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IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 567 OF 2013

BETWEEN:

VIRIATO ANTONIO MATUS	**Claimant**
AND	
JOSE ANTONIO ORELLANO	**1st Defendant/Ancillary Defendant**
GIOVANNI VALDEZ	**2nd Defendant/Ancillary Claimant**

CLAIM NO. 568 OF 2013

BETWEEN:

JULIO ALBERTO CASTELLANOS	**Claimant**
AND	
JOSE ANTONIO ORELLANO	**1st Defendant**
GIOVANNI VALDEZ	**2nd Defendant**

BEFORE: Hon. Chief Justice Kenneth Benjamin.

June 26 & 27; July 3 & 11; August 13, 2014.

Appearances: Mrs. Nazira Uc Myles for the Claimants.
Mr. Anthony Sylvestre for the 1st Defendant.
Mrs. Andrea McSweaney McKoy for the 2nd Defendant

JUDGMENT

[1] Before the Court are two Consolidated Claims, each brought by a separate Claimant. These matters arose from a motor vehicle accident which occurred on November 22, 2012 at around 7:00 p.m. on the Iguana Creek Road, Cayo District. The accident involved a collision between a Green Volkswagen Sedan registered number CY-C33274, owned and driven by the 2nd Defendant; and a Grey Chevrolet Silverado Pick-up Truck registered number CY-C-29396 driven by 1st Defendant. The Claimants, Viriato Matus (1st Claimant) and Julio Castellanos (2nd Claimant) were passengers in the green Volkswagen Sedan. Viriato Matus was seated to the right in the rear passenger seat and Julio Castellanos was seated in the middle of the said rear seat. Elvis Castellanos, who unfortunately lost his life as a result of the accident, was in the right front seat, while Francisco Concha was seated to the left of the rear passenger seat. All the occupants of the sedan were leaving work at the Belize Natural Energy compound.

[2] On October 30, 2013, the Claimants each filed a claim against the Defendants seeking the following:

> "1. Damages for personal injury and suffering, loss of amenities, and future medical expenses caused by a vehicular accident with [sic] occurred on the on the [sic] 22nd day of November 2012, as a result of the Defendants' negligence.
> 2. Special Damages in the sum of $38, 146.78.
> 3. Interest on any damages found due to the Claimant pursuant to s 166 of the Supreme Court of Judicature Act
> 4. Costs.
> 5. Such further or other relief as this Honourable Court deems just."

The particulars of negligence against each Defendant were as follows:

1st Defendant was negligent in that he:-

a) Drove without due care and attention;
b) Drove under the influence of alcohol;
c) Failure to keep any or any proper lookout or to have any or any sufficient regards to other users of the highway;
d) Driving recklessly in a manner which was dangerous to the public;
e) Driving at a speed that was in the circumstances excessive;
f) Failure to adequately or at all observe or heed or act upon the presence, path, position and approach of the 2nd Defendant's vehicle;
g) Failing to drive as close as possible to the right hand side of the road;
h) Failure to see the 2nd Defendant in sufficient time to avoid the collision or at all;
i) Failing to brake or otherwise manoeuvre so as to avoid a collision with the 2nd Defendant;
j) Driving without reasonable care for the safety of other road users and in particular the 2nd Defendant's vehicle.

The 2nd Defendant was negligent in that he:-

a) Drove without due care and attention;
b) Failure to adequately or at all observe or heed or act upon the presence, path, position and approach of the Defendant's vehicle;
c) Failing to drive as close as possible to the right hand side of the road;
d) Failing to brake or otherwise manoeuvre so as to avoid a collision with the 1st Defendant;

[3] The 1st Defendant filed a Defence to the claim on November 20, 2013. In the said Defence, it was averred that the collision was caused by the vehicle in which the Claimants were passengers travelling at excessive speed with its high beams on and swerving into the lane in which the 1st Defendant's vehicle was being driven. It was denied that the said collision was caused by the negligence of the 1st Defendant. The 2nd Defendant failed to file a Defence within the prescribed time and on January 8, 2014

the Claimants obtained default judgment for damages together with interest and costs. The 2nd Defendant applied to the Court to set aside the Default Judgment but the application was dismissed.

[4] The 2nd Defendant subsequently filed an Ancillary Claim against the 1st Defendant on January 28, 2014 seeking:

1. Damages for personal injury, pain and suffering, loss of amenities, and future medical expenses and loss of property recklessly or negligently inflicted upon the Claimant by the Defendant on the 22nd of November 2012 on the Iguana Creek Road between Spanish Lookout and Blackman Eddy.
2. Special Damages in the sum $33, 105.30.
3. Interest on all Damages found due pursuant to s. 166 of the Supreme Court of Judicature Act.
4. Cost
5. Such further or other relief as this Honourable Court deems just."

[5] In the Ancillary Statement of Claim, the following particulars as to negligence on the part of the 1st Defendant/Ancillary Defendant were set out:

[1] Failure to slow down or stop on the side of the highway between Blackman Eddy to Spanish Lookout off the Western Highway so as to give the Claimant the way to pass.

[2] Failure to give way to the Claimant who was at all the time travelling in an easterly direction, on the right hand side of the Iguana Creek road headed towards Blackman Eddy...

[3] Failure to drive or manoeuvre his vehicle so as to avoid colliding into Claimant.

[4] Driving too fast.

[5] Failure to move off the road so as to avoid the collision.

On February 26, 2014, the 1st Defendant filed a Defence to each Ancillary Claim wherein he repeated the substance of the Defence to the main Claim, denying that

the vehicle he was driving collided with the 2nd Defendant's vehicle and that the accident was caused by his negligence.

THE EVIDENCE

The Claimants' Case

[6] The Claimants' case as pleaded was that on November 22, 2012 at about 6:45 p.m., they were travelling at a moderate speed in the green Sedan driven by the 2nd Defendant/Ancillary Claimant in a west to east direction on the Iguana Creek Road from Belize Natural Energy Limited compound towards Blackman Eddy Village when the 1st Defendant who was heading in the opposite direction at a very fast speed, swerved into the 2nd Defendant/Ancillary Claimant's lane and collided into the right front passenger side of the vehicle.

[7] Both Claimants gave evidence that there was a pickup truck owned by Mr. Jacob Braun, travelling in front of them in the same west to east direction and that they saw this pickup truck swerve to the right off the road. They both stated that when the pickup truck swerved off the road, the 2nd Defendant/Ancillary Claimant seemed to slow down almost to a stop but then accelerated and swerved to his left (1st Defendant's lane). This was to avoid a collision with the 1st Defendant/Ancillary Defendant who at the same time swerved to the right in his correct lane to avoid the collision. In the words of the 1st Claimant: "When Giovanni (the 2nd Defendant) went left, in a way he was attempting to escape the oncoming truck." It is the Claimants' evidence that the green Sedan they were travelling in was hit on the right front passenger side by the Chevrolet Pick-up and upon impact their vehicle was pushed backwards in the opposite direction.

[8] In cross-examination by Learned Counsel for the 2nd Defendant/Ancillary Claimant, the 1st Claimant indicated that repairs were being made to the Iguana Creek Road; however, at the time of the accident, the road had been scraped and was at the

last stage to be paved. He also said that the road was smooth and vehicles could travel freely on the surface.

The 1st Defendant's Case

[9] The 1st Defendant, Jose Orellano, and his witness, Hilberto Gutierrez, who was a passenger in the pick-up, both gave evidence in support of the 1st Defendant's case. In Orellana's witness statement he indicated that on November 22, 2012 sometime after 6:30 p.m. he was driving a grey Chevrolet Silverado Pick-up truck owned by one John Fredhoff, from Buena Vista Village in an east to west direction on the Iguana Creek Road heading towards Spanish Lookout. Upon approaching BNE a vehicle travelling at excessive speed in the opposite direction, swerved into the lane in which he was travelling to avoid an unpaved section of the road causing the right side of the 2nd Defendant's vehicle to collide with the front of the vehicle he was driving. However, under cross examination, both the 1st Defendant and Hilberto Gutierrez admitted that when the accident occurred, the 2nd Defendant was already travelling on the unpaved part of the road. Each was shown a picture marked Exhibit CO-2 and both accepted that the unpaved part of the road started further back from where the accident occurred.

[10] When cross-examined by Learned Counsel for the Claimants, the 1st Defendant stated that by moderate speed he meant he was travelling at 37 miles per hour and the driver of the green Volkswagen Sedan was travelling at an excessive speed around 65 miles per hour. He further testified that on impact the vehicle he was travelling in was not pushed forward or backward but pushed about 8 to 10 feet to the side off the road. Learned Counsel suggested that he was driving at an excessive speed of 70 miles per hour and that the impact was so hard that the green Volkswagen ended up under the Chevrolet Pick-up truck. This was however denied by the 1st Defendant.

[11] The 1st Defendant testified that prior to the accident he and Hilberto Gutierrez were as at a bar called La Pasadita from around 2:30 p.m. and stayed for approximately

1 ½ hours. During this time he stayed outside in his vehicle and drank bottles of water while Mr. Gutierrez drank around 6 beers. After leaving the bar, they travelled to Buena Vista Village where they stopped at a shop and Mr. Gutierrez made a purchase. Learned Counsel for the Claimants suggested that they stopped to purchase alcohol. This was denied by the 1st Defendant and he insisted that he did not know what Mr. Gutierrez purchased. However, Mr. Gutierrez told the Court the 1st Defendant was with him in the bar and that he told the 1st Defendant to stop so that he could buy a bottle of alcohol.

The 2nd Defendant/Ancillary Claimant's Case

[12] By order dated January 8, 2014 Judgment in Default of Defence was entered against Giovanni Valdez, the 2nd Defendant/Ancillary Claimant for unspecified sums pending assessment of damages. The 2nd Defendant/Ancillary Claimant is therefore not entitled to be heard on the substantive Claim. However, as is permissible, evidence was led on the Ancillary Claim against 1st Defendant.

[13] At trial the 2nd Defendant/Ancillary Claimant testified and called three witnesses, Jacob Braun, Francisco Concha and Everon Tech. Their witness statements stood as examination-in-chief and they were each cross-examined. The 2nd Defendant/Ancillary Claimant's evidence is that on November 22, 2012 at around 7:00p.m., while at the exit gate at BNE he waited while a large Dodge truck being driven by Mr. Jacob Braun passed and then he entered the highway. He drove for approximately half a mile about three vehicle lengths behind the large Dodge truck maintaining a speed of about 40 miles per hour. Suddenly the Dodge truck swerved to its right, completely off the highway causing dust to rise but this did not obstruct his vision. Once the Dodge truck moved, he saw a vehicle coming directly towards him. At first the vehicle moved to his right and then he realized that it was going to collide head on so he quickly swerved to his left and tried to move out of the path of the oncoming vehicle; however the oncoming vehicle then made a sharp left turn towards him and collided directly into the front right corner of his car.

[14] In cross examination by Learned Counsel for the Claimants, the 2nd Defendant/Ancillary Claimant testified that the 1st Defendant was travelling at a speed of 70-75 miles per hour and on impact the vehicle that he was driving was pushed about 15 feet to his left and backwards in the direction he was travelling from. He further testified that at the time of the collision he was driving on the unpaved section of the road.

[15] In cross examination by Learned Counsel for the 1st Defendant, Mr. Valdez agreed that if he swerved to his left it would take him into the next lane. However he insisted that the collision took place in his lane and the vehicle was pushed from the middle of the road to the edge of the road. It was suggested to him that he swerved into the lane in which the 1st Defendant was travelling because it was dark and the dust from the road obstructed his vision. This suggestion was however rejected by the 2nd Defendant.

[16] Mr. Francisco Concha in his witness statement stated that on November 22, 2012 at around 7:10 pm he was travelling in a green Volkswagen driven by the 2nd Defendant from BNE, Spanish Lookout, toward Blackman Eddy Village. Before exiting BNE, a large Dodge Truck travelling at moderate speed of about 50 miles per hour, passed in the same direction they were headed. The 2nd Defendant travelled at a moderate speed about three to four vehicle lengths behind the Dodge Truck and gradually accelerated to about 40 miles per hour while continuing to drive behind the Dodge Truck. There were lights from a vehicle travelling in the opposite direction but it was dark and the Dodge Truck in front obstructed his vision. The Dodge Truck made a sharp right side turn and ran off the road. The front seat passenger shouted and at the same time he noticed an oncoming vehicle was in the same lane they were travelling in and seemed to be halfway on and hallway off the road at full speed headed directly into their vehicle. The 2nd Defendant had swerved to his left to avoid the collision but the oncoming vehicle driven by the 1st Defendant suddenly swerved to his right and collided with the front right corner of the vehicle in which he was travelling. He felt the vehicle he was travelling in pushed backwards until it came to a stop. At the point of impact the vehicle he was travelling in was still in the right lane but close to the centre of the road.

At the time of the collision, a portion of the road was under construction and was at the final stage where it was layered by chippings and was compacted. The condition of the road allowed for vehicles to pass unobstructed.

[17] After the collision, Mr. Concha came out of the vehicle he was travelling in and went over to the other vehicle involved in the collision. Upon reaching the door there was a strong scent of rum. This scent was also recognised in the ambulance that he shared with the 1st Defendant on the way to the Western Regional Hospital.

[18] Cross-examined by learned Counsel for the Claimants, Mr. Concha told the Court that by full speed he meant the 1st Defendant was travelling at a speed of about 65 to 70 miles per hour. When shown exhibit CO2, he stated that the picture does not show where collision took place but shows where the vehicles came to a stop after the impact and the vehicle he was travelling in was pushed back about 30 feet in the direction they were coming from. He told the Court that he was conscious after the collision and remembers a strong scent of rum coming from the 1st Defendant both on the scene when he went over to the vehicle he was travelling in and in the ambulance they were in on the way to the Hospital.

[19] Learned Counsel for the 1st Defendant in cross examination put to Mr. Concha that he could not see if the oncoming lights came from the left or right lane because it was dark and his vision was obstructed by the Dodge truck travelling in front. Mr. Concha admitted that he could not tell where exactly the lights were coming from but insisted that when the Dodge truck ran off the road, the vehicle driven by the 1st Defendant was right in front of them and it was impossible to avoid the collision. Learned Counsel further suggested that Mr. Concha could not have smelt the aroma of rum coming from the 1st Defendant because he was too injured to walk over to the 1st Defendant's vehicle and they did not share an ambulance. Mr. Concha told the court that his ankles, legs and right hand was injured but he was still able to check the vehicle that the 1st Defendant was travelling in and he insisted that there was a strong scent of rum.

[20] Mr. Jacob Braun, the second witness for the 2nd Defendant, in his witness statement stated that on November 22, 2012 at around 7:00p.m. he was traveling along with his family on the Iguana Creek Road, Spanish Lookout towards the Blackman Eddy Village. While passing the BNE junction he saw the 2nd Defendant's car parked at the entrance of BNE. The 2nd Defendant drove out on the highway behind his vehicle. After traveling for about half mile he saw the lights of a vehicle directly in front of him and realized the vehicle was veering directly into the lane he was driving in so he quickly swerved out of his lane and onto the shoulder of the road into a small ditch. Shortly after he heard a loud bang and turned back to discover that the 1st Defendant had crashed into the 2nd Defendant's vehicle. He further stated that he was traveling at about 45 to 50 miles per hour and the 2nd Defendant travelled at a moderate speed at about three vehicle lengths behind him.

[21] In cross examination Mr. Braun told the Court that there was a strong smell of alcohol coming for the 1st Defendant on the night of the collision. Learned Counsel for the 1st Defendant suggested that he was being untruthful because he made no mention of this in his witness statement. Mr. Braun admitted that he did not see when the collision took place because it happened behind his vehicle and he turned back about 50 yards from the place of the collision.

[22] Corporal Everald Tech, 3rd Witness called for the 2nd Defendant provided little assistance to the Court as he was not the investigating officer and did not visit the scene of the accident. He could only say that the witness, Hilbert Gutierrez, appeared to be highly under the influence of drugs or alcohol and he smelt the strong aroma of alcohol coming from his breath.

The Question of Liability

[23] The Claimants were passengers in the vehicle owned and driven by the 2nd Defendant. They were both injured as a result of the collision. Upon proof of damage, they are both entitled to pecuniary compensation for their injuries and loss. Judgment in default having been entered in the Claimants' favour against the 2nd Defendant he is liable to the Claimants. However, by virtue of the Claims against the 1st Defendant and

the Ancillary Claim, the court must determine whether the 1st Defendant is wholly liable for the Claims and for the Ancillary Claim or the extent to which both defendants have incurred liability. The issues were put in this way in the Claimants' written submissions.

> "a. Whether the collision and consequential loss/injuries were caused solely by The 1st Defendant/Ancillary Defendant's negligent acts and/or omissions or Whether the collision was a result of negligent acts and/or omissions by the the 1st Defendant/Ancillary Defendant and the 2nd Defendant/Ancillary Claimant.
>
> b. If both Defendants acted negligently, what percent (%) of liability should be attributed to each Defendant?"

[24] The Consolidated claim and Ancillary Claim fall to be resolved upon the same evidence led at trial and are grounded in the tort of negligence. The Claimants and the Ancillary Claimant must establish on the evidence that the Defendants or the 1st Defendant/owed a duty of care to the Claimants or the 2nd Defendant/Ancillary Claimant that the said duty was breached and that damage flowed from the breach. The burden of proof rests upon the Claimants/Ancillary Claimant to show on the balance of probabilities that the Claimants /Ancillary Claimant were injured and/or suffered loss and damage by the act or omission of the defendants or either of them. (See: Halbury's Laws of England, 5th Edition, Volume 78 (2010), para. 62 & 63.

a. Claimants' Submissions

[25] Learned Counsel for the Claimants submitted that the 2nd Defendant was driving in his assigned lane on the right side of the Iguana Creek Road heading towards the George Price Highway when he was confronted by the 1st Defendant's vehicle in the same lane. At the time he was travelling at a moderate speed of 35 to 40 mph while the 1st Defendant was driving at an excessive speed of about 70 mph. The 2nd Defendant swerved to his left rather than to his right whereupon the 1st Defendant also swerved to the right into his correct lane to avoid a collision. Upon the evidence of both Claimants,

the pick-up truck being driven by Jacob Braun ahead of them swerved to the right off road.

[26] Learned Counsel highlighted the inconsistencies between the evidence of the 1st Defendant and his witness, Hilberto Gutierrez, as to their movement prior to the accident. It was submitted that on the balance of probabilities the 1st Defendant was intoxicated at the time of the accident. The Court was invited to accept the evidence of the Claimants that the 2nd Defendant did not drive into the opposite lane to avoid an unpaved portion of the road. In sum, it was urged that both Defendants were in some degree responsible for the accident and therefore liable to pay damages.

[27] As pleaded in the Statements of Claim, it was contended that the 1st Defendant failed to keep any or any proper look out and to keep to the right hand side of the road so as to avoid the collision. As to the 2nd Defendant, pointing to the manoeuvre by Jacob Braun, it was said that the 2nd Defendant driving 3 to 4 car lengths behind ought to have kept to the right side of the road to avoid the collision.

b. Submissions on behalf of 1st Defendant

[28] The 1st Defendant maintained in his evidence that he was driving in his correct lane on the right side of the road and that it was the 2nd Defendant who entered his lane. Much emphasis was placed on the photographs tendered by the 1st Defendant's son showing the highway with a red marking and the unpaved portion and of the two vehicles sometime after the accident. Also, much was made of the right side of the 2nd Defendant's vehicle coming into contact with the front of the 1st Defendant's pickup truck. Learned Counsel asked the Court to reject the testimony of the 2nd Defendant and his witness, Francisco Concha, that the point of impact took place on the 2nd Defendant's half of the road and that the collision pushed both vehicles onto the 1st Defendant's half of the road.

[29] The court was asked to not accept the evidence of Jacob Braun that he was travelling at about 45 to 50 mph but rather to accept the 1st Defendant's approximation of about 75 mph. This was used as the basis for submitting that Jacob Braun lost control of his vehicle by virtue of driving at speed on the unpaved section of road thereby ending up in the ditch. The submission continued to say that Braun's vehicle raised dust which impeded the vision of the 2nd Defendant who then veared into the 1st Defendant's lane resulting in collision. Learned Counsel urged the Court to disbelieve the evidence of Braun as he along with the 2nd Defendant caused the collision.

[30] In response to the alleged intoxication of the 1st Defendant, it was maintained that there was no credible evidence of the 1st Defendant being drunk.

c. Submissions on behalf of the 2nd Defendant

[31] Reference was made to Regulation 114 (1)(a) of the Motor Vehicles and Road Traffic Regulations, Chapter 230 which provides:

> "114 (1) each driver of a motor vehicle shall comply with the following rules:
>
> (a) He shall at all times keep the vehicle on the right-side of the road unless prevented by some sufficient cause."

This Regulation states what is commonly referred to as "the rule of the road," that motorists must drive in the right lane.

[32] The main plank of the 2nd Defendant's submissions rested on the evidence of himself and Francisco Concha to the effect that the accident took place in the 2nd Defendant's correct lane and it was the 1st Defendant whose driving in the wrong lane precipitated the collision. The evidence was analysed by reference to the particulars of negligence set out in the Ancillary Claim, namely that the 1st Defendant had:

(1) Failed to give way

(2) Failed to drive, move or manoeuvre his vehicle as to avoid colliding into him (2nd Defendant)

(3) Drove to fast.

The Learned Counsel for the 2nd Defendant relied upon the evidence of the Claimants save that it was contended that they were not in a position to say that the point of impact was on the left or wrong side of the road because the 2nd Defendant drove at a moderate speed behind Jacob Braun's pick-up having just exited the BNE Compound. It was said that the 2nd Defendant had no reason to swerve into the left lane hence it was the manner of driving by the 1st Defendant that caused the 2nd Defendant to swerve to his left.

[33] It was contended that circumstantially the evidence pointed to the 1st Defendant being intoxicated, losing control of his pick-up truck and driving into the wrong lane, first into the path of Jacob Braun, who was forced to take evasive action and then into the path of the 2nd Defendant. It was accepted, as was testified to by the Claimants, that the 1st Defendant was trying to pull back to his correct side of the road after the 2nd Defendant had swerved to avoid his pick-up. This explained the right passenger side of the 2nd Defendant's vehicle colliding with the front of the 1st Defendant's truck.

[34] Learned Counsel invited the Court on behalf of the 2nd Defendant to treat the 1st Defendant as an unreliable witness given that he was most likely intoxicated at the time of the collision and by his own admission was only conscious for about five minutes after the collision. Also highlighted were the facts of the 1st Defendant saying he never saw Jacob Braun's vehicle and the inconsistencies between his evidence and that of his witness, Hilberto Gutierrez as to their whereabouts between 2:30 pm and 6:30 pm.

Conclusions on Liability

[35] There is no demur that there was a collision between vehicles driver by the 1st and 2nd Defendants at about 6:30 pm on the Iguana Creek Road on November 22, 2012. It is not in dispute that the 1st Defendant had driven out of the BNE Compound with the Claimants and his witness Francisco Concha as passengers. The 2nd Defendants had left Buena Vista and was traveling east to west in the opposite direction towards Spanish Lookout. In the collision the right front passenger side of the 2nd

Defendant's Volkswagen Sedan came into contact with the front of the 1st Defendant's pick-up truck. For completeness, it is added that the injuries to the Claimants and to the 2nd Defendant were sustained as a result of the collision.

[36] The evidence is to be gleaned from the eye-witness testimonies of the claimants, the defendants and their witnesses Jacob Braun and Francisco Concha. There were photographs tendered by Carlos Orellano, the brother of the 1st Defendant. A somewhat blurry colour photograph allegedly depicted the stone with the vehicles and on the right of the accident was also accepted into evidence. The photographs taken on the following day by Carlos Orellano were of the Iguana Creek Road in the area where the accident was said to have taken place. Police Cpl 290 Everal Tech was only able to assist by describing the condition of Hilberto Gutierrez who was brought to the Police Station on the night of the accident.

[37] All the witnesses accept that after the collision, the vehicles came to a stop on the northern or the half of the road assigned to vehicles travelling to Spanish Lookout. There is disagreement as to whether the point of impact was on that side of the road or on the other or southern side of the road. The 2nd Defendant and Francisco Concha said it was on the 2nd Defendant's Southern side of the road. The Claimants, the 1st Defendant and Hilberto Gutierrez said it was on the 1st Defendant's or northern side of the road. Jacob Braun was driving ahead of the scene and he did not see the actual accident but was able to recount what he saw afterwards.

[38] The 2nd Defendant's vehicle was driving behind the big Dodge pick-up driven by Jacob Braun from the time it left BNE and maintained a distance between them of three to four car lengths. The preponderance of the evidence is that it was around 6:30 pm and it was dark. The vehicles' lights were on. In the 2nd Defendant's vehicle there was conversation before the accident.

[39] There was an unpaved section of road on the side of the road on which Jacob Braun and the 2nd Defendant were driving. Jacob Braun first drove on this section of road. Dust rose from the surface. The Claimants and 2nd Defendant was driving at a moderate speed of 30 to 40 mph. Jacob Braun estimated his speed at 45 to 50 mph.

The 1st Defendant and his witness disagreed and insisted that the 2nd Defendant was driving fast and, as the 1st Defendant said, at a speed of over 75 mph.

[40] The Dodge pick-up drove off the road into a ditch to the right. Jacob Braun spoke of seeing lights coming straight in front of him when he was already on the unpaved section of road. He realized it was a vehicle veering directly into his lane. He swerved out of his lane onto the shoulder of the road into a small but not deep ditch.

[41] It is salutary to note that neither the 1st Defendant nor his witness Hilberto Gutierrez recalled seeing the Dodge pick-up. Indeed, when pressed in cross-examination, the 1st Defendant denied that it was on the road. Consistent with this denial, learned Counsel for the 1st Defendant urged the Court to find that Jacob Braun was not to be believed. It was the Dodge pick-up which was blocking the 1st Defendant's view ahead and which accounts for the sudden evasive action by swerving to the left. The Claimants both spoke of him slowing down almost to a stop, then accelerating and pulling to the right then sharply to the left. It is not difficult to avoid the consistency of the evidence of the Claimants, the 1st Defendant, Jacob Braun and Francisco Concha of the swerving of the Dodge pick-up off the right side of the road and of the 2nd Defendant swerving to the left. In this regard, the evidence of the 1st Defendant and Gutierrez cannot be credible.

[42] As earlier suggested and I now iterate the 2nd Defendant did swerve into the opposite lane and therefore this requires an explanation for this action in breach of the rule of the road. The answer is provided by the testimony as to the approaching lights of a vehicle on his side of the road consistent with what Jacob Braun encountered. The location of those lights would not have been seen until Jacob Braun's Dodge pick-up moved to the right off the roadway. This set the stage for the collision as a head-on collision loomed. The 2nd Defendant took evasive action and as observed by the 1st Defendant that manoeuvre was one of self-preservation in my view as he pulled to the left to take his side of the vehicle out of harm's way. Had the 1st Defendant maintain his course in his incorrect lane a collision might have been avoided or the right front of the 1st Defendant's vehicle would have made contact with the right front of the 2nd

Defendant's vehicle. Given that the front of the 1st Defendant's vehicle was damaged, this lends credence to the 1st Defendant trying to regain his correct lane. As I see it, the accident did occur in the northern lane which was the correct lane for the 1st Defendant and the incorrect lane for the 2nd Defendant given their respective paths. In as much as the blurred photographs ("JAOC7") seemed to put the vehicles at right angles to each other after the accident, there is evidence from the Claimants, the Defendants and Francisco Concha that the vehicles moved after the point of impact before coming to a halt. Therefore, it is of no moment that the photograph appears to show the vehicles at right angles to each other.

[43] The red marking on the roadway as seen in the photograph was said to reflect the point of impact. However, it was pointed out that close to the marking is an oil stain from the vehicles. This plainly meant that this is the spot where the vehicles came to rest. I disagree with the 1st Defendant that this was the point of impact and accept the statement of Jacob Braun that the red marking showed where the vehicles were after the accident.

[44] It is the tacit submission of the Claimants that the 2nd Defendant's evasive manoeuvre to the left renders him partially responsible in negligence for the accident. In as much as it was the act of the 1st Defendant in driving on the wrong side of the road that precipitated the collision, the question loomed as to why he did not swerve to the right as Jacob Braun did. I am satisfied that this makes the 2nd Defendant to some measure liable for the accident.

[45] The 1st defendant and Hilberto Gutierrez both said in their witness statements that the 2nd Defendant crossed into the 1st Defendant's lane out of his own lane to avoid the unpaved section of road. The suggestion was that this road surface was in a state that it could not be driven over at even moderate speed. Indeed, it was argued that this accounted for Jacob Braun driving off the road. In relation to the state of the road, it was sufficient to view the photographs to see that the surface was even although not paved. In furtherance of this observation was the direct testimony of Jacob Braun who stated that it was not difficult to make the transition from the paved to the unpaved part

of the road. In addition, the 2nd Claimant said that the road surface was stripped and one could travel freely as it was on the last stage before applying tar and the chippings. In the evidence, there was no support for the unpaved section of the road being a factor in the cause of the accident.

[46] The evidence as to the speed of the vehicles was somewhat varied. The Claimants and Jacob Braun agreed with the 2nd Defendant and Francisco Concha that the 2nd Defendant's vehicle was travelling at a moderate speed, maintaining a steady distance of 3 to 4 car-lengths behind Jacob Braun's vehicle. The 1st Defendant however said in his witness statement that the oncoming vehicle was travelling at excessive speed. He estimated the speed to be around 75 mph. I do not accept this based on what the other witnesses testified given that there was no suggestion that the 2nd Defendant's vehicle was closing the distance between it and Jacob Braun's vehicle.

[47] As to the speed of the 1st Defendant's vehicle, he said he was travelling at 37 miles per hour. The Claimants and the 1st Defendant said he was travelling at excessive speed. Jacob Braun, however, whose evidence I prefer, was not so convinced and was only prepared to say the 1st Defendant's vehicle was travelling at about 40 mph. In my estimation, speed was not a major contributing factor to the accident.

[48] The Claimants emphasized the level of intoxication of the 1st Defendant. The witness, Francisco Concho spoke of smelling alcohol coming from the driver when he went to the 1st Defendant's vehicle soon after the collision. He also said there was the strong smell of alcohol in the ambulance which he shared with the 1st Defendant. Also Jacob Braun said he smelt alcohol on the breath of the 1st Defendant at the scene.

[49] As between the testimonies of the 1st Defendant and Hilberto Gutierrez, they differed as to what they did before the accident. They both said they went to La Pasadita Bar in Buena Vista Village where Gutierrez drank 5 – 6 beers. The 1st Defendant said he remained outside while Gutierrez went inside and drank five (5) beers. He did not explain nor was he asked how he knew what his passenger did in the bar. Gutierrez said that the 1st Defendant did accompany him into the bar but he drank

water. The credibility became stained by its very improbability but moreso by the fact that they met at 2:30 pm and the accident occurred at 6:30 pm. Although, they stopped briefly for Gutierrez to make a purchase, the evidence suggested that almost 4 hours was spent at the bar. Also, the 1st Defendant and Gutierrez differed as to what was purchased after they left the bar. Gutierrez said he told the 1st Defendant he had purchased a bottle of rum whereas the 1st Defendant claimed not to know what Gutierrez purchased as it was in a black bag. As to the state of Gutierrez, he admitted going back to have 4 "stouts" after the accident. His incoherence and unsteady gait was attested to by P/Cpl. Tech. Taking the foregoing into account, the preponderance of the evidence is that the 1st Defendant did imbibe alcohol before the accident over a period of nearly 4 hours and this must have been the cause of him driving on the wrong side of the road after accessing the Iguana Creek Road from Buena Vista.

[50] Taking the evidence in its totality into consideration, I hold that the 2nd Defendant was responsible for the accident to the extent of 20% having regard to his ill-advised though instinctive manoeuvre. The 1st Defendant is liable to the Claimants and to the 2nd Defendant to a percentage of 80% of damages.

Damages

General Damages

[51] In determining the quantum of general damages guidance has been given by Wooding CJ in **Cornilliac v St Louis 1965 7 W.I.R. p 491**. In this hallmark case, the learned judge itemized the several considerations which a court should bear in mind when making an assessment of general damages for personal injury as follows:

> "
>
> *(I) The nature and extent of the injuries sustained;*
> *(II) The nature and gravity of the resulting disability;*
> *(III) The pain and suffering which had to be endured;*
> *(IV) The loss of amenities suffered; and*
> *(V) The extent to which consequentially, the appellants pecuniary prospects have been materially affected."*

Counsel for Claimants No.1 and 2 presented the evidence under each heading as follows:

Claimant No. 1

The nature and extent of the injuries sustained

[52] According to the medical report issued by Dr. Francis Smith dated March 6, 2013, after a physical and roetgenographic examination, it was concluded that Claimant no. 1, Viriato Matus sustained: a displaced comminuted fracture of the distal third of the left femur; dislocated left elbow; dislocated right elbow with a displaced fracture of the proximal ulna (Monteggia's fracture); ligamentous injury of the left knee; mild cerebral concussion and minor cuts and abrasions. The report further states that Viriato Matus underwent longitudinal skin traction for the left femoral fracture and closed reduction for both dislocated elbows. On November 23, 2012 the Claimant had a second surgery for the intramedullary interlocking femoral nailing to fix the femoral fracture and internal fixation with plate and screws done for the displaced right proximal ulnar fracture.

[53] Post surgery examination done on March 6, 2013 revealed a distal interal-locking screw as broken – a fatigue fracture due to his weight. The report concluded that the Claimant would have to undergo two future surgeries to remove the femoral and ulnar implants and left knee surgery. Permanent residual disability (without complications) estimated at 25% of the total person.

Claimant No. 2

[54] Two medical reports were issued concerning Claimant no. 2, Julio Alberto Castellanos, one by Dr. Francis Smith dated December 10, 2012 and one on April 15, 2013 and one by Dr. Amin Hegar dated August 7, 2013. Dr. Hegar reported that the Claimant has a large scar about 35 mm in length below the lower lid of the right eye and swelling or puffy upper eyelid. There is also a scar at the level of his nose bridge which was caused by the fracture of his nasal bones. Dr. Hegar concluded that this Claimant now presents a facial deformity of his face as a result of the scars.

[55] According to the reports from Dr. Smith, Claimant No. 2 suffered closed head trauma, a lacerative wound to the scalp, nasal bone fractures, lacerative wounds to the face, a sub-galeal haematoma and a displaced fracture of the right tibia. A short leg cast was applied to temporarily stabilize the tibial fracture on the night of the accident. Surgery was performed for the head and facial injuries on November 22 and 23, 2012. This Claimant also underwent closed intramedullary tibial nailing for the right tibial fracture. A synthes tibial interlocking nail was inserted with two interlocking screws proximally and two distally. The report further indicates that the Claimant requires physical therapy due to the tight tendo-calcaneus when the cast was removed three months post-operative. Future surgery will be required as the tibial intra-medullary nail should be removed two years from date of insertion. This Claimant was estimated to be permanently disabled as to 10% of his total person.

Nature and gravity of the resulting disability

Claimant No. 1

[56] Claimant no. 1 suffered extensive scaring on the arms near the elbows as a result of the longitudinal skin traction and replacement of skin near the dislocated elbows along with the total inability to use his arms. After the surgery cuts healed, there was still restriction of the active range of both elbows and bone union. Due to a broken interlocking screw in the left knee and scaring at the fracture sight mobility is restricted.

Claimant No. 2

[57] Claimant no.2 suffered facial deformity as a result of a large scar approximately 35mm in length below the lower lid of the right eye and a large scar at the level at his nasal bridge and suffers from visual impairment. He suffered limited mobility for over three months and underwent physical therapy for over three months to assist in regaining considerable mobility to his right leg.

Pain and suffering

Claimant No. 1

[58] This Claimant suffered two broken elbows, a broken leg and knee in addition to a head concussion. He was hospitalized for over nine (9) days and suffered discomfort and restricted mobility in his arms for over six (6) months. Severe pain is felt when the Claimant is sitting and he is unable to bend his left knee when sitting. Mobility is restricted to walking with a walking stick. The Claimant No. 1 is unable to drive or stay in the same position for a long time without his leg becoming swollen.

Claimant No. 2

[59] Julio Castellanos suffered a broken nasal bridge, a broken leg and laceration of the scalp and face. He was hospitalized for over 7 days and suffered discomfort and restricted mobility of his leg for over 3 months. This Claimant complains of headaches and shocking pain in his back and right leg. The vision in his right eye has diminished and he experiences pain and blurry vision when in the sun. When the weather changes, he has strong pains in his right leg and back.

Loss of Amenities

Claimant No. 1

[60] The Claimant was unable to do much activity which required the use of his arms/elbows for over six (6) months and was unable to walk or participate in moving activities for over two (2) months. Simple daily activities of life have become painful.

Claimant No. 2

[61] This Claimant was unable to walk and participate in moving activities for over three months. His mobility is still restricted and pain is felt when pressure is applied to the leg. His vision is still impaired and his facial deformity causes embarrassment.

Loss of earning capacity

[62] Learned Counsel for Claimant no. 1 referred the court to **Gravesandy v Moore 40 WIR 222** where it was held that:

> *"A Plaintiff who seeks general damages for loss of earning capacity must show that there is a real or substantial risk that he might be disabled from continuing his present occupation and be thrown, handicapped, on the labour market at some time before the estimated end of his working life. The 'risk' in such a case will depend on the degree, nature or severity of his injury and the prognosis for full recovery, and evidence must be adduced as to these matters and also as to the length of the rest of his working life, the nature of his skills and the economic realities of his trade and location."*

[63] The court was invited to consider the Claimant's disadvantage in the labour market on account of his injuries. The Claimant was 25 years old at the time of the accident and was employed as a floor hand at the Belize Natural Energy. He has not been on the job site since the accident and although still employed on record, he is not being paid a salary. The evidence before the Court indicates that Claimant no. 1 was employed since April 2010 and earned an annual salary of $52,000.00. The position of floor hand requires the Claimant to work 12 hours per day on 7 days shift and the job description involves assisting in setting up, taking down and transporting drilling and service rigs and service equipment, cleaning up drill rig area, handling, sorting and moving drill tools, pipes, cement and other materials.

[64] Learned Counsel also submitted that there is no evidence of what type of employment the Claimant can undertake in the future or if he would be able to work again due to the nature of his injuries and the need for future treatment and surgeries. It was however submitted that in light of the evidence, there is a substantial risk that the Claimant may lose his present employment as a floor hand some time before the end of his working life.

Submissions on Quantum

[65] Learned Counsel for Viriato Matus and Julio Castellanos, Claimants no. 1 and no. 2 respectively, submitted, based on the **Judicial Studies Board – Guidelines on the Assessment of General Damages in Personal Injury Cases 9th Edition,** each Claimant's injuries was analysed and compiled to arrive at a settlement figure. Counsel relied of the following comparable award:

Claimant No. 1

(a) Moderate or Minor Injury (comprised of simple fractures, tennis elbow syndrome and lacerations) – Up to £8,000

(b) Fractures from which an incomplete recovery is made (the injured person will be left with a metal implant and defective gait) - £11,500 to £17, 750

(c) Knee Injuries (continuing pain and discomfort and limitation of movement or instability) - £17,000 to £27,500

(d) Male –less significant scarring - £2,500 to £5,850

Claimant No. 2

(a) Minor Eye Injuries -£2,500 to £5,600

(b) Fractures of Nose or Nasal Complex (Displaced fracture where recovery complete but only after surgery) - £2,500 to £3,250

(c) Male – Less significant scarring -£2,500 to £5,850

(d) Less serious leg injuries (Fracture from which an incomplete recovery is made) - £11,500 to £17,750

[66] Counsel for the Claimants referred the court to the case **Cleos Billingy v Kevon Jessie-Don Anderson et al Claim No. SVGHCV2013/0096**, where the Claimant was a Police Sergeant age 40 at the time of the accident. As a result of the accident on August

20, 2011, the Claimant sustained a laceration to the left parietal scalp, deformity of distal left leg and left elbow, fractures to the left tibia and fibula and fracture to the left distal humerus and right thumb. He underwent surgery on August 28th and external fixation of the fracture of the distal humerus was done as well as closed reduction and casting of the fracture to the tibia/fibula. He was discharged August 30, 2011 and thereafter received follow up treatment. Months later the Claimant underwent another operation to remove the external fixator to his arm and physiotherapy to the elbow commenced. In 2013 the Claimant required walking aid and complained of swelling, pain and stiffness to the ankle and leg. When walking for long periods of time or in the morning or prolonged immobilization, there was swelling and stiffness of the foot. When the Claimant went back to work he had limited mobility. Under general damages the Claimant was awarded EC$147,760.00 which included pain and suffering of EC $80, 000.00, loss of amenities $30,000.00, future medical expenses EC$5,000.00, loss of earning capacity EC$30,000.00 and nursing care EC$2,500.00 and in addition special damages, interest and costs.

[67] Counsel further referred to the cases **Randy James v Leroy Lewis et al Claim No. ANUHCV 2007/0403** and **Nichola Rodriguez v ANSA Finance Merchant Bank Limited et al Claim No.CV 2008-03048**. In **Randy James v Leroy Lewis et al**, the Claimant was 35 years of age at the time accident and 39 years of age at the time of the trial. He was unconscious for five days and sustained several injuries including facial injuries, injury to the right eye, injury to the right ear, fracture of both bones of the right forearm, rupture to both collateral ligaments of the knee, complete rupture of the Anterio Crucid Ligament and Meniscus tear and injury to the Posterior Crucid Ligament. The Claimant was hospitalized for four months and suffered pain in the left knee, right arm, shoulder, neck, face and ear. Further surgery was necessary for the knee injury at the date of trial. As general damages the Claimant was awarded EC $180,000.00 which includes pain and suffering of EC$70,000.00, loss of amenities EC$60,000.00 together with special damages, interest and costs. In **Nichola Rodriguez v ANSA Finance Merchant Bank Ltd et al** , the Claimant suffered tenderness along the lateral border of the right patella, maltracking patella, intermittent back pain, pain the right knee cap and

difficulty walking with pain radiating down the right calf. For the injury to the right patella (knee cap) arthroscopic or 'key hole' surgery was recommended. The Claimant was awarded $185,000.00 with interest at 9% for non-pecuniary loss, loss of future earnings of $504,000.00, future surgery $45,000.00 along with special damages and costs.

Special Damages

[68] It is now settled law that special damage must be pleaded and proved if the Claimant is to recover. In **Ilkiw v Samuels [1963] 1 WLR 991**, Diplock, LJ, had this to say:

> *"In my plain view it is plain law – so plain that there appears to be no direct authority, because everyone has accepted it as being the law for the last hundred years – that one can recover in action only special damage which has been pleaded and, of course proved."*

[69] The Court was provided with receipts as evidence of the special damages being claimed. All of the receipts were admitted into evidence; however some of the receipts were challenged during cross examination of both Claimant No. 1 and Claimant No. 2.

Special damages claimed are as follows:

Claimant No.1:

1. Medical expenses - $36, 476.78

2.Police Report and birth certificate -$30.00

3. Transportation - $1,640.00

Total: $38,146.78

Claimant No. 2

1. Medical Expenses - $41,685.59

2. Police Report and Birth Certificate -$30.00

3. Transportation/Travel Cost - $7, 650.00

Total: $49,365.59

[70] In the course of cross-examination, both Claimants admitted that their medical expenses were paid by the insurers save for 20% co-payment which was borne by each of them. Accordingly, Claimant No. 1 claim as per receipts amounts to $8,369.79 and Claimant No. 2 to $13,235.02. No evidence was led viva voce or by way of receipt in support of the sums claimed for Police Report or Birth Certificate. As to the transportation cost claimed by Claimant No.1, the receipts are in the name of the taxi driver. It was explained in cross-examination that this was done inadvertently, which explanation is accepted to the Court. In the case of the Claimant No. 2, he admitted that the travel expenses were paid by his father and the Claim was not pursued by his Attorney-at-Law.

2nd Defendant/Ancillary Claimant

[71] The 2nd Defendant/Ancillary Claimant, Giovanni Valdez, in his witness statement stated that as a result of the accident he suffered from a displaced hip, upper back and chest pain. He further stated that he suffered extreme pain and had to do 10 sessions of physiotherapy. His 1996 Volkswagen Passat Sedan, which was valued at $10,000.00 at the time of the collision, was totally destroyed. Although he claimed damages for pain and suffering, loss of amenities, loss of expectation of life and loss of earning, a medical report confirming the extent of his injuries was not submitted with his Statement of Claim or exhibited to his witness statement.

General Damages

[72] In the absence of a medical report certifying the injuries sustained by the 2nd Defendant/Ancillary Claimant, the Court has been put in the invidious position of declining to award any general damages.

Special Damages

[73] There is documentary evidence of the 2nd Defendant/Ancillary Claimant's medical expenses being paid by his insurers and that his co-payment of 20% amounted to $3,280.69. In addition, he incurred expenses for 10 sessions of physiotherapy for which he paid $260.00 taking into account what was paid by the insurers. Documents disclosed and admitted into evidence by consent establish the 2nd Defendant/Ancillary Claimant's ownership of the vehicle and that said vehicle was damaged beyond repair. An amount of $10, 00.00 was sought as compensation for the loss and there was no demur by the Ancillary Defendant. Additional documents included receipts for five trips to the hospital in Belize City at $200.00 per trip, thus totalling $1,000.00 as claimed in the Statement of Claim. The insurers paid for the ambulance trip leaving the 2nd Defendant/Ancillary Claimant with the co-payment of $65.00.

[74] The 2nd Defendant/Ancillary Claimant is therefore entitled to recover the aggregate sum of $14,452.69 as special damages.

Conclusions on General Damages

Claimant No. 1

[75] Having considered the submissions of Learned Counsel for the Claimant No. 1, general damages are to be awarded based on the injuries sustained. Following the Judicial Studies Guidelines, I would allow the following sums: (a) Injuries to both elbows $6,000.00; (b) Fractures to the left former and proximal ulna - £15,000; (c) injury to the ligaments of the left knee _ £17,000.00; and (d) minor head injury – mild cerebral concussion - £1,250.00. This leads to a total of £39,250.00 which converts to $130,702.50 BZ at the Central Bank buying rate of 3.3 as at the date of trial of July, 2014. The Claimant No. 1 will be required to do a further operation on his hip and a further operation on his knee. This is borne out by his answers in response to Learned Counsel for the 1st Defendant and by the medical report of Dr. Francis D. Smith. An estimate in the sum of $2,750.00 was exhibited for the knee operation but no estimate was provided for implanting hip bone to the fracture area.

Loss of Earning Capacity

[76] At the time of the accident, the Claimant No. 1 was 25 years of age and employed as a floor hand. His job description revealed that the tasks were physical in its nature. There is some uncertainty as to whether he will be able to walk normally again as this is dependent upon the success of the two additional operations he will require to undergo. In his witness statement he stated that he is unable to work and depends upon his family for financial assistance. He does not know whether he will be able to do physical work again or for that matter to work in the oil drilling industry. When cross-examined he admitted to receiving sickness benefit from Social Security and that he is still recorded as an employee of BNE though not being paid.

[77] The principles as to awards for loss of earning capacity were enunciated in the case of **Smith v. Manchester Corporation [1974] 17KIR1** and in **Moeliker v Reyvoke, Co. Ltd [1977]1 All E.R. 9**. The award is made where the Claimant is at risk sometime in the future of losing the employment he enjoyed. In this case there exists a real risk of Claimant No. 1 losing his previous position in the labour market. In the circumstances I would award the Claimant No.1 $20,000.00.

[78] Taking into account the comparative cost of living between the UK and Belize, I would scale down the general damages to $115,000.00. Accordingly, I would allow general damages in the total sum of $137,750.00.

Claimant No. 2

[79] Again following the Judicial Studies Board's Guidelines relative to the injuries sustained by the Claimant No. 2, the following sums are extracted : (a) minor eye injury - £2,500 (b) nasal bone fractures £2,500.00, (b) nasal bone fractures £3,000.00 (c) Facial deformity from large scar as level of nasal bridge - £3,500.00; (d) Fracture of right tibia - £15,000.00. It is to be noted that Dr. Hegar stipulated that his eyes were normal in his report of August 7, 2013. His permanent disability was estimated at 10% of his total person. The aggregate amount of £24,000.00 when converted at a rate of 3.3 as at July 2014, stands at BZ $79,920.00. Inclusive of pain and suffering and allowing for the

variance as to the cost of living between the UK and Belize I would award the sum of $75,000.00

Summary

[80] The Claimants are entitled to judgment against the Defendants as follows:

No. 1 Claimant

General Damages - $137,750.00

Special Damages – Medical Expenses – (as per receipts)		$8,369.79
Taxi Fares (as per Claim)		$1,640.00
		$10,009.79
Total	$147,759.79	

No. 2 Claimant

General Damages		$75,000.00
Special Damages (as per receipts)		$13,235.02
	Total	$88,235.02

[81] On the Ancillary Claim, judgment is entered in favour of the 2nd Defendant to the extent of 80% of special damages of the sum of $14,452.69 which amounts to $11,562.15.

Interest

[82] The special damages awarded to the Claimants and to the 2nd Defendant shall attract interest at half the statutory rate, that is to say, at the rate of 3% from the date of the accident – November 22, 2012 to the date of trial August 14, 2014. In the case of the general damages, the interest shall be at the statutory rate of 6% from the date of service of the Claim – November 13, 2013 to the date of trial – August 14, 2014.

Costs

[83] The Claimants are entitled to costs as agreed at the pre trial review in the sum of $6,000.00 to be paid by the Defendants. The 1st Defendant shall pay to the 2nd Defendant prescribed costs in the sum of $2,890.54 on the special damages awarded of $11,562.15.

KENNETH A. BENJAMIN
Chief Justice