

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

**CLAIM NO. 748 OF 2011**

<b>BETWEEN</b>	<b>(JOY BLANCO</b>	<b>FIRST CLAIMANT</b>
	<b>(CRISPIN BLANCO</b>	<b>SECOND CLAIMANT</b>
	<b>(</b>	
<b>AND</b>	<b>(</b>	
	<b>(</b>	
	<b>(CELSO POOT</b>	<b>DEFENDANT</b>

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Philip Zuniga, S. C., for the Claimants**

**Mrs. Julie-Ann Ellis Bradley of Barrow and Williams for the Defendant**

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**J U D G M E N T**

- 1) On February 5<sup>th</sup>, 2011 at around 12:00 midnight, a traffic accident occurred at the intersection of the Western Highway and the Hummingbird Highway. The vehicles involved in the accident were a 1992 Nissan Pathfinder with

Registration Number CY-25889 belonging to the First Claimant, Joy Blanco, and a 2001 Hyundai Galloper II with Registration Number CYC-26119 belonging to the Defendant Celso Poot. At the time of the accident the Second Claimant, Crispin Blanco, was driving the Nissan Pathfinder, and the Defendant Celso Poot was driving the Hyundai Galloper II. The Western Highway is a major road and the Hummingbird Highway is a minor road. Both vehicles sustained significant damage as a result of the collision and both are constructive total losses. Both the Second Claimant and the Defendant sustained injuries. The Claimants have brought this action for damages on the basis that the accident was caused by the negligence of the Defendant. The Defendant has denied liability and brought a counterclaim alleging that it is the negligence of the Second Defendant that caused the accident.

### **The Issue**

- 2) The sole issue for determination in this case is whether the accident was caused by the negligence of the Second Claimant, or that of the Defendant, or whether there is contributory negligence by either party.

### **The Evidence**

3) The first witness called on behalf of the Claimant was Joy Blanco who established that the Nissan Pathfinder belonged to her and that at the time of the accident her husband was driving it. She was cross examined on many matters, but most importantly, as to the value of her vehicle. It was put to her that at the time of the accident her vehicle was 20 years old and was only worth about BZ \$5,000.00. She disagreed and insisted that based on the valuation done by her mechanic her vehicle's value was around BZ \$12,500.00

4) The next witness for the Claimant was Crispin Blanco who testified in his witness statement that at the time of the accident he was driving his wife's white Pathfinder along the Western Highway from the direction of Belize City to Cayo and upon reaching the junction of the Western Highway and the Hummingbird Highway he saw another vehicle coming south to north towards him from the direction of Belmopan at very high speed. Mr. Blanco stated that the vehicle did not stop to allow him to enter on its left hand side but instead continued and swerved to its left and attempted to enter the Western Highway without slowing down. He said he slowed down to avoid contact, moved a little to the right and pressed his brakes, at which

point the other vehicle crashed into the left front side of his vehicle. The impact of the collision spun Mr. Blanco's vehicle to a northwesterly direction and spun the other vehicle to a westerly direction.

He was cross examined extensively by Learned Counsel for the Defence Mrs. Bradley challenging the speed and the direction he was travelling at the time of the accident:

*Q. "The collision occurred at the junction of the Western Highway and the Hummingbird Highway, correct?"*

*A. I won't say the junction. I would say when we entered into the Hummingbird Highway.*

*Q. I am suggesting to you, Mr. Blanco, that at the time of the collision you were heading from the direction of Belmopan towards the Western Highway.*

*A. Totally wrong. I reject that."*

Later in the cross examination, it was put to him that he was traveling too fast and could have avoided the collision:

*“Q. Had you been driving at a slower speed, you could have avoided the collision?”*

*A. No, I couldn't have avoided the collision because that's why... Could I explain to you? That's why the reason when I turned and I saw the vehicle coming, instead I expected that it would move to the right to give me way but instead he just came to the left and I'm ...*

*Q. You continued towards the vehicle?*

*A. No, I pat my brakes. I was already going slow and then I moved to the right and that's how the head on collision was avoided or else it would have been a head-on collision. He would have come straight head on to me.”*

5) Cpl. 648 Earlwin Palacio, a police officer travelling as a passenger with Mr. Blanco in his vehicle at the time of the accident, also gave evidence for the Claimants. In paragraph 2 of his witness statement, Cpl. Palacio stated that as the vehicle driven by Blanco was approaching the junction of the Hummingbird and Western Highway in Belmopan City, a blue in color Hyundai Galloper with License Plate No. 26119 was travelling in a south to north direction with a high speed coming on the Hummingbird Highway from the direction of Belmopan City to the Western Highway. He went on to say that the Hyundai vehicle failed to stop and give way at the junction of

the Hummingbird and Western Highway and collided into the vehicle in which he was travelling.

Under cross-examination he denied that Mr. Blanco was speeding at the time of the accident. He also said that the blue vehicle (the Defendant's vehicle) was coming from Belmopan towards the Western Highway traveling on the right side of the road. He said that the vehicle in which he was travelling was moving at minimum speed while the blue vehicle was travelling very fast. It was suggested that he told witnesses at the scene to shut up when they tried to explain to other police officers what they had seen. Under re-examination he clarified that he went over to two persons at the scene after the accident and identified himself to them as a police officer because he heard the driver of the blue vehicle telling these people "Tell the police I was coming from Belize City."

- 6) PC 209 Jermaine Hyde was called as he was the officer who responded to the emergency call and went to the scene of the accident. He drew a sketch plan. He was cross examined as to whether he saw skid marks on the road and he said no. He was asked whether based on the position of the vehicles

it would appear that the Nissan was heading to the Western Highway and he said yes based on his first impression upon arriving on the scene, but no based on his investigation. He said on his investigation he considered the explanation of the drivers of both vehicles involved in the accident and he also considered the damage to the vehicles and on that basis he drew the sketch plan. He was challenged on paragraph 10 of his witness statement where he stated that the Defendant approached him at the scene and told him that he did not stop to give way to the other vehicle because he did not see it and that he was at fault and willing to settle the matter through his insurance. Corporal Hyde insisted that that was what happened at the scene.

- 7) The next witness was Scenes of Crime Technician Wenceslado Teul who took photos of the scene of the accident. He was not cross examined.
- 8) Alexander Tillett was the final witness for the Claimants. His evidence was on the value of the Claimants' vehicle prior to the accident which he assessed at \$12,500.00. Under cross examination, he said he was a mechanic and that was his opinion.

9) The first witness for the Defence was Jorge McField. He gave evidence that having examined the Nissan Pathfinder he assessed its pre-accident value at BZ \$5,500.00. It was put to him in cross examination that the pre-accident value was BZ \$12,500.00 but he rejected that assertion.

10) The next witness was the Defendant Celso Poot. He stated in his witness statement that he is an employee of the Belize Zoo and Tropical Research Center as Operations Manager and that he had been socializing at work at a staff function on February 4<sup>th</sup>, 2011. He decided to leave work around 11:00 p. m. after this function and he travelled in his 2001 Hyundai Galloper II along the Western Highway with two of his colleagues heading towards San Ignacio. He said he dropped off one colleague at Amigos Restaurant on the Western Highway. The road conditions were wet and it was dark and foggy. He said he remembers driving past the Hector Silva Airstrip on the Western Highway and thereafter he only recalls regaining consciousness at the scene of the accident. He awoke in pain and realized he had been injured and his vehicle had been damaged.

Under cross examination by Learned Counsel for the Claimants Mr. Zuniga, S. C., Mr. Poot admitted that he consumed about three to five beers that night at the event at which he had been socializing immediately prior to driving on the highway. It was put to Mr. Poot that he had actually consumed more than five beers that night but he denied this saying he was working and socializing that night but not indulging in beers. He also admitted that he cannot give the court an account of how the accident occurred because he has no memory of it. He was also questioned quite skillfully and intensely about the manner in which the accident occurred:

*“Q. So you cannot say whether just before the accident where you were coming from?”*

*A. I know I was coming from the direction of Belize towards San Ignacio area.*

*Q. At the time of the accident?*

*A. Yes.*

*Q. Even though you said you were not aware?*

*A. It’s not that I was not aware. It’s that split second that I don’t recall what happened.*

*Q. Split second. Let me read to you, sir, what you said. Paragraph 7 of your witness statement:*

*‘I remember driving past Hector Silva Airstrip along the Western Highway and thereafter I only recall regaining consciousness at the scene of an accident and I was out of my vehicle. I realized that I was unconscious for a while. I am not sure for how long.’*

*That’s what you said. You want to change that?*

*A. No, that is the --- I mean I cannot put it in any better words. That is exactly what happened.”*

11) Anthony Galvez was the next witness called on behalf of the Defence. He said that he is a Tourist Guide and he and his friend Joseph Lopez were standing by the roadside at the junction of the Western Highway and the Hummingbird Highway by Guanacaste Park on February 4<sup>th</sup>, 2011. He said it was dark because it was night. He said he saw a vehicle about to turn left toward Belmopan when suddenly another vehicle heading from Belmopan towards the junction did not stop and an accident occurred. After the accident he said he recognized the driver of the vehicle coming from Belize City to be Poot whom he knew worked for the Belize Zoo for years.

Under cross examination Mr. Galvez said he and his friend were standing about 100 yards away from the junction where the accident occurred. He admitted that he did not see who collided into who. He just saw a collision.

12) The next witness for the Defence was Joseph Lopez. He said that on the 4<sup>th</sup> February, 2011 he and his friend Avery Galvez were at the junction of the Western Highway and the Hummingbird Highway waiting for a third friend to go hunting. It was already night and it was dark. He said he saw a blue

SUV coming from the direction of Belize City with its indicator on and was turning into the junction towards Belmopan, when he saw another vehicle coming fast from the direction of Belmopan toward the intersection at a high speed. He heard a loud slam and the two vehicles collided. He said he tried to explain to police at the scene what he saw but they would not listen to him nor take a statement from him.

Under cross examination, it was put to Mr. Lopez that the vehicle coming from Belize City was the white vehicle. He said no. It was also put to him that the vehicle coming from Belmopan was the blue vehicle. He said no.

13) Mr. Humberto Wohlers was the next witness called for the Defence. He was the passenger travelling with Mr. Poot at the time of the accident. He said that he attended the staff function at the Belize Zoo where he worked as Animal Management Supervisor and that he got a ride home to San Ignacio around 11:00 p. m. with Mr. Poot. He said that he fell asleep shortly after they dropped a co- worker off at Amigos, and he woke up at the junction of the Western Highway and the Hummingbird Highway. It was then that he realized that they were involved in an accident.

Under cross-examination, he said that before the accident they were coming from the Belize Zoo.

- 14) The final witness for the Defence was Dr. Rene Godoy. His testimony was that he is a Medical Doctor and Surgeon with 18 years experience who treated Celso Poot 11 days after the accident for a broken rib. He said Mr. Poot was given pain killers and told to rest. His bill was \$170.00.

### **Findings of the Court**

- 15) Having reviewed all the evidence in this case, I find that the accident was caused solely by the negligence of the Defendant. I accept as true the evidence of Mr. Blanco and Corporal Palacio that they were travelling from the direction of the Western Highway, a major road, into the Hummingbird Highway going towards Belmopan when the Defendant collided into them. I have examined the photographs submitted by both sides in this case and I agree with the submission of Learned Counsel Mr. Zuniga, S. C., for the Claimants that the physical damage on the Claimant's vehicle proves that he was telling the truth in that his vehicle was hit while he was turning left into the Hummingbird Highway. In addition the Defence's own expert

witness Jorge McField states in his Vehicle Inspection Report that this vehicle (the Claimants' vehicle) sustained a major left side frontal impact as a result of being involved in a road accident.

In addition, I find that the Defendant's own version of events prove that he alone caused the accident especially since he did not even know where he was at the time the accident occurred. In his own words, Mr. Poot told the court that while driving his vehicle he passed out around the Hector Silva airstrip and when he awoke, he realized he was in an accident. He clearly was not driving with the necessary care and attention required of drivers. He was travelling late at night on the highway, it was dark and rainy and the road was wet. All these conditions of the road required him to exercise a degree of care to other road users which he failed to exercise. His passenger Humberto Wohlers was also of no assistance because he too was passed out immediately before the accident. I have considered the evidence of the witnesses Joseph Lopez and Avery Galvez. While I believe they both saw the collision, I do not believe they could see with any degree of accuracy the color of each vehicle prior to the accident occurring. By all accounts it was a very dark rainy night around 11:00 p.m. and they were 100 yards away from the scene of the accident. I do not find their evidence

to be reliable. I find on a balance of probabilities that Mr. Poot was speeding on the wet road and, having consumed several beers at a social function immediately prior to travelling on the road, passed out while driving and lost control of his vehicle. He alone caused this accident and he alone is liable.

### **Quantum of Damages**

16) Having found that the Defendant is liable, I now turn to the quantum of damages. I agree with the point raised by Mrs. Bradley in her submissions that there should have been a detailed medical report submitted to prove the nature and extent of the injuries suffered by the Second Claimant to assist the Court in determining the quantum of damages. There is a medico legal form submitted by the Claimants which states that Dr. Randy Williams treated Mr. Blanco for a cut wound to the right knee and pain to the right ankle and the doctor classified the injury as “Wounding” on February 5<sup>th</sup>, 2011. I award the sum of \$3,000.00 as general damages to the Claimants.

With regard to special damages, I found the sum of \$1,449.00 fully proven and substantiated by receipts for expenses incurred by the Claimant for

transportation to and from the hospital, towing his vehicle and other expenses.

In assessing the value of the Claimants' vehicle, I found that the witness Jorge McField called on behalf of the Defence was a very reliable and knowledgeable witness. I especially liked his explanation under re-examination by Learned Counsel for the Defence Mrs. Bradley as to how he arrived at the sum of \$5,500.00 in assessing the pre-accident value of the Claimants' vehicle:

*“THE WITNESS: In this instance we did a background check on the vehicle as is our standard protocol ... and we confirmed that the vehicle was issued a salvage title in the US.*

*THE COURT: It was issued what?*

*THE WITNESS: A salvage title in the US.*

*THE COURT: What does that mean?*

*THE WITNESS: That would indicate that the vehicle was in a previous incident in the United States ... and it was deemed a total write-off. The insurer would then have the DMV issue a salvage title ...*

*THE COURT: Okay.*

*THE WITNESS: We also look at the vehicle's package whether it had power windows, power locks, manual transmission versus an automatic transmission ... and then if it had any accessories.*

*THE COURT: What did you find on this one?*

*THE WITNESS: It had power windows. It had a manual transmission and it was a two-wheel drive vehicle and it had a V6 engine in it.*

*THE COURT: Okay.*

*THE WITNESS: What we then did is then we used another guide. Another guide is the valuation guide ... that gives us a starting value.*

*THE COURT: Yes?*

*THE WITNESS: And from that starting value, we made adjustments for any defect and deficiencies. In this instance we only made an adjustment for its salvage title.*

*THE COURT: Yes?*

*THE WITNESS: We then added a shipping and handling amount. We added all of those figures, the starting value less the adjustment plus the shipping and handling. Then we added the appropriate duties for a V6, a 6 cylinder vehicle.*

*THE COURT: Custom duties?*

*THE WITNESS: Yes, Ma'am, custom duties. That would be duties and taxes.*

*THE COURT: Okay.*

*THE WITNESS: Specifically it would be the import duty, revenue replacement, GST and ET and that would arrive us at our pre-accident value.”*

I accept the evidence of Mr. McField on this point and I award the sum of BZ \$5,500.00 to the Claimants for the value of their vehicle.

17) The total amount of damages awarded is therefore BZ \$9,949.00 to be paid by the Defendant to the Claimants. Costs awarded to the Claimant in the sum of BZ\$5,000.00.

***Dated this 20<sup>th</sup> day of September, 2013***

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**Michelle Arana  
Supreme Court Judge**