of Proof – Evidence – Contribution – Motor Vehicles and Road Traffic Act – Loss of Expectation of Life – Damages – Special Damages – Funeral Expenses.

[1] **ALEXANDER, J.:** This matter involves a fatal accident that occurred on 5th February 2022 on the Thomas Ramos Highway in front of Beef Masters. The claimant is the mother and administrator of the estate of Policarpio Francisco Mario Sanchez (“the deceased”). She is 71 years old. She brought the claim to recover damages for the deceased’s estate and for dependency.

- [2] The claim alleges that the first defendant was negligent in his driving, and this led to a violent collision with the vehicle being driven by the deceased, causing the death of the deceased. The first defendant was the servant or agent of the second defendant. The trial was heavily contested, with the defendants denying culpability for the accident and calling quasi-technical evidence to prove their case. The evidence, therefore, was critical to the resolution of this case.
- [3] I find that on a balance of probabilities that the defendants are liable for the collision that led to the deceased's death. Based on the evidence provided, I make the orders on damages set out below and award costs to the claimant.

Background

- [4] Parties and their witnesses presented significantly different accounts of the collision. The deceased is not here to give his version so must speak through the witnesses. The factual accuracy of the differing accounts was tested under cross-examination, which aided in determining the outcome of the matter. It is common ground that the Highway in either direction from Beef Masters is straight, so the head-on collision happened along a straight stretch of Highway. The distance to the Sittee Rover junction from which the deceased was coming was about a quarter mile away from Beef Masters.

The Amended Claim

- [5] On 8th March 2023, the claimant filed an amended claim and statement of claim ("the claim"). The claim is both a dependency claim under sections 9 & 10 of the Torts Act Chapter 172 R.E. 2011 and for the benefit of the deceased's estate under The Administration of Estates Act Chapter 197 R.E. 2000. The claim seeks:
- a) Damages for the said estate.
 - b) Damages for the said dependant.
 - c) Funeral expenses.
 - d) Interest and costs

[6] The accident occurred in the early hours of the morning of 5th February 2022. The deceased died on the same day of the accident at the age of 30 years. At the material time, the deceased was the driver of a Honda Pilot SUV with licence plate TOL-C-6400 (“the SUV”). The SUV was travelling on the Thomas Vincent Ramos Highway (“the Southern Highway”) going from Independence Village towards Hummingbird Highway. The first defendant was driving a Towhead truck with licence plate No. CYA-48030 (“the Towhead truck”), in the opposite direction along the said Southern Highway. The Towhead truck was carrying gas and at the material time the tanker was full. In the vicinity of mile 11.5, the two vehicles collided. After the collision, the Towhead truck came to a stop many feet off the left side of the Southern Highway, facing south. The claimant claimed negligence due to excessive speed, driving on the wrong side of the Southern Highway, failing to keep a proper look out for other traffic, particularly oncoming traffic, failing to keep proper control of the Towhead truck and failing to stop, slow down, swerve or manage or control the Towhead truck to avoid the collision. The collision occurred on the deceased side of the road and the Towhead truck came to a stop on that side of the road. The claimant relied on the doctrine of *res ipsa loquitur*.

Defence and Counterclaim

[7] The defendants filed a defence and counterclaim on 20th March 2023 denying the claim. They claimed that the deceased was negligent as he drove in the first defendant’s lane, drove at a fast speed, drove an unlicensed SUV, and drove in a dangerous and reckless manner. The deceased then swung back onto his own lane, as the first defendant also simultaneously moved across to the deceased’s lane hence the collision. The defendants claimed that the collision was caused solely by the deceased’s negligence and/or reckless driving.

[8] By their counterclaim, they sought the following reliefs:

- a) Damages in the amount of \$52,000.00 BZE for negligence in causing damages to the 2nd Defendant’s white Towhead bearing license plate number CYA-4830 which occurred when the Deceased Driver negligently drove his Honda Pilot SUV bearing license plate number TOL-C-6400 on the Thomas Vincent Ramos Highway (Southern Highway) and caused a collision into the 2nd Defendant’s vehicle resulting into it being damaged;

- b) A declaration that the accident was wholly caused by the negligence of the Deceased Driver;
- c) Interest at the rate of 6% pursuant to section 175 and 176 of the Senior Courts Act of the Laws of Belize; and Costs.

Issues

[9] The issues, as the court finds them, are:

- a) Whether the accident was caused by the negligence of the first defendant or the deceased?
- b) What is the quantum of damages payable by the responsible party?

The Evidence

[10] Both sides have taken entrenched opposite positions on what happened on the morning of the accident. There was no expert evidence called to assist me in resolving the issues in this matter. It is no surprise, therefore, that each side maintained in their evidence that fault for the accident lay with the other side. I will briefly summarize the evidence of witnesses immediately below and, where necessary, delve more deeply into it during the analysis of the law and evidence. The witnesses were:

For the claimant:

- 1) Francisca Sanchez aka Yolanda Sanchez – the claimant.
- 2) Elsworth Lamb – the passenger.
- 3) Erwin Choc – Crime Scene Technician.

For the defendants

- 1) Jasmine Tillett – the first defendant.
- 2) Chad Dietrich – the General Manager of the second defendant.
- 3) Giovanni Ponce – a police officer and passenger of the first defendant.

Claimant's evidence

Francisca Sanchez aka Yolanda Sanchez

- [11] The claimant obtained Letters of Administration from the High Court of Belize in the estate of the deceased on 25th January 2023 and filed her claim on 26th January 2023. She conceded that she was not present at the time of the accident. She relied on the doctrine of *res ipsa loquitur*. Understandably, she could not speak to what occurred in the accident, as she had no sideline view of the events that transpired. In my view, her lack of knowledge on how the accident occurred does not translate into a lack of veracity or a disconnect on which her case must fail.

Elsworth Lamb

- [12] Mr. Lamb was a passenger in the SUV being driven by the deceased. Mr. Lamb stated that the SUV was travelling along the Highway on the right side going north when, as it neared Beef Masters entrance, he “suddenly, saw a truck which had been coming from the opposite direction come across the SUV’s lane.” He just had time to cover his face with his hands for a split second, as the Towhead truck made impact with the SUV. Mr. Lamb stated that throughout the journey, he and the deceased were talking. During cross-examination, he stated that he saw “everything” that happened during the accident.

Erwin Choc

- [13] Mr. Choc stated that he has been a Crime Scene Technician for 19 years and is attached to the Scene of Crime Unit of the National Forensic Science Services Department. He has been called out to the scene of numerous road traffic accidents to take photographs and help generally in the protection of the scene. In the present proceedings, Mr. Choc was not called as an expert witness so could not give opinion evidence. Mr. Choc was also not at the scene of the accident when it occurred. He visited the scene after the accident and provided 19 photographs taken of the scene.
- [14] It is his evidence that he used his Nikon D610 digital camera with a 35mm lens, which were in perfect working condition, to take the photographs. His 19 photographs reflect a true and accurate depiction of the accident scene that morning. Later at his office, he

used the office's Dell desktop computer and then the office HP Officejet Pro 7740 printer, both of which were in perfect working condition, to upload and print the said photographs. The photographs were taken when facing south. His photographs show debris on the left side of the Highway as well as tyre marks going from the right side of the said Highway across the yellow dividing line onto the left lane and continuing to the Towhead truck positioned on the left side of the Highway.

Defendants' evidence

Jasmine Tillett

- [15] The first defendant was the driver of the Towhead truck. He denied that he was negligent or had caused the accident. He stated that around 6:30am on the morning of 5th February 2022, he was driving at approximately 48 mph along the Southern Highway from Dangriga towards Independence Village when the deceased, who was coming in the opposite direction, suddenly swerved to the left and drove into his lane of oncoming traffic, and towards the Towhead truck that the first defendant was driving at the time. To avoid a head on collision, he stated "I quickly applied my breaks to slow down and swerved left away from" the deceased's SUV. The deceased then swerved back into his proper lane, causing a collision with the front end of the Towhead truck. The first defendant stated that it was impossible for him to bring the Towhead truck with the gas tanker to a complete stop when he saw the SUV coming towards him in the wrong lane. This was because of the weight of the Towhead truck with the gas tanker and the short period of time that he had. He claimed that he did everything that a reasonable driver of a Towhead truck with a gas tanker would or could have done to avoid the collision. However, the accident was caused negligently by the deceased, on the deceased's side of the road.

Chad Dietrich

- [16] Mr. Dietrich is the Corporate Sales Manager of the second defendant's company. His evidence was used to corroborate and confirm the first defendant's evidence on his speed limit of 48 mph. Mr. Dietrich was not a court appointed expert, but he provided quasi-technical evidence.

- [17] Mr. Dietrich stated that after the collision, he did an investigation. He produced a report of the accident that he tendered into evidence. The report was on the GPS system, owned and controlled by the second defendant's company, and involved checking the GPS system installed in the Towhead truck. His investigation included photographs taken by a Mr. Harold Reimer, the manager of the second defendant, which were later copied onto the computer owned by the second defendant's company. These photographs were taken "using the company phone held by Mr. Reimer" and later placed on the second defendant's computer. Mr. Dietrich did not say who downloaded the photographs onto the company's computer. Although he was the Sales Manager, it seems that he was also authorized by the second defendant to check the GPS system installed in the Towhead truck, against the recordings from the GPS system housed at the second defendant's company.
- [18] His evidence was that based on recordings from the GPS system and photographs provided to him, he did graphics of how the accident occurred and confirmed the speed limit at which the first defendant was driving. Mr. Dietrich stated confidently that, "The 1st Defendant was driving at a speed of 48 mph prior to the collision, and his last standing speed at the time of collision was less than the initial 48 mph." His evidence was linked to pings received by the GPS system. Using these pings, he confirmed that the deceased was negligent and had caused the accident.
- [19] I had some serious reservations about the evidence given by Mr. Dietrich. He was not skilled in accident reconstruction, and he was not an independent witness. There were gaps in his evidence that remained unexplained. In his witness statement, Mr. Dietrich did not say if the reduced speed recorded on the GPS was due to the first defendant pressing on the brakes or not, immediately before the collision. Secondly, during cross-examination, when asked to explain the 23 seconds *gap* in the "pings" (i.e. GPS readings) especially as the other pings were nowhere near 23 seconds, he could not provide a proper explanation. The loopholes in the ping evidence did not inspire any confidence in his evidence. In my view, Mr. Dietrich's evidence was more self-serving than useful.

Giovanni Ponce

- [20] The witness, Giovanni Ponce, was a passenger in the Towhead truck. He was a police officer. I reject upfront Mr. Perera's submission that his job as a police officer automatically qualifies him as an "independent" witness and/or, by implication, this passenger somehow is more to be believed as a credible, reliable witness than a non-police officer.
- [21] Mr. Ponce stated that he was in the Towhead truck travelling on the right side of the road headed towards Placencia. He saw a black SUV travelling in the opposite direction of the Towhead truck suddenly turn left and into the lane of the Towhead truck. The black SUV was driving at a high speed, and he pointed that out to the first defendant who began slowing down and slightly going to his right. Mr. Ponce noticed that the black SUV was also drifting further into their lane as well. The first defendant then pulled slightly to his left to avoid a head on collision, but the deceased driver also turned to his right to return to his lane, causing his vehicle to collide into the front of the truck. As a result of the impact, the Towhead truck came to a stop on the left side of the Highway.
- [22] It is his evidence further that when he got out of the Towhead truck, he saw the black SUV on the left-hand side of the road some distance from the Towhead truck. He also saw the passenger (Mr. Lamb) outside the black SUV disoriented and staggering along the road, so he assisted Mr. Lamb. Mr. Ponce stated that Mr. Lamb told him "*I tell ah we deh pan the wrong side of the road.*" This evidence was put to Mr. Lamb in cross-examination, and he disagreed that he had made the statement. Mr. Perera asked that it be tendered for the truth of it. It was.

Submissions

- [23] Counsel for both parties criticized the evidence of the witnesses for the other side. Mr. Perera described the evidence called by the claimant as unhelpful, disconnected, and characterized by bias and untruths. Mr. Perera argued also that because there was conversation taking place throughout the journey that morning, it must be that both the deceased driver and his passenger were distracted and that this contributed to the

accident. He stated it is “unbelievable” that occupants of a vehicle who were talking to each other right before a collision “would be able to fully see how the accident occurred”. Their evidence, in those circumstances, is to be viewed as unreliable.

[24] Mr. Perera also advanced what I shall call “the unwavering loyalty” argument in relation to friendship shared by occupants of vehicles. According to Mr. Perera, the fact that Mr. Lamb and the deceased were close friends should be viewed by me to mean that Mr. Lamb came with untruths to support the case brought by the mother of his deceased friend. Counsel stated it thus, “Mr. Lamb also **proved to be an unhelpful and unreliable witness** for the court as his testimony confirmed that he was close friends with the deceased driver, and that **he has an unwavering loyalty to the deceased driver and thus, the Claimant.**” [My emphasis]. Mr Perera also argued that there were certain inconsistencies in Mr. Lamb’s responses in cross-examination on the unlicensed SUV (discussed further below) that showed he was unreliable and bias. I quote Mr. Perera’s words here that “Undoubtedly, **Mr. Lamb displayed his unwavering loyalty to the deceased driver and an inability to be unbiased** in his oral testimony as it was filled with many inconsistencies and contradictions. This is first evident in the statement of Mr. Lamb when he is questioned about the (sic) whether the vehicle that the Deceased was driving was unlicensed.” [My emphasis].

[25] I assume from his submissions that Mr. Perera would like me to believe that this “unwavering loyalty argument” only applies to friendships and not to employer/employee relationships so it was inapplicable to the defendants’ witnesses. By his submissions Mr. Perera seemed, impliedly, to be inviting me to conclude that close friends who are involved in an accident would, because of their “unwavering loyalty” to each other, come with untruths to perjure themselves before the court. I do not hold the same view. Neither friendship nor a conversation between friends on a road trip would, to my mind, automatically translate into the survivor coming to court with lies because of “unwavering loyalty”. The unreliability and untruthfulness of a witness’ evidence must be tested and found to be so on inconsistencies and contradictions that are not explained. In any event, I do not accept that Mr. Lamb came purposefully to mislead the court. I will discuss in more details below the evidence of this witness.

[26] Mr. Dujon, counsel for the claimant, submitted that there was inconsistency in the evidence of Mr. Ponce and the first defendant. Mr. Dujon pointed out that according to Mr. Ponce, the first defendant/driver who was driving an 18-wheeler Towhead truck and gas tanker was able to manoeuvre right just prior to turning left, onto the deceased's side of the road and into the lane of the coming traffic and SUV. This conflicted with the evidence of the first defendant who never stated that he first manoeuvred right then left into the deceased lane and Mr. Dietrich's GPS system did not show this occurrence. This discrepancy in the evidence of the defendants' witnesses was not refuted by Mr. Perera but in fact deemed by him as evidence of Mr. Ponce's independence and truthfulness. Respectfully, I did not share this view.

[27] For completeness, I will treat here with the objection taken by Mr. Dujon to how Mr. Ponce was brought before me to give his evidence. He was a witness who was issued a witness summons to secure his attendance. Mr. Dujon took issue with the admissibility of Mr. Ponce's evidence. The summons came after the defendants had failed to file a witness statement or witness summary for his evidence. Mr. Dujon argues that CPR 29.11 does not give the court an unfettered discretion in light of the case management order that remained unvaried. He relies on **Gamatronic (UK) Ltd et al v Hamilton et al**¹ as authority for the proposition that once a CMC order is made for witness statements and there is difficulty in obtaining a witness' cooperation then a witness summary must be filed. In the instant case, a witness summary was not filed.

[28] In the present case, a witness summary would not have been helpful to secure Mr. Ponce's attendance. On an application for the attendance in court of the witness who was a police officer, and required permission to be away from his duties based on evidence, I gave an order for a witness summons to be issued. I exercised my discretion before the trial and will not set aside my order.

¹ [2016] EWHC 1455 (QB).

Analysis

Negligence

[29] Negligence is a well-traversed area of the law, so the elements are well-known. For the claimant to prove negligence, she will have to show that all the ingredients of the tort are satisfied.

[30] Liability in negligence would only be established if the following elements are shown:

- 1) A duty of care i.e. where liability is attached to carelessness.
- 2) Breach of the duty of care i.e. there was some failure to measure up to the standard set by the law.
- 3) A casual connection between the person's careless conduct and the damage.
- 4) Foreseeability i.e. the particular kind of damage to the particular injured party is not so unforeseeable as to be too remote.²

[31] A party to a claim or counterclaim who establishes as against the other party that these four requirements are satisfied would have established the other party's liability in negligence.

Duty of Care

[32] It is settled law that all drivers have the basic duty to drive with reasonable care. In the instant case, both drivers have the same duty to exercise reasonable care while driving. What is reasonable care will always depend on the specific facts and circumstances of the case. In broad, this duty of care includes a duty to not speed, not to swerve into the opposite lane, a duty to drive with due care and attention and a duty to stop, give aid and report the accident. In Belize, this duty of care is statutorily enshrined. I will set out the relevant provisions in operation at the time of the accident as set out in the Motor Vehicles and Road Traffic Act, Chapter 230, Substantive Laws of Belize, R.E. 2020 ("the MV Act"):

² Clerk and Lindsell on Torts page 431, at para. 8-04.

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 ...

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.

89.-(1) Where, owing to the presence of a vehicle on a road, an accident occurs whereby injury or damage is caused to any person, animal or property, the driver of the vehicle shall immediately stop, and—

(a) if any person has been injured in the accident, the driver shall render such person aid, and if the person wishes to be taken to a hospital or to a doctor, or is unconscious, convey or cause to be conveyed the injured person without delay to the nearest hospital or to a doctor;

(b) if requested by the injured person or by the owner of the damaged animal or property or some person on such owner's behalf, the driver shall give his name and address and particulars of his driving licence and the name and address of the owner of the vehicle; and

(c) unless a report is made by the driver at the time and place of the accident to a member of the Police Department, the person riding in, driving or in charge of the vehicle shall proceed with all proper despatch to the nearest Police station or police constable in uniform and shall report the accident, and shall give his name and address and the name and address of the owner of the vehicle and the names of any persons in the vehicle at the time of the accident.

[33] At the time of the accident, both drivers (the deceased and the first defendant) had a duty to exercise reasonable care when driving.

[34] Mr. Perera submitted that the SUV that the deceased was driving was an unlicensed vehicle. It is part of the overall duty of care of drivers to ensure that the vehicles they are driving are licensed. I will set out below the relevant statutory provision that deals with having or causing to have an unlicensed vehicle on the road. Section 11 of the MV Act provides:

11.-(1) Except as is otherwise in this Act provided, if after the commencement thereof—

(a) the owner of any motor vehicle or trailer keeps for use or allows to be kept for use such vehicle or trailer without having obtained, or otherwise fails or omits to obtain, the relevant licence prescribed in respect of that motor vehicle or trailer;

- (b) any motor vehicle or trailer is used upon any road for a purpose which is not authorised by the licence issued in respect thereof or in contravention of any provisions of this Act; or
- (c) any motor vehicle or trailer is used upon a road being loaded so as to exceed the maximum gross weight or the number of passengers respectively covered by the licence,

the owner or the driver or other person in charge of the motor vehicle, as the case may be, who contravenes any of the provisions of paragraph (a), (b) and (c), commits an offence and is liable to a fine not exceeding fifty dollars.

[35] It is the defendants' case that as the SUV was unlicensed, the deceased was in breach. During cross-examination, Mr. Lamb stated that he had borrowed the SUV for the trip. He did not check to see if the SUV was licensed but he did check that the vehicle was insured. Mr. Perera submitted that this evidence must not be accepted, as in Belize both the insurance and license stickers are displayed next to each other, on the windshield of a vehicle. If Mr. Lamb had checked the insurance, he would have been aware that the SUV was unlicensed. Mr. Perera submitted that Mr. Lamb's evidence was tailored in this regard because he knew that it would be detrimental to the claimant's case to admit that the SUV was unlicensed. It should be negatively inferred that the Mr. Lamb was dishonest and incapable of being an unbiased witness for the court.

[36] The law requires both the owner and driver of a vehicle to comply with the provision to ensure that the vehicle being driven on the roadways is licensed and insured and provides that it is an offence if they fail to do so. The same responsibility is placed on a "person in charge of the motor vehicle" to ensure that the vehicle is licensed. A person in charge of the motor vehicle is not defined. I assume that if a driver is driving under someone's instructions, the person giving the instructions may be considered a person in charge of the motor vehicle. Section 11 (1) spells out that ensuring that a vehicle is licensed involves ensuring that it is the relevant licence that is prescribed for the particular vehicle; and ensuring that it is used in accordance with the authorise purpose under the licence and that when in use on the road, its load does not exceed its maximum gross weight or the number of passengers allowed by the licence. Section 11 (1) does not require a passenger of an unlicensed vehicle, to comply with its provision unless there is evidence to show that he was "the person in charge of the motor vehicle". There is no such evidence before me and, in any event, there was no claim against Mr. Lamb in this matter.

I agree with Mr. Perera though that on a balance of probability Mr. Lamb would have realized, when he checked for the insurance on the windshield, that the vehicle was unlicensed.

[37] Regarding the deceased, I have no evidence before me that he had knowledge of the unlicensed status of the SUV. The SUV was borrowed by the passenger, Mr. Lamb. Still, this does not absolve the deceased from the requirement of ensuring that he was driving a licensed vehicle. I, therefore, find that the deceased driver had the duty to take reasonable care to ensure that the SUV was licensed. He failed to do so, resulting in an unlicensed vehicle being on the road.

Breach of the duty of care

[38] I have already found that the deceased breached his duty to exercise reasonable care to ensure that the SUV was licensed. Mr. Perera submitted that apart from driving an unlicensed vehicle, the deceased drove on the wrong side of the road, was speeding, swerved in and out of the first defendant's lane and drove in a reckless and dangerous manner. The evidence does not support these allegations. Mr. Perera submitted, however, that the defendants' witnesses "who witnessed the accident" have given evidence to support this position. I noted that in his bid to pin liability for the accident solely on the deceased driver, Mr. Perera did not reference the evidence of the defendants' witnesses involved in the reconstruction of the accident scene. He referred simply to those witnesses "who witnessed the accident" which could not possibly include the manager/photographer employed by the second defendant and Mr. Dietrich. They were not present at the time of the accident. As stated above, I had concerns with Mr. Dietrich evidence and the manager/photographer was not called to give evidence. To resolve the cause of the accident or who was liable for it, I will look at the evidence in some more details.

Inconsistencies in evidence

[39] Mr. Ponce's inconsistency was pointed out by Mr. Dujon in his submissions. In response, Mr. Perera submitted, impliedly accepting the inconsistency in Mr. Ponce's recollection with that of the first defendant, that I must accept Mr. Ponce's evidence that the first defendant, immediately before the impact, turned the Towhead truck to his right slightly before manoeuvring it left, onto the wrong side of the road i.e. the deceased's side. Instead of calling Mr. Ponce's statement "an inconsistent statement", Mr. Perera calls it a "difference" that shows Mr. Ponce's evidence is independent, reliable, and unbiased. Mr. Perera then points out that the evidence of both witnesses (Mr. Ponce and the first defendant) is consistent as to the fact that the first defendant "ultimately turned to the left to prevent a head on collision. That fact remains consistent." The use of the softer word "difference" instead of "inconsistency" does not change the fact that it was relevant, and it was helpful evidence. Mr. Perera's attempt to refocus me on the second piece of the evidence that was consistent, rather than the inconsistency between his two witnesses, did not whittle down the relevance of the evidence. In my view, the evidence showed that the first defendant crossed over to the deceased's side of the road, where the collision occurred. This was incontrovertible and consistent evidence.

[40] I noted also that Mr. Perera who had made heavy weather of the claimant's evidence being biased did not decry the evidence of employees of the second defendant as being tainted. Instead, he asked me to consider the defendants' witnesses as reliable, honest, and trustworthy. I assume, I was to ignore inconsistencies in the evidence of one party but not in the evidence of the other side. In my determination, all inconsistencies in the evidence were considered to arrive at my finding.

Photographs

[41] Photographs were taken after the collision by the second defendant's manager Mr. Reimer and used as part of Mr. Dietrich's report. Mr. Choc, a witness for the claimant, also took photographs of the accident scene. Neither Mr. Reimer nor Mr. Choc was called as independent expert witnesses. Mr. Perera advanced that Mr. Choc's evidence was

useless because he was not called as an expert witness and could not give his opinion or any explanation or details that aided in determining liability. No similar argument was advanced about the photographs of Mr. Reimer used as part of the report produced by Mr. Dietrich. I refused to accede to the submission of Mr. Perera to disregard the claimant's evidence in its entirety and to prefer the defendants' evidence, in pinning liability on the deceased driver. On the evidence before me including the photographs, the accident occurred on the deceased's side of the roadway. That much is clear and neither counsel deemed it fit to call experts to assist me to justly resolve the issue of liability.

Other Considerations

[42] I considered my finding that the deceased was in breach of his duty to drive the unlicensed SUV. However, driving an unlicensed SUV is not equated with liability for the accident or evidence that the deceased caused the accident. I did not accept the argument that the only independent witness was Mr. Ponce because he was a policeman who happened to be a passenger. His evidence was inconsistent, and I did not accept his statement that Mr. Lamb admitted liability to him, by telling him the deceased was on the wrong side of the road. To me, Mr. Ponce came with a rehearsed story to pin liability on the deceased. I find the evidence called by the defendants to be self-serving and refused to accede to their counsel's call to trust in the reliability of the defendants' witnesses. The instant case is one where parties are unable to precisely prove the cause of the accident. Without an independent report and/or expert opinion, to aid with liability, I turn to discuss the burden of proof.

Burden of proof & res ipsa loquitur doctrines

[43] The burden of proof, in civil cases, lies with the claimant. In **Reid (Roy) v Forest Industries Development Co. Ltd.**,³ the court confirmed that the burden of proof lies with the claimant:

³ Civ. App. No. 57 of 1996.

The burden of proof in a claim of negligence, in a civil case, generally is on the plaintiff, to prove, on a balance of probabilities, the breach of a duty of care, on the part of the defendant. **The plaintiff discharges that burden by adducing sufficient evidence to establish that breach of duty, or inferentially or by relying on the doctrine of *res ipsa loquitur*.**

The *res ipsa* doctrine is in essence a rule of evidence governing the onus of proof, in circumstances where a plaintiff, unable to prove precisely the cause of an accident leads evidence of the happening of an event, involving, for example, an object or machine in the control or management of the defendant and which event, in the ordinary course of things is not expected to happen. An inference then arises that the occurrence was probably caused by a lack of care on the part of the defendant. An evidential burden then lies on the defendant to disprove that the said accident occurred by his fault or to prove that he took reasonably adequate steps to avoid such an occurrence. In the absence of such proof by the defendant, the plaintiff is entitled to succeed.

- [44] Both sides referred to and relied on photographs of the accident scene after collision. The photographic evidence called by the claimant showed that the Towhead truck was on the deceased's side of the road after the collision. Mr. Perera submitted that *res ipsa loquitur* does not apply in the instant claim as the claimant has provided insufficient evidence of any negligence. Counsel argued further that it is settled law that the *res ipsa loquitur* doctrine is only applicable where the cause of the accident is not known. I understand his submissions on this point to mean that the cause of the accident is known, and I am to accept as proof that the defendants' account of the accident is the true account of the accident. The deceased driver is to be blamed for the accident. He relies on Charlesworth & Percy on Negligence at paragraph 5-99:

Cause must be unknown, the rule of evidence (*res ipsa loquitur*) has never been thought to apply where the cause of an accident is known. If "the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established, negligence is to be inferred or not."

- [45] I disagree with Mr. Perera's argument that in the instant case, the facts of the collision are sufficiently known. I also did not accept that the deceased's negligence can be inferred from the facts. I did not find as unreliable or bias the evidence of Mr. Lamb that he had one second to see the Towhead truck before he covered his face. I did not accept the submission that this meant that he did not see the accident or was bias. In fact, having heard and seen the witnesses of both parties, I found Mr. Lamb to be a simple, straightforward and believable witness. Further, although I was asked to disregard Mr.

Choc's evidence on the basis that he was not an expert, I noted that the photographs spoke for themselves. Unfortunately, Mr. Choc was not called as an expert and his evidence was not so used. I also did not find as more credible, independent or unimpeachable the evidence of the defendants' witnesses (a police officer passenger and a sales manager from the second defendant's company). I was not satisfied that the defendants' evidence must be taken as providing proof of the cause of the accident so the claim must be dismissed, and the counterclaim succeed.

[46] I have considered all the evidence before me. I find that the exact cause of the accident is unknown on the conflicting evidence produced. I reject the defendants' evidence, as self-serving and devoid of independence. In my judgment, the facts speak for themselves. The first defendant admitted that he had swerved onto the deceased's lane. The Towhead ended up on the left side of the Highway or on the deceased's lane. I find, therefore, that on a balance of probabilities that the first defendant swerved onto the deceased's lane and negligently caused the accident. I find that the *res ipsa loquitur* rule is applicable to the present facts, and it was applied.

Contribution

[47] I have considered carefully whether any degree of contribution ought to attach to the deceased. While I find that the deceased did not exercise reasonable care to ensure that the SUV was licensed before taking it to the roadways of Belize, there is no evidence that this contributed in any way to the accident. I will make no order as to contribution. The counterclaim is dismissed.

Damages

[48] At this stage of the proceedings, I am to determine the quantum of damages. At the assessment, the claimant advanced the dependency claim only and not the estate claim. The defendants deny the entitlement of the claimant to any damages and suggested nominal damages, if their position was not agreeable to the court.

[49] The assessment of the dependency claim falls under the Torts Act. The claimant as the mother of the deceased is a statutorily defined dependant and is the sole dependant as the deceased had no children. Her claim as the dependant is predicated on a loss of benefit, which as a dependant she would have had a reasonable expectation of continuing to receive had the deceased lived. The measure of damages, therefore, is to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value, subject to the element of reasonable future probabilities. In **Davies v Powell Associated Collieries Ltd**,⁴ Lord Wright stated at page 617 that, “there is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities.”

[50] The claimant bears the burden of proving her case for damages. McGregor on Damages at paragraphs 8-001 – 8-002:

A claimant claiming damages must prove his case. To justify an award of substantial damages **he must satisfy the court both as to the fact of damage and as to its amount**. If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages. ...

As Vaughan Williams L.J. put it in *Chaplin v Hicks*, the leading case on the issue of certainty: “The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages.” Indeed if absolute certainty were required as to the precise amount of loss that the claimant had suffered, no damages would be recovered at all in the great number of cases. ... Of course, as Devlin J. said in *Biggin v Permanite*: “Where precise evidence is obtainable, the court naturally expects to have it, [but] where it is not, the court must do the best it can.” ... **it remains true to say that “difficulty of proof does not dispense with the necessity of proof”**, ... the standard of proof only demands evidence from which the existence of damage can be reasonably inferred and which provides adequate data for calculating its amount. [My emphasis].

[51] Regarding proof of damage, Bowen LJ in **Ratcliffe v Evans** puts it best and I quote:

⁴ [1942] AC 601.

As much certainty and particularity must be insisted on, both in pleading and proof of damage, **as is reasonable**, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. **To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.** [My emphasis].

Special Damages

[52] The claimant claimed funeral expenses of BZ\$14,954. She stated in her witness statement that she borrowed the monies to bury the deceased. Mr. Perera submitted that the claimant's name was not on the receipts. She cannot make a claim for monies that she or the estate did not spend. The receipts have the name of the deceased on them and show that they were in connection with his funeral. I have considered the jurisprudence especially the cases that invite courts to examine all the circumstances and avoid the pedantry that goes with insistence on certain proof. I exercise my discretion in the circumstances of this case and allow special damages of BZ\$14,954.

General Damages

Loss of expectation of life

[53] I award the sum of BZ\$20,500 for loss of expectation of life: see **Edgar Arana v Adelardo Jose Mai**.⁵ It is a conventional sum, that though nominal, recognizes the value of human life.

Dependency

[54] Mr. Dujon submitted only on the dependency claim. Loss of dependency is based on pecuniary loss that is proven to have been incurred upon the demise of the deceased. It requires proof of pecuniary loss to the dependant, the household and/or of any loss of gratuitous services done by the deceased such as domestic work. The award is based on an estimate of the period of dependency that is a determination of how long the

⁵ Claim No. 322 of 2017; see also Herlinda Diego et al v Jerry O'Hara David Claim No. 797 of 2018.

dependant would have continued to benefit and in what amounts. Basically, it is a loss that is calculated on the multiplier/multiplicand basis.

[55] In disposing of this claim, I considered the claimant's evidence that the deceased lived at home with her and gave her BZ\$200 every two weeks from his salary for her use. She averred that upon the deceased's demise, she lost this financial support. She provided evidence that the deceased was employed as a first-class mason by the Government of Belize and received a basic salary every two weeks of BZ\$519.63. I considered also that the deceased died at the age of 30. There is no evidence of any other dependants. There is no evidence of any other pecuniary contribution to the household or of any gratuitous domestic services provided by the deceased for which a loss was suffered upon his demise. The claimant's evidence was that he lived "a happy and vigorous life" and was in good health. I have no evidence that contradicts this. It is presumed that as a young man, he would have retained a significant portion of his earnings for himself and his personal expenses. Mr. Dujon submitted that a heavily reduced multiplicand of BZ\$5,200 per annum be used and I consider it reasonable.

[56] Regarding the multiplier, there are certain elements⁶ that should inform an assessment of loss for the future. These would include among other things the likelihood of the person who is providing the support continuing to exist; the likelihood of the dependant being alive to benefit from the support; the impact of changes, whether negative or positive, on the providing capacity of the deceased and the possibility of the dependant's needs being altered by the changes and chances of life. A critical element is the actuarial discount to be applied for immediate receipt of the compensatory damages. In the present case, the age of the dependant was a relevant consideration and her likely changing needs. Considered also was the evidence of the deceased good health, age of 30 years, steady employment, which would all likely have allowed for the continuance of the expected support to the claimant.

⁶ Corbett v Barking Havering et al [1991] 2 QB 408.

[57] In **Rita Griffith v Alberto Efrain Chan**⁷ where a multiplier of 6 was used for a deceased father of 45 who left six children of various ages between two and sixteen, it was stated that:

In assessing the value of the dependency, the courts in the UK have tended, in the absence of evidence to the contrary, to express the annual dependency as a percentage of the deceased's earnings. Thus, in the case of the death of a husband where there are no children, the widow's dependency is 66.6% of his earnings. Where there are children, the widow and children's dependency would be 75% of his earnings.

[58] I did consider Mr. Perera's submission that no award should be made under this head, as the claimant did not sufficiently prove her case for damages for loss of dependency. Accordingly, Mr. Perera stated that there is no evidence of the deceased's expenses, or of his contribution and other possible incomes of the claimant from her other children and she was not listed as a separate claimant in the proceedings. Although the evidence was not provided in a detailed or exhaustive manner, and she was not named as a separate claimant, the claimant did provide evidence of the deceased's net earnings and pay slips. I considered whether the deficiencies were sufficient to refuse the dependency award. In deciding to make the award, I noted section 11 of the Torts Act that entitles the administrator to bring the action. The claimant has pleaded the dependency, claimed it as part of her prayer for relief and provided evidence to support the case she has advanced. This was not a case without any evidence or where the pleading was absent. I, therefore, accepted the amount put forward as the deceased's salary, which was supported by documentary evidence, and the evidence of the financial sums given to the claimant with whom the deceased had lived. In light of the overriding objective of the CPR, I will not allow the thin evidence to negate the award and so create an unjust outcome for the claimant. I am satisfied that she has made out her case for a dependency award.

[59] Mr. Dujon submitted that a multiplier of 3 be used. He provided no authority for the selection of this multiplier but there was no objection taken to it by the other side. He suggested that a multiplicand of BZ\$5,200 per annum be used and that the award be

⁷ Claim No. 614 of 2008.

made in the sum of BZ\$15,600. It is a more than reasonable sum and I will make the award as prayed.

Disposition

[60] It is ordered that:

- a. Judgment is granted to the claimant against the defendants.
- b. Loss of expectation of life is awarded in the sum of \$20,500.
- c. Special damages are awarded in the sum of BZ\$14,954 with interest at the rate of 3% per annum from the 5th February 2022 to 27th May 2024 and 6% from judgment until payment.
- d. Loss of dependency is awarded in the sum of BZ\$15,600.
- e. The counterclaim is dismissed with no order as to costs.
- f. Costs are awarded to the claimant on her claim on the prescribed basis.

Martha Alexander
High Court Judge