

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

CLAIM NO: 237 of 2013

BETWEEN:

GLENFORD GODFREY CLAIMANT/1st ANCILLARY DEFENDANT

AND

KEVIN ENRIQUEZ 1st DEFENDANT/ANCILLARY CLAIMANT

ANDREA ENRIQUEZ 2nd DEFENDANT/ANCILLARY CLAIMANT

MARY YORKE 3rd DEFENDANT/ANCILLARY CLAIMANT

ALEXIS ENRIQUEZ 4th ANCILLARY CLAIMANT
(A child by Andrea Enriquez her next friend)

NIA ENRIQUEZ 5th ANCILLARY CLAIMANT
(A child by Andrea Enriquez her next friend)

EDWARD COX 2nd ANCILLARY DEFENDANT

Keywords: Road traffic collision; Negligence; Vicarious liability; Proof of Claim in Negligence and of personal injury; Assessment of loss and of damage.

Before the Honourable Mr. Justice Courtney A Abel

Hearing Dates: 17th December 2013
18th December 2013
20th December 2013

Appearances:

Ms. Alifa Hyde, Counsel for the Claimant/1st Ancillary Defendant and the 2nd Ancillary Defendant.

Ms. Naima Barrow, Counsel for the 1st, 2nd and 3rd Defendants/1st, 2nd, 3rd 4th and 5th Ancillary Claimants.

JUDGMENT
Delivered on the 20th day of December 2013

Introduction

- [1] This case concerns a collision on the Phillip Goldson Highway, at 7 or 8 mile, on the 15th January 2013 at about 4.30 pm between a White Mack Cargo Truck bearing licence Plate BZ-A-3149 (“the white Mack truck”), owned by the Claimant, which was travelling towards Belize City, and a blue Mazda Tribute bearing licence plate BC-C33606 (“the blue Mazda Tribute”), owned by a married couple, the 1st and 2nd Defendants, which was travelling in the opposite direction from Belize City towards Lords Bank Village.
- [2] It is claimed by the Claimant/1st Ancillary Defendant that there were two persons in the white Mack truck at the time of the collision namely the 2nd Ancillary Defendant and the witness Wilhelm Moody. There is a dispute as to who was the driver of the white Mack truck at the time of the collision: whether the 2nd Ancillary Defendant or the witness Wilhelm Moody.
- [3] It is undisputed that there were three persons in the blue Mazda Tribute namely the 3rd Defendant, its driver, and that the 4th and 5th Ancillary Claimants (the minor children of the 1st and 2nd Defendants) were passengers in this vehicle.
- [4] The collision undoubtedly resulted in personal injury to the 3rd Defendant and the 4th and 5th Ancillary Claimants, and some minor injuries were received by 2nd Ancillary Defendant and Wilhelm Moody for which no claim has been made; also it is not in dispute that extensive damage resulted from the collision to both the White Mack truck and to the blue Mazda Tribute.
- [5] The Claimant made a claim for loss suffered by him occasioned by the damage to the white Mack truck and for consequential losses, while the 3rd Defendant and the 4th and 5th Ancillary Claimants have made claims for the personal injury which they have suffered; and the 1st and 2nd Defendants have made claims for damage to their blue Mazda Tribute.

- [6] The central issue in the present claim is whether either or both of the drivers of the white Mack truck and the blue Mazda Tribute was/were negligent resulting in the collision on the Phillip Goldson Highway on the 15th January 2013.
- [7] The subsidiary question was whether the successful party has proved any loss or damage.
- [8] It was agreed that the issues of liability and quantum would be tried at the same time (contrary to a decision at case management that such issues would be split and tried on two separate successive days).
- [9] Subject to the questions of liability and proof of damage the parties have agreed the Claimant's costs amount to \$8,684.75 and the Defendants' costs amount to \$12, 488.48.

Background

- [10] Many of the facts of the case have not been seriously challenged or are not in dispute in the present case.
- [11] It has not been seriously challenged, and the court will accept that the Claimant is a businessman and the owner of the white Mack truck and that the 1st and 2nd Defendants are the owners of the blue Mazda Tribute.
- [12] It was agreed, and I am prepared to accept, that the witness Wilhelm Moody was the authorised driver of the white Mack truck and that he was at the time of the collision the employee of the Claimant, doing his business of collecting furniture for him.
- [13] At all material times the 3rd Defendant was the driver of the white Mazda Tribute as servant and or agent of and for the business of the 1st and 2nd Defendants, the latter two of whom are vicariously liable for the actions of the 3rd Defendant in relation to any negligence for which she is found liable by this court arising from the collision in the present proceedings.
- [14] At or about the time of the collision the day was sunny and conditions dry and clear, and visibility was also clear and the traffic was slow.

- [15] The witness Wilhelm Moody was driving the white Mack truck and picked up the 2nd Ancillary Defendant, who had just left his home in Sandhill village and had flagged Wilhelm Moody to stop, and to whom Wilhelm Moody decided to give a ride to Belize City. Wilhelm Moody did not know the 2nd Ancillary Defendant well before this occasion although they had previously had a fleeting acquaintance.
- [16] The 3rd Defendant in the blue Mazda Tribute had just passed a curve in the road from Belize City and the white Mack truck travelling in the opposite direction had also just passed a curve in the road, when there was a collision and at about the same time the white Mack truck veered to its right, off the road, and fell over on its right side. The blue Mazda Tribute received extensive damage to its front right side.
- [17] The 3rd Defendant apparently briefly lost consciousness and all of the occupants of the two vehicles received injuries some more minor than the others. the 3rd Defendant received pain in her head and got cut on her upper left arm. The 4th Ancillary Claimant had bruises on her shoulder and the 5th Ancillary Claimant sustained injuries to her face and neck and both children were crying.
- [18] An ambulance was called and the occupants of the two vehicles managed to get out of their respective vehicles.
- [19] Police Investigations indicated that the 3rd Defendant was at fault and as a consequence she was served with a Notice of Intended Prosecution for driving a motor vehicle without due care and attention, and on Thursday 27th June 2013 the case was dismissed by the Magistrates Court of this charge.
- [20] The Claimant requested reimbursement and compensation for damages to his vehicle and the Defendants have refused and failed to pay any sums to the Claimant.
- [21] The case also raises the following issues/questions which will be considered in turn:
- (a) Who was driving the white Mack truck, Edward Cox or the witness Wilhelm Moody?

- (b) Which vehicle collided into the other vehicle and what was the nature of the collision?
- (c) Whether either or both of the drivers of the two vehicles was/were negligent at or about the time of the collision?
- (d) Whether the negligence of either or both of the drivers of the two vehicles caused the collision?
- (e) What caused the white Mac Truck to overturn?
- (f) What, if any injury, loss or damage was suffered by Glenford Godfrey Mary Yorke and Alexis and Nia Enriquez, and the Defendants/Claimants Kevin Enriquez and Andrea Enriquez ?

The Court Proceedings

- [22] The Claim Form and Statement of Claim, were filed by the Claimant against the 1st, 2nd and 3rd Defendants on 19th April 2013 and were served on 24th April 2013.
- [23] A Notice of Action on Insurer was filed on the 24th April 2013.
- [24] An Acknowledgement of Service was filed by the 1st, 2nd and 3rd Defendants on the 26th April 2013.
- [25] An Affidavit of Service on Home Protector Insurance was filed on the 6th May 2013
- [26] An Affidavit of Service on 1st, 2nd and 3rd Defendants was filed on 6th May 2013.
- [27] An Ancillary Claim Form was filed on 23rd May 2013.
- [28] Defence and Ancillary Claim was filed on the 23rd May 2013.
- [29] An Acknowledgement of Service for the 1st Ancillary Defendant was filed on 31st May 2013
- [30] An Affidavit of Service of Ancillary Claim on 2nd Ancillary Defendant was filed on 11th June 2013
- [31] An Amended Statement of Claim was filed on 28th June 2013.
- [32] A Defence to Ancillary Claim was filed on 28th June 2013.
- [33] An Amended Defence was filed on the 4th July 2013.

[34] On the 8th July 2013 directions were given for the management of the present case at a case management conference, at which case management conference the following directions were given:

1. That the 1st, 2nd and 3rd Defendants/1st 2nd and 3rd Ancillary Claimants are permitted to amend their Ancillary Claim on or before 12th day of July 2013.
2. That the Claimant and the 2nd Ancillary Defendant be permitted to further amend their defence on or before 23rd day of July 2013.
3. That the parties make standard disclosure on or before the 31st day of July 2013.
4. That the Claimant and the 2nd Ancillary Defendant be at liberty to call 4 witnesses.
5. That the 1st, 2nd and 3rd Defendants/1st 2nd and 3rd Ancillary Claimants be at liberty to call 3 witnesses.
6. That the parties file and serve witness statements on or before the 30th day of August 2013.
7. That witness statements do stand as examination-in-chief unless the court orders otherwise. All witnesses are to attend the hearing for cross-examination, unless the other side dispenses with such attendance by notice in writing. If a party who has served a witness statement does not call the witness to give evidence at trial the witness statement shall not be admitted in evidence unless the other side wishes to put the witness statement in as hearsay evidence.
8. That the issue of liability in relation to the claim and Ancillary claim herein be first and separately tried before the issue of quantum.
9. That the parties seek to agree costs and quantum on or before the 16th day of September 2013.
10. That the trial of the preliminary issue of liability is fixed for the 8th day of October 2013.
11. That in the event that quantum and costs are not agreed then these matters will be tried on the 9th day of October 2013.

12. That costs of this case management conference is costs in the cause.
- [35] An Amended Ancillary Claim Form was duly filed on the 12th July 2013 in which the, 4th and 5th Ancillary Claimants (respectively Alexis Enriquez and Nia Enriquez) and the other Ancillary Claimants (1st and 2nd Ancillary Claimants) brought a claim against Edward Cox (the 2nd Ancillary Defendant) and Glenford Godfrey (the 1st Ancillary Defendant) for negligence and vicarious liability arising from the road collision on the 15th January 2013, the subject of the present proceedings,.
- [36] A Certificate of suitability of minor's next friend was filed by the 1st and 2nd Defendants, the parents of the minor 4th and 5th Defendants/Ancillary Claimants, on the 12th July 2013, that they can fairly and are competently conduct proceedings on behalf of the minors and that they have no interest adverse to the said minors.
- [37] The Claimant filed Disclosure Statements on the 31st July 2013 and the Defendants filed a List of Documents on the same date.
- [38] The Claimant filed three witness statements which included that of the Claimant, Wilhelm Moody and the 2nd Ancillary Defendant and each of these persons were called as witnesses and gave evidence in the proceedings, with the last two giving, in my view, direct and pertinent evidence about events leading up to the collision, the collision and events immediately following it.
- [39] The 1st, 2nd and 3rd Defendants filed four witness statements each of themselves and in addition of Gildon Rowland Sr. who also each gave evidence at trial, again with the last two giving direct and pertinent evidence about the events leading up to the collision, the collision itself and events immediately following it.
- [40] Generally, from the demeanor of the 3rd Defendant at the trial, I did not find her to be a forthright and reliable witness and wherever her evidence conflicted with that of Wilhelm Moody or the 2nd Ancillary Defendant, I generally preferred the latter's evidence.
- [41] I also did not find the version of events as testified to by the 3rd Defendant to be consistent with the observable and uncontested facts and she mentioned a number of matters in her witness statement and in her oral testimony which she admitted

she did not mention to the police in her statement (which was the first and much earlier opportunity to relay her version of events) and also many such matters did not find their way into the police report for one reason or another (none of which I find satisfactory).

- [42] Overall, I also did not find the evidence of the 3rd Defendant convincing or persuasive, either in the way she gave her testimony in court, or generally, on the balance of probabilities. I also did not find the 3rd Defendant's evidence to be credible, particularly her suggestion that the police inserted into the end of her witness statement "I agree to be at fault". This latter allegation was noticeably absent from her witness statement filed on the 2nd September 2013 after she had herself disclosed the statement to the police with this incriminating statement, on the 31st July 2013.
- [43] Obviously the burden of proof was on the respective Claimants to prove their respective cases on the balance of probabilities.
- [44] The present proceedings did not raise any significant questions of law which is fairly settled so far as the present case of negligence in road traffic collision cases are concerned and, for this reason no doubt, understandably, I was not addressed on it by Counsel for the parties .

Who was driving the white Mack truck, Edward Cox or the witness Wilhelm Moody?

- [45] Counsel for the Claimant relied on the evidence in the case that although the evidence disclosed that the 2nd Ancillary Defendant and Wilhelm Moody had seen each other before, they were not friends and did not know each other. Also both of these persons denied that the 2nd Ancillary Defendant was driving.
- [46] Counsel for the 1st, 2nd and 3rd Defendants/Ancillary Claimants however relied on the evidence of Mr. Rowland Sr, as an independent third party witness, that the 2nd Ancillary Defendant was driving the white Mack Truck; and it was his evidence that he was among the first on the scene and saw no one but the 2nd

Ancillary Defendant exiting the overturned white Mac Truck. Also that he did not see anyone helping the 2nd Ancillary Defendant out of the vehicle,¹.

- [47] Also, reliance was placed by Counsel for the 1st, 2nd and 3rd Defendants/Ancillary Claimants, on the testimony of the 3rd Defendant, that the 2nd Ancillary Defendant told the doctor who attended to them in the examination room after the accident that he, the 2nd Ancillary Defendant, was the driver. Also that the Doctor on the 6th February 2013 (in tab 20 of the Defendants disclosure bundle) stated that she was informed that the 2nd Ancillary Defendant was one of the drivers. This latter evidence, being hearsay evidence (as the Doctor did not give evidence at the trial and was not cross-examined about it) I placed little or no reliance on it.
- [48] I have no hesitation in believing the evidence of the witness Wilhelm Moody and the 2nd Ancillary Defendant that they did not know each other and that Wilhelm Moody was the driver of the white Mack truck. In relation to the former fact for the reason that there was no evidence to contradict their evidence that they had merely seen each other before and by implication did not know each other, and in relation to the latter fact for the same reason and also there was no cogent evidence that Edward Cox would have been the driver of this truck.
- [49] I frankly do not believe the evidence of the 3rd Defendant, nor do I consider it reliable, that at the hospital she overheard the 2nd Ancillary Defendant say that he was the driver of the white Mack truck. In addition, in her signed statement to the police on the 21st January she did not mention that the 2nd Ancillary Defendant was the driver of the white Mack truck rather she said that “I don’t know the driver of the truck” which would have been an appropriate time to mention what she had overheard Cox telling the Doctor at the hospital.
- [50] I also find that the reliability of the evidence of the witness Gildon Rowland Jr., as to who was the driver of the white Mack truck, was far from satisfactory as he admitted in cross-examination that he did not see who was driving this vehicle and that he arrived at his conclusion by way of assumption; which assumption I

¹ Indeed his evidence was that he did not see the 2nd Ancillary Defendant getting out of the vehicle.

also found was unreasonable and in any event was discredited under cross examination.

Which vehicle collided into the other vehicle and what was the nature of the collision?

[51] Counsel for the Claimant relied on the evidence in the case from Wilhelm Moody and the 2nd Ancillary Defendant, and indeed the 3rd Defendant, as to the blue Mazda Tribute colliding with the white Mack truck. Particularly the evidence of Wilhelm Moody and the 2nd Ancillary Defendant that the blue Mazda Tribute was driving on the wrong side of the road and that Wilhelm Moody swerved to the right to avoid a head-on collision with the blue Mazda Tribute. That the blue Mazda Tribute collided into the rear left wheel of the white Mack truck. That damage was sustained to the front driver's side of the blue Mazda Tribute. That there was no evidence that the front of the white Mack truck was damaged and that Wilhelm Moody said that the impact was on the rear left wheel of the white Mack truck.

[52] Counsel for the 1st, 2nd and 3rd Defendants/Ancillary Claimants strenuously advanced and relied on the submission that it was more probable than not that the blue Mazda Tribute could not have overturned the white Mack truck; the allegation by the 3rd Defendant that the white Mack truck came onto her side of the highway and seemed unable to get back onto its side of the highway and that she could do nothing but brace for the impact; the pictures which were admitted into evidence (at tab 5 of the Defendants List of Documents); the fact that the white Mack truck had just passed a curve before entering the straight part of the road while the Mazda had been travelling on a straight road; the evidence of Wilhelm Moody that there was a blown tire to the rear left wheel of the white Mack truck; and from all the relevant facts of the case that it is more probable than not that the accident resulted from the driver of the white Mack truck losing control of his truck because he had just navigated a curve in the road or because

the truck had suffered a blown tire, overturning and colliding into the drivers' side of the blue Mazda Tribute.

[53] In all the circumstances of the case, and having heard and assessed the evidence of the witnesses, I prefer the submissions of Counsel for the Claimant, and the evidence on which she relied.

[54] In particular I have no hesitation in finding that the blue Mazda Tribute ran into or collided with the white Mack truck as the physical evidence disclosed by the photographs at tab 4 of the Defendant's List of Documents (which were all agreed by the parties) clearly demonstrated that the damage to the blue Mazda Tribute was on the left front side and there was no damage left side of the white Mack truck.

[55] This physical evidence, in my view, corroborates the evidence of the 2nd Ancillary Defendant that the blue Mazda Tribute "ended up in the rear left wheel of the Mack truck".

[56] The 3rd Defendant also in her statement to the police, shortly after the event on the 21st January 2013, at tab 5 of the Defendant's List of Documents, stated that "my vehicle received extensive damage to its left front portion".

[57] This explanation is, in my view entirely consistent with the fact that the white Mack truck ended up being overturned and the evidence of Wilhelm Moody and the 2nd Ancillary Defendant that the former swerved to the right to avoid a head-on collision with the blue Mazda Tribute.

Whether either or both of the drivers of the two vehicles was negligent at or about the time of the collision?

[58] The 3rd Defendant in her statement to the police admitted she was talking to the children (whom she described as "the kids") and she also stated that: "I suddenly saw a white truck appeared in front of me and after I found myself involved in a collision. I don't know what happen".

[59] This is consistent with an explanation that she was not keeping a proper attention lookout on the road ahead of her and that she was not concentrating on and paying proper attention to the road ahead; also there was no evidence that there was anything to prevent her from seeing the way ahead.

[60] I frankly do not believe the evidence at the trial as given by the 3rd Defendant as to her involvement in the collision and her attempt and her explanation for retracting her statement to the police that “I agree to be at fault”; and therefore any suggestion that the collision was not her fault and any later suggestion exonerating her from liability for the collision.

[61] On the balance of probabilities I accept the version of events of the the 2nd Ancillary Defendant and Wilhelm Moody that the 3rd Defendant strayed onto the path of the white Mack truck and that Wilhelm Moody had to take evasive action by swerving to his right to avoid a head-on collision with the blue Mazda Tribute .

Whether the negligence of either or both of the drivers of the two vehicles caused the collision?

[62] As a result of the above I have no hesitation in finding that the 3rd Defendant was the sole or material cause of the collision which resulted in injury loss and damage to the Claimant, the 4th and 5th Ancillary Claimants and the 2nd Ancillary Defendant.

What caused the white Mac Truck to overturn?

[63] As I already stated above the facts which I found are, in my view, entirely consistent with the fact that the white Mack truck ended up being overturned and the evidence of Wilhelm Moody and the 2nd Ancillary Defendant that the former swerved to the right to avoid a head-on collision with the blue Mazda Tribute.

[64] The overturning of the white Mack truck is not inconsistent with the evidence of Wilhelm Moody and the 2nd Ancillary Defendant that the white Mack truck was hit on its left back side while it was swerving to its right; while at the time this vehicle must have been travelling at or a greater speed than 40 miles an hour together with the unchallenged evidence that the blue Mazda Tribute was also at

the time travelling at or about 40 miles an hour just before the former vehicle took evasive action to avoid a head-on collision with the latter vehicle.

What, if any injury, loss or damage was suffered by Glenford Godfrey Mary Yorke and Alexis and Nia Enriquez?

[65] This is the most difficult part of the claim.

[66] I am prepared to accept the uncontested evidence of the Claimant in relation to the estimate of repairs for the white Mack truck being in the sum of \$19,389.00.

[67] I do not find that the Claimant/1st Ancillary Defendant has discharged the burden on him of proving the other items, which were not admitted, and which they were required to be strictly proved namely the \$450 for towing charges, the sum of \$5,300 for repairs to the furniture and/or the sum of \$9,600.00 as loss of income.

[68] It necessarily follows from my decision that the 4th and 5th Ancillary Claimants, are likely entitled to be compensated from the 1st 2nd and 3rd Defendants/Ancillary Claimants and 3rd Defendant/Ancillary Defendant but I am not prepared to make such an order as no such claim was made against these parties in the present proceedings.

[69] It also necessarily follows from my decision that the 1st, 2nd and 3rd Defendants/Ancillary Claimants are not entitled to recover any compensation for any loss or damage which they might have suffered as a result of the collision, the subject of the present proceedings.

Costs

[70] In the above circumstances the Claimant and the 2nd Ancillary Defendant are entitled to their costs agreed at \$8,684.75.

Disposition

[71] For the reasons given above, it is declared by this Court that the collision on the 15th January 2013 was wholly caused by the negligence of the 3rd Defendant while acting in the course of her employment with the 1st and 2nd Defendants and that these 1st, 2nd and 3rd Defendants are thereby jointly and severally liable for the injuries and loss suffered by the Claimant which I have found to be the sum of 19,389.00.

- [72] I also order that the 1st, 2nd and 3rd Defendants/1st, 2nd and 3rd Ancillary Claimants are jointly and severally liable to pay and shall pay the Claimant's/1st Ancillary Defendant's costs agreed in the sum of \$8,684.75.
- [73] The Ancillary claim of the 1st, 2nd, 3rd, 4th and 5th Ancillary Claimants against the 1st and 2nd Ancillary Defendants is hereby dismissed.

The Hon. Mr. Justice Courtney A. Abel