

**IN THE SUPREME COURT OF BELIZE, A.D. 2011**

**CLAIM NO. 244 OF 2011**

**BETWEEN:**

**JOSE LUIS CARRILLO**

**Claimant**

**AND**

**ERNESTO CASTILLO  
D & E BUS COMPANY**

**Defendants**

**December 12 and 21, 2011.**

**Appearances:** Ms. Darlene Vernon for the Claimant.  
Mrs. Liesje Barrow-Chung for the Defendants.

**BEFORE THE HON. CHIEF JUSTICE KENNETH BENJAMIN.**

**JUDGMENT**

[1] In April 2010, the D & E Bus Company operated a bus service between Benque Viejo and Belize City. The Company is owned by the parents of Ernesto Castillo, who is also a driver employed by the Company. This action has been brought on behalf of Luisa Carrillo by her father, Jose Luis Carrillo, on his own behalf, as well as on behalf of her estate, for damages arising from the death of the said Luisa Carrillo, while she was a passenger on the Company's bus which was being driven by Ernesto Castillo.

[2] There is agreement by the parties that at all material times the said Ernesto Castillo was the servant and/or agent of the second-named Defendant, D & E Bus Company.

[3] The circumstances surrounding the incident are as unusual as they are tragic. The Company's bus registration number BVO 00324 departed from Belize City on the afternoon of Monday, April 12, 2010 on its return trip to Benque Viejo. The bus was being driven by Ernesto Castillo. At the Three Flags Supermarket, the bus was boarded by the deceased Luisa Carrillo and a witness, Jason Rosado. Between San Ignacio and San Jose Succotz Village, the driver and passengers of the bus were held up by two persons who were already on board the bus. One of the robbers had a firearm and the other held a hand grenade. They proceeded to rob the passengers of their belongings.

#### THE CLAIMANT'S CASE

[4] The Amended Statement of Claim pleaded that while the bus was heading towards San Jose Succotz Village, Ernesto Castillo so negligently drove, managed and controlled the bus that he caused the deceased to be flung towards the rear of the bus causing her to fall from the bus, which fall resulted in her death. The negligence of Ernesto Castillo was particularized as follows: (1) he did not drive within the speed limit; (2) he did not have any or any sufficient regard for the safety of the passengers of the bus; (3) he did not slow down the bus on reaching bumps on the road; (4) he did not stop when he became aware that the deceased had fallen from the bus; and (5) he did not ensure that the doors of the bus were properly locked. It was further pleaded that the deceased's death occurred as a result of the Company failing to discharge its duty of care for the safety of the passengers while on the bus by failing to ensure that the doors of the bus were properly maintained and were capable of being properly locked.

[5] It is on the basis of the allegations of negligence on the part of Ernesto Castillo as the driver of the bus and on the part of the Company as the owner of the bus that the Claimant sought damages arising from the injuries to and the death of the deceased. At the case management conference, the parties agreed that the trial

be conducted solely for the purpose of ascertaining liability. Hence, this judgment is strictly concerned with whether the defendants are liable for the death of Luisa Carrillo.

[6] The Claimant's case was presented through the testimony of three witnesses. The Claimant gave unchallenged evidence as to the deceased being his daughter, who died at the Belize Health Care Hospital on April 20, 2010. She was then a student aged 18 years. It was stated that the Claim was being brought by the Claimant on his own behalf and on behalf of the estate of the deceased to recover damages for loss suffered and expenses incurred.

[7] The testimony of Jason Rosado in support of the Claimant's case detailed this witness' recollection of the events on the fateful evening. Jason Rosado attended the same school as the deceased, the Sacred Heart High School. They both boarded the bus at Three Flags Supermarket at San Ignacio on the Western Highway at about 6:30 p.m. He recalled that the deceased sat in about the 3<sup>rd</sup> row of seats from the front of the bus, while he sat in about fourth row of seats from where she sat. He recounted that after a passenger disembarked from the bus at Calla Creek, two male individuals who were on the bus went to the front of the bus and told the passengers that they were holding up the bus. The men demanded that the passengers give up their belongings. The driver was instructed to turn off the lights in the bus. One of the men, who was armed with a hand grenade, was positioned at the front of the bus next to the driver; meanwhile the other man, who was armed with a hand gun, proceeded to relieve the passengers of their money and other belongings.

[8] When the bus reached in the vicinity of Nabitunich Village, a resort which Rosado said is located about three miles from the Benque Police Station, the bandit at the front of the bus demanded that the driver open the door of the bus. Upon the door being opened, a quick-witted passenger moved swiftly from his seat about two rows behind the driver and kicked the bandit through the door. The same passenger then went towards the back of the bus and held the bandit with the hand gun around his neck. The conductor came to his aid as did about four other passengers. As the

struggle with the second armed bandit ensued, passengers began to shout words of encouragement to the persons who apprehended the bandit.

[9] The witness, Rosado, could not say how fast the bus was travelling during the struggle but he offered that it was going 'kinda fast' while he was concentrating on watching the fight taking place about five rows of seats behind him, or three-quarters of the length of the bus from the front. The struggle moved towards the front of the bus and the participants fell down near to where the deceased was sitting. In Rosado's words 'I know for a fact they fell over her.' In his statement he wrote:

"While the fight was going on, and the robber was moved to the front of the bus, they fell beside and at one stage almost on top of Luisa Carrillo who became frightened and started moving to the rear of the bus where most of the passengers were heading as the fight moved from the back of the bus to the front."

However, when cross-examined, Rosado altered his testimony by saying: 'I did not see when she moved' and 'I did not see how Luisa moved from the front to the back door.'

[10] The bandit was subdued and relieved of the firearm. He was injured in the struggle and lay bleeding on the floor of the bus. Rosado stated that, with the bandit on the ground, the bus began to go faster. At the entrance to San Jose Succotz, the bus did not stop although passengers at the back of the bus were shouting to the driver to stop to allow them to get off the bus. Rosado said in his statement that he noticed at that point in time that the back door of the bus was already open. The bus then approaching the entrance to San Jose Succotz. At trial he stated that he did not see who opened the back door but when he saw it open he saw a lot of people by that door.

[11] Rosado stated that there was a lot of shouting by the passengers to stop the bus and to beat the bandit. He observed a struggle at the back of the bus where people were trying to get out of the bus. The back door was then already open.

There was a lot of pushing and struggling while the bus was travelling fast. Rosado admitted that he did not see how the deceased ended up out of the bus.

[12] Rosado told the Court that the bus passed the Police Station at Succotz and proceeded to the Benque Viejo Police Station about one and a half miles onward where it stopped. The manner in which the bus was driven was described by this witness. In his witness statement he said that the bus was travelling fast and flew over the speed bump. At that time, the back door was already open. The witness said that while the passengers were pushing and struggling at the back of the bus, the bus was going fast for the whole time.

[13] The third witness presented on behalf of the Claimant was Amir Cocom who was standing by a supermarket. He observed the bus speeding towards the entrance to San Jose Succotz. He also heard loud noise and shouting coming from the bus. However, he admitted not being able to see what was going on inside the bus. He observed the back door of the bus was open as the bus negotiated a curve in the road. His description of what he saw was clear and graphic. He said in his witness statement: 'As the speeding bus flew past the speed bump, a young lady I later found out to be Luisa Carrillo fell through the back door of the bus.' He further clarified at trial that he was able to observe her fall back-first from the back door of the bus. He demonstrated his vantage point as being at a distance of approximately 25 feet from where he observed the deceased falling out of the bus.

### THE DEFENDANTS' CASE

[14] The Defence admitted that the Company's bus was travelling on the Western Highway from San Ignacio going towards San Jose Succotz Village at about 7:30 p.m. on April 12, 2010.

[15] The Defendants averred that the death of the deceased was as a result of her own negligence in that she opened and jumped out of the rear door of the bus while it was in motion. They also denied that they had failed to maintain and properly lock the doors of the bus for the safety of the passengers.

[16] The sole witness for the Defendants was the first-named Defendant. He was the driver of the bus that left Belize City with approximately 58 passengers on board. The bus stopped at Clarissa Falls along the Western Highway at about 7:00 p.m. to allow passengers to disembark. Proceeding from there on the way to Benque Viejo, Castillo turned off the lights inside the bus. He looked in his rear view mirror and saw two men walking towards the front of the bus declaring in Spanish that it was a robbery ('un asalto'). One man had a hand grenade and the other held a firearm which he put to Castillo's head telling him to continue driving. That robber took the purse with the fares from the conductor and then began collecting items from the passengers. The man with the grenade stood at the front of the bus threatening to detonate the grenade if Castillo signalled to other vehicles.

[17] In his witness statement, Castillo said that, as he approached the entrance to Succotz Village, the bandit with the grenade told the other bandit that they should get off the bus before it got to the village. He instructed Castillo to slow down and open the front door. When the front door was opened, a passenger who was seated directly behind the driver's seat, kicked the bandit with the grenade out of the bus. Castillo stated that he then accelerated and turned on the lights of the bus. Simultaneously, the conductor and the man who kicked the bandit through the open front door of the bus both went towards the back of the bus. A commotion ensued in the middle of the bus and passengers attacked the second bandit. In the rear view mirror, Castillo observed the passengers surrounding the bandit with the firearm while he drove onward to get to Benque Viejo Town 'as soon as possible.'

[18] The bandit was subdued by the passengers and the firearm was taken away from him and handed over to Castillo. Castillo said he heard passengers shouting to him to go directly to the Police Station. He drove to the Benque Viejo Police Station and handed over the firearm to the Police.

[19] Castillo declared that he was not aware that a passenger had jumped out of the bus until he was so informed after stopping at the Police Station.

[20] Learned Counsel for the Claimant cross-examined the first-named Defendant at some length. He admitted that he increased his speed after the bandit with the

hand grenade was ejected from the bus. However, he insisted that he slowed down at the speed bumps. More specifically, he said he slowed down at the first speed bump entering Succotz Village but did not come to a complete halt. The increase in speed he estimated at from about 15 miles per hour to about 25 to 30 miles per hour. He told the Court that he was forced to slow down on approach to Succotz as the road goes downhill and the bus had over 50 passengers.

[21] Castillo responded to Learned Counsel that the apprehending of the bandit took place in the middle of the bus while some passengers were still seated to the front of the bus. About 8 to 10 passengers were involved in tackling the bandit. All this he observed through the rear view mirror. He also said that the presence of passengers in the aisle prevented him from seeing the back door which is in line with the aisle. Therefore, he was unable to see whether the back door was open. Equally, he could not see what was taking place at the back of the bus. He responded to what he heard the passengers shouting, namely, that he should drive directly to the Benque Viejo Police Station. He denied hearing passengers telling him to slow down.

[22] Castillo denied that the bus would jump to any extent while going over a speed because of its weight; however, he agreed that there would be a 'little' jump if the bus was not brought to a complete stop at the speed bump. He maintained that there would be no jerking motion. He also said that at the speed he went over the speed bump no one would fall out of the bus.

[23] The Court was told that the bandit with the gun was accosted before the bus entered Succotz Village but he received the firearm from the passenger in Succotz Village after passing the speed bump. He informed the Court that Thread Stop is located before the entrance to Succotz Village.

[24] Ernesto Castillo confessed that he did not know at that time that there was a Police Station at Thread Stop, hence the reason for proceeding to Benque Viejo which Jason Rosado had stated to be about one mile and a half beyond Thread Stop.

[25] It is to be noted that no evidence was led to substantiate the pleading that he deceased opened the rear door and jumped out of the bus.

### DUTY OF CARE TO PASSENGERS

[26] The law imposes upon the driver of a public transport vehicle a duty of care towards the passengers being carried. The test to be applied is whether the driver of the bus acted reasonably or unreasonably as would be required of an ordinary, reasonable and careful driver. Upon being faced with an emergency situation, the driver is required to apply his mind to how he ought to act without endangering any of the passengers on the bus. This was the purport of the judgment of the Court of Appeal of England in **Parkinson v Liverpool Corporation [1950] 1 All E.R. 367**. In that case, the driver of an omnibus braked suddenly in response to the sudden dash of a dog in the path of the bus after the bus had slowed down to pass behind the dog. The Court considered that the driver had acted instinctively after considering that he could save the dog's life without endangering the passengers. The driver's explanation was regarded as serving to rebut the prima facie evidence of negligence.

[27] In **Glasgow Corporation v Sutherland (1951) 95 Sol. So. 204** Lord Simmonds stated that it was a question of fact to be determined by the Court as to whether the driver had acted with the skill and care of a reasonable driver.

[28] In the present case, there being no plea of *res ipsa loquitur* (as was the case in **Jamaica Omnibus Services, Ltd v Hamilton (1970) 16 WIR 316**), the burden is on the Claimant to establish negligence on the part of the Defendants. Proof must be to the civil standard on a balance of probabilities. However, this case must be resolved on its own peculiar facts. In applying the objective standard of care owed by the driver of the bus to the passengers, it must be recognized that the conduct of the driver must be viewed in the context of an unforeseen emergency. Taking that into account as a relevant factor, the Court must then apply the test as to whether the driver acted as a reasonable, prudent and careful driver would have done in all the circumstances.



## FACTUAL FINDINGS

[29] Jason Rosado and Ernesto Castillo both painted a picture of surprise followed by fear and panic when the bus was held up at gunpoint by the two bandits after making a stop at Clarissa Falls or Calla Creek on the Western Highway. However, on the approach to Succotz Village, the driver slowed down the bus and opened the front door, whereupon a public-spirited passenger kicked one of the bandits off the bus. There remained the threat of the passenger with the firearm. The same passenger joined by the conductor challenged the gunman. The driver admits that he increased his speed and turned on the lights of the bus. Jason Rosado confirmed that the bus began to travel faster when the gunman was wrestled to the ground.

[30] Subsequently, the gunman was subdued and the firearm was taken from him. That firearm was handed to the driver, who must be taken to have then become aware that the threat of the firearm had been removed and that by extension the bandit was no longer armed. Having admitted turning on the interior lights of the bus and viewing what was taking place in the middle of the bus behind him by means of his mirror, the driver must have been in a position to observe what Jason Rosado described. The scene was that of persons standing in the aisle of the bus around the bandit. Further, he must have observed that persons (of whom Luisa Carrillo would have been one), had left their seats at the front of the bus. These persons could only have migrated to the back of the bus. It does not require any quantum leap in thought to surmise that persons would attempt to exit the back door of the bus. It therefore behoved the driver to minimize any risk to these passengers. This could only have been achieved by slowing or halting the bus in order to restore a modicum of normalcy by having the passengers not involved in restraining the bandit sit down for their own safety.

[31] A factual dispute arose on the evidence as to the speed at which the bus was being driven. The first-named Defendant insisted that he increased his speed from 15 to 25 or 30 miles per hour after the bandit was kicked off the bus. He tried to explain that the bus could not have been driven faster when coming down the hill approaching San Jose Succotz. This contrasted sharply with the evidence of two of the Claimant's witnesses. Jason Rosado stated that the bus begun to travel faster

after the gunman was forced to the ground. He went on to state that notwithstanding the shouts of the passengers to stop, the bus did not stop but rather went faster. Amir Cocom, from his vantage point outside, said he saw a speeding D & E bus which flew past the speed bump.

[32] Both Rosado and Cocom said that the bus went over the speed bump at the approach to San Jose Succotz while speeding. Neither made mention of the bus slowing down to negotiate the speed bump. On the other hand, Ernesto Castillo said he slowed down for the speed bump although he did not stop. It is noteworthy that Ernesto Castillo admitted accelerating when the gunman was accosted. He went on to state in his witness statement that he was focused on getting to Benque Viejo as soon as possible and that he was heeding the cries of passengers telling him to “go straight to the police station.” As I see it, it was more likely than not that the bus was travelling at a fast rate of speed in order to get to the Benque Viejo Police Station as soon as possible. I have no reason to doubt Ernesto Castillo when he said he was unaware that there was a Police Station at Thread Stop. Nonetheless, the weight of the evidence is against his assertion that he slowed down for the speed bump.

[33] There is no demur that Luisa Carrillo was a passenger on the bus and fell from the bus and died from the injuries she sustained. As to how she came to exit the bus, the only evidence is that of Amir Cocom who saw what transpired from an estimated distance of 25 feet while he had the bus under observation. He could not say how she came to fall but he did see her fall backwards onto the roadway out of the rear door of the bus. The act of falling out of the door backwards is consistent with a fall or a push but inconsistent with the deceased having consciously jumped. There are two additional matters to be considered. Firstly, Jason Rosado spoke of the passengers including Luisa Carrillo gravitating towards the back of the bus while the struggle to subdue the gunman was taking place. There was a lot of shouting although Rosado and Ernesto Castillo disagreed as to what was being said. Against this background, there is the second fact in the witness statement of Amir Cocom who juxtaposed the falling of the deceased through the back door with the speeding bus going over the speed bump. From these interlocking events, the balance tips in favour of a conclusion that the deceased fell through the back door on account of the bus going over the speed bump at a fast rate of speed.

[34] No issue was raised as to how the back door came to be open. From the evidence of the passengers gravitating to the back of the bus to avoid the struggle with the gunman in the milieu of an atmosphere of fright and terror, it can be concluded without irrationality that a passenger voluntarily opened the door to aid exit. Even assuming the driver was not aware that the back door was open, this fact would have become known had he stopped the bus. There is some evidence to suggest that he must have known that the back door was open because Jason Rosado said in his evidence that he heard the door open. As the driver familiar with the bus this sound would have been discernible to him.

[35] In the circumstances of the case, the driver did not act as a reasonable, prudent and careful driver ought to have done when he drove at a fast rate of speed. He ought to have foreseen that traversing a speed bump at a speed could result in injury to the passengers. As earlier indicated, it would have been his duty to seek to slow or stop the bus to achieve some level of safety for the passengers under his charge.

[36] Given the foregoing reasons, I hold that the first-named Defendant as the servant and/or agent of the second-named Defendant acted negligently. Accordingly, the Defendants are liable to the Claimant for damages. Costs shall be the Claimant's in the sum prescribed according to the quantum of damages or in such sum as agreed between the parties.

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**KENNETH A. BENJAMIN**  
**Chief Justice**