

THE SUPREME COURT OF BELIZE, A.D. 2017

CLAIM NO. 542 of 2016

TIFFANY TRACY WILLIAMS

CLAIMANT

AND

**CARLOS JOSE RODRIGUEZ
NATIONAL FISHERMEN PRODUCERS
CO-OPERATIVE SOCIETY LIMITED**

**1st DEFENDANT
2nd DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2017

17th July

18th July

Decision

2017

18th September

Mr. Brandon S. Usher for the Claimant.

Mrs. Nazira Myles for the 1st Defendant.

Mr. Kevin Arthurs for the 2nd Defendant.

**Keywords: Tort – Negligent Driving Causing Death – Contributory
Negligence – Eleven Year Old Child – Agency – Assessment of Damages –
Torts Act Cap 172**

JUDGMENT

1. Tezzrah Diamond Thompson, a ten year old, is dead. On the afternoon of 5th October, 2015, as a pedestrian, she was involved in a collision with a GMC truck being driven by Carlos Jose Rodriguez. She was injured and

succumbed the next day. The truck belonged to the National Fishermen Producers Co-operative Society Limited (National) and had been loaded with 3000 lbs of lobster and conch also belonging to National.

2. Tezzrah's mother, Tiffany Williams, has brought this claim as a dependent under the Tort's Act. She says that her daughter's death was caused by Carlos' negligent driving and that at the relevant time he was the servant or agent of National. She claims, both special and general damages with interest thereon, from them both. Carlos and National deny that Tezzrah's death was caused by any wrongful act or default on Carlos' part. In fact, they say, if there was negligence, it was wholly or in part, Tezzrah's as she carelessly crossed "*the highway suddenly ... without paying attention to oncoming traffic*" (taken from the agreed pre trial memorandum). They add that at the time of the collision, Carlos was neither an agent nor a servant of National. He was an independent contractor and any liability for negligence which may be ascribed to him cannot be vicariously ascribed to National.
3. Undoubtedly, motor vehicle drivers owe a duty to use reasonable care and skill towards all other users of the road who may reasonably be likely to be affected by their actions. The issues which, therefore, now fall for the court to determine are:
 1. Did Carlos Rodriguez' negligence cause the injuries and the death of Tezzrah Thompson.
 2. Did Tezzrah Thompson's own negligence contribute to her injury and death.

3. If Carlos Rodriguez' negligence did cause or contribute to the injuries and death of Tezzrah Thompson was he the employee or agent of National at that time.

4. If Carlos Rodriguez' negligence did cause or contribute to the injuries and death of Tezzrah Thompson what damages is Tiffany Williams entitled to.

Did Carlos Rodriguez' negligence cause the injuries and the death of Tezzrah Thompson:

4. The Defendants submit that not one scintilla of evidence was provided by the Claimant to prove that Carlos had driven negligently. The court notes that not even the statement of claim gave any indication at all of how the collision or "*knock down*" occurred. Six particulars of negligence were stated but they were supported in no way by any factual contentions on which the Claimant sought to rely. They seem to postulate that the simple fact that the collision occurred necessarily meant that the Defendant was liable. However, the defence never sought to strike out the embarrassing pleadings. Nor did they object to a dependency claim by a mother for a 10 year old, no order having been made appointing her as an administrator. Instead, they joined issue and offered their own version of events, including a clear plea of contributory negligence.

5. The Defendants referred to the lack of any eye witness testimony on the Claimant's behalf. They stressed that all the evidence from the scene came from persons who arrived after the incident had already occurred and who could therefore not give any direct testimony in proof. The Claimant certainly presented no eye witness testimony nor was there an official

investigator's report or findings, no photographs which could definitively offer point of impact, location or description of damage to the vehicle, nothing of the expected physical evidence. There was not even a post mortem report for the deceased. One was attached to the claim form but was never put into evidence. (I state for clarity that attachments to the claim form do not form part of the claim form or evidence in the trial). The full extent of Tezzrah's injuries are therefore unknown. But, it is no novelty that a case could be proven on circumstantial evidence only. Circumstantial evidence being no weaker than direct. The court's inferences must only be reasonable drawn on the established facts. Those facts being established from both the Claimant and the defendant's evidence.

The Evidence

6. We begin with the evidence of Darwin Slusher who says he had undergone a three month basic Emergency Medical Technician course offered by the Belize Emergency Response Team. He says he had been self-employed as an intermediate medic for two years at the time of the incident. He was not a medical expert but he had some medical knowledge and proved to be an exemplary witness of fact.
7. He explained how he had been travelling in a bus when it suddenly halted at the George Price Highway and Mahogany Heights Junction. He noticed a girl (accepted to be Tezzrah) bleeding at the side of the road and he approached to render first aid. She was lying face down on the pavement and was surrounded by a number of persons. He rolled her over and noticed she had teeth missing and her legs and jaw appeared to be broken. He said he himself splinted one of her legs, took her blood pressure and oxygen and instructed that an ambulance be called. The ambulance came sometime later

and Tezzrah was placed on a spine board and transported by ambulance to the Karl Heusner Memorial Hospital. He went with her and while underway she was treated with bandaging, an IV and suctioning of her airway.

8. Denbigh Yorke, a police Corporal out on highway patrol that day explained that he came upon the scene around 3:15 p.m. He saw a child lying on the ground “*suffering from head and body injuries,*” and being attended to by “*two nurses.*” He attended to traffic flow control, made a sketch of the scene and took measurements. The original sketch was not before the court, but there was a reproduction, which he says, he made from it. It was signed only by Cpl. Yorke who explained that he was unable to get Carlos to sign or approve the markings, originally, because of the language barrier (Carlos is Spanish speaking) and subsequently, because he did not know how to locate him. The drawing showed a bus (which he testified was a blue bird school bus) parked entirely on the shoulder of the road just before a bus stop, a point of impact on the highway about 4 feet from the mid side of that bus, a blood stain 45 feet away from this point of impact and a vehicle which he claimed to be the one Carlos was driving. He places that vehicle entirely on the shoulder of the road some 318.6 feet away from his point of impact. He added under cross examination that he was assisted in marking the point of impact by blood and debris he saw on the ground and by what he had been told by the bus driver and other persons present.
9. I found these two witnesses to be independent and forthright. They had nothing to prove or to hide and I had no reason to disbelieve them. Neither of these men were eye witnesses, but Carlos and (to a limited extent) his passenger Daniel Dawson were.

10. We begin with the joint defence where it is pleaded at paragraph 3 to 7:

“3. The Defendants deny paragraph 2 of the Statement of Claim inclusive of the Particulars of Negligence. The 1st Defendant states that he was driving the motor truck at a moderate speed of approximately 30 MPH when upon reaching Miles 31 and 32 on the George Price Highway, he saw a yellow in color bus parked immediately before the bus stop on the right hand side of the highway (travelling from Belmopan to Belize City) partly on the shoulder of the highway. The 1st Defendant states that the bus was parked in such a way that the rear of the bus was still on the highway blocking the bus stop.

4. The 1st Defendant further states that he was already crossing next to the bus when suddenly a female student dressed in a sky blue uniform ran out from in front of the bus unto the highway without looking both ways for oncoming traffic. The female student rushed unto the highway in an effort to rapidly cross the highway to catch a van on the opposite side of the road (the left side travelling from Belmopan to Belize City). This van transports commuters and students into the Mahogany Heights Village. That the female ran into the right side of the motor truck where she sustained her injuries.

5. The 1st Defendant tried to avoid the collision with the female student and maneuvered the steering wheel to his left side of the highway but the distance between the motor truck and the student was only about one feet. The female student ran into the front side of the motor truck and damage from the impact was caused to the right side signal lights which is on the passenger side door.

6. Once the 1st Defendant heard a loud bang, he immediately pulled over to the right shoulder of the highway after the bus stop and a couple vehicles that were parked off the shoulder of the road (heading from Belmopan to Belize City) and rendered assistance to the female student.

7. The female student, Tezzrah Daimond Thompson’s injuries and death was wholly caused by her negligently and carelessly crossing the highway without paying attention to oncoming traffic, specifically the motor truck driven by the 1st Defendant.”

11. As already stated, there never was a version of how the accident occurred except as presented in the defence. However, although the pleaded defence, verified by a statement of truth signed by Carlos and Pauline Rodrigues of National, stated quite clearly what their case would be at trial, the testimony from neither Carlos nor Daniel makes any reference at all to most of it.

12. Carlos states that he came around a small curve in the road. His vehicle was heavily loaded. He was already driving at a reduced speed but he slowed down to about 25mph as he approached a parked yellow bus at a bus stop. The back of the bus was on the road. He saw no one crossing the road. When he was directly in line with the yellow bus he suddenly heard a loud bang. He swerved the truck to the left while exclaiming to his passenger (Daniel) that he must have hit something. He continued driving until he found space to park ahead of six to eight vehicles which were already parked at the side of the road. He exited his vehicle, checked it for damage, then ran back towards a forming crowd. It was then that he saw a hurt little girl on the ground.
13. Daniel explains that he felt the speed on the truck reduce as they were approaching the Mahogany Heights junction. He focused on the road ahead and saw a big yellow bus parked on the right hand side of the road. As they passed the junction and the bus, he felt the truck swerve and he simultaneously heard a bang. *“The truck came to a complete stop about 70ft from the bus as several vehicles were parked on the same side of the road in front of the bus shed”*. It was only after he exited the vehicle, checked it for damage and then walked back to the gathering crowd that he realized the loud bang was the truck making contact with a little girl. He had not seen her attempting to or running across the street.
14. It becomes apparent that the detailed facts set out in the defence were almost diametrically opposed to what these two men testified to under oath. Carlos’ explanation for the divergence was that he did not file the defence. He seems conveniently to have forgotten that he signed that defence certifying that to the best of his knowledge, information and belief it's contents were true. He

signed it in circumstances where there was no other version of the events. No explanation was offered as to why the defence had not been amended to reflect any of the relevant changes.

15. The court must ask itself why this would be so and why the agreed pre trial memorandum would place Tezzrah carelessly crossing the highway suddenly, without paying attention to oncoming traffic as a factual contention if this was not within the scope of the knowledge of Carlos, particularly. Tezzrah could equally have been standing still since neither the driver or his passenger had seen her at all. The court is allowed to draw certain inferences therefrom.
16. When the court positions the pleaded defence against the circumstantial evidence presented by the Claimant a strange thing begins to happen. Denbigh's drawing seems correct. The defence states, as does Carlos, that the bang (the collision) occurred as he was alongside the yellow bus. In fact the defence says that he was already crossing next to the bus. Not that he had passed the bus as Daniel testified. The drawing places the point of impact on the highway, 4ft from the mid side of the bus. It seems possible then that Tezzrah may have been attempting to cross the highway. One strand forms.
17. Next the drawing places a blood stain, which Denbigh explained under cross examination, was where he met Tezzrah lying. Although Counsel for the first defendant tried to make much of Tezzrah having perhaps been moved, the court dismisses the notion for two reasons. One, Darwin met Tezzrah lying face down and turned her over. That is all he said he did and I believed him. That she was face down, is a clear indication that she had not been moved. No one would move an injured person to rest them face down. From

the evidence, when Carlos and Daniel arrived, a person, whom the court accepts to be Darwin, was already assisting Tezzrah. Carlos even explains that they tried to move her but a police man would not allow them to. Tezzrah could not have moved herself because of her injuries. Carlos says when he approached her she was complaining for pain in her leg. Darwin said her legs appeared to be broken and he splinted one. Two, under cross examination, Carlos himself said he went towards the bus stop and saw a girl on the highway. It spoke volumes that when giving viva voce evidence he does not position Tezzrah in relation to the bus (as in his evidence in chief). He positioned her, as Denbigh did on his drawing, by the bus stop. Strand two.

18. Finally, in examination in chief Carlos testified that he stopped the truck, beyond six to eight vehicles, after the accident. Under cross examination, he admitted that he did not know exactly how far away from the collision he stopped his vehicle. Nor was he sure whether it was far away from the collision but he estimated it at 150ft. He explained that there were vehicles parked along the shoulder of the road and he wanted to park on the shoulder as well. So, he continued on until he could pull off to the side of the road beyond those vehicles. Daniel on the other hand stated in his evidence in chief that *“the truck came to a complete stop about 70 feet from the bus as several vehicles were parked on the same side of the road in front he bus shed.”* Under cross examination he said five to six vehicles. The pleaded defence said Carlos *“immediately”* pulled over to the shoulder beyond the bus stop and *“a couple of vehicles.”* The court understands a couple to be two. Denbigh measured this distance at 318.6ft. That could not have been an immediate pull over. There was no evidence that that vehicle had been moved since having been initially

stopped by Carlos. Denbigh and Tiffany both place that vehicle on the shoulder of the road. Having considered all Denbigh's other markings and Carlos' inconsistencies, I could find no reason to doubt this one. In fact the court feels secure relying on the contents of that drawing entirely. Strand three

19. The court then considers Carlos' immediate action after alighting from the truck. He and his passenger both say in examination in chief that they inspected the truck for damage and only the front indicator light on the front right side (Carlos) or front right indicator (Daniel) was broken. Daniel even went further to explain that on noticing the damage to the indicator light, he drew Carlos' attention to it. However, under cross examination Carlos says he never noticed any damage until the police came and conducted an inspection with him. What need was there to lie about something so simple. After the glaring inconsistencies with the pleaded defence, I found it difficult to believe the testimony of Carlos and Daniel. It seemed engineered to put as much distance as possible between Carlos and the defence and Denbigh's drawing. But in fact they gave credence thereto.

The Facts:

20. The facts as I find them are as follows: Tezzrah was on the right side of the highway (if looking towards Belize) when she was knocked down by Carlos. She was positioned 4ft from the mid-side of the bus parked on the shoulder of that highway. There is no evidence before the court that that bus ever moved. In fact, not even Daniel speaks of the back of the bus being on the highway. He testified clearly that the bus was parked on the right side of the road and that is where Denbigh depicts it. The distance from the point of impact to where she rested, as well as the fact that she died from the impact

(this is not in issue) demonstrates on a balance of probability that she was hit with considerable force. That there was little damage to the truck indicates nothing. As stated in **Eagle v Chambers [2003] EWCA Civ 1107** a car can do much more damage to a person than a person can to a car.

21. The damage was at the front right side of the truck and Tezzrah came to rest some 45ft away from the point of impact. This indicated that she could not have simply walked into the side of the truck she must have been positioned in front of the truck just before impact for the momentum to be so great. This seems more consistent with the pleaded defence that Carlos saw Tezzrah, swerved left but collided with her nonetheless.
22. The loaded box truck did not stop until it had travelled 318.6ft from the point of impact. This alone signifies nothing. But when viewed in light of the inconsistent statements as to distance given by the defence and their witnesses; the fact that I find them not to be forthright, coupled with the distance Tezzrah was propelled, indicates on a balance of probability that the truck had been traveling at a significant speed. The pleaded defence says Carlos was traveling at *“a moderate speed of approximately 30 MPH.”* It cites no other speed. Carlos testified that on seeing the bus he slowed down to 25mph. Daniel, a self-proclaimed driver, said they were traveling at 40MPH and he felt the speed reduce to about 25MPH at the time he could see the yellow bus up ahead. The court considers by way of comparison that the speed limit in villages is 25mph and as Shanks J stated in **Casey v Aguet and BTL Belize Action No 486 of 1998**, *“It is well known that there might be children on bicycles on the highway particularly in the villages and children tend to behave erratically when they are on bicycles. The purpose of the 25mph speed limit is*

precisely to protect them.” If Carlos had indeed been going at 25MPH Tezzrah would not have come to rest 45ft away.

23. Now, did Carlos take any special care when approaching a stationary school bus. Firstly, it is accepted that the bus was not marked as a school bus since this has not been refuted. The court does take judicial notice that this incident occurred on a school day. It was around 3 to 3:30 in the afternoon. The court also has knowledge that school buses in Belize are most often yellow. That there was a yellow bus stopped at a designated bus stop at that hour of the day should have alerted Carlos that the possibility existed that it could be a school bus from which children might be alighting. At its lowest, it was a regular passenger bus from which passengers including children might be alighting.
24. **Melleney v Wainwright [1997] EWCA Civ 2884** explains that a very high standard of care is needed when motorist drive by young children as the risk of them doing something foolish always exists. There is therefore a special duty of care owed to children in circumstances where they are expected to be present. I find this to be such a circumstance. Although Carlos and Daniel both testified that they saw no children around while they were approaching, Carlos knew children might be alighting and as a reasonable driver he should have guarded against the expected risk of children behaving unpredictably and without thinking. What is even more troubling is that the pleaded defence said there was a van on the other side of the road “*which transports commuters and students into the Mahogany Heights Village.*” This should equally have indicated to Carlos that commuters would be in the vicinity and he needed to slow down and heighten his vigilance.

25. Carlos testified that he never saw Tezzrah before he felt the bump. (Daniel says the same but that's of no assistance since he admits to have been looking elsewhere). A failure to see something or someone is not necessarily negligence. There must be some evidence indicating that the person was in a position to be seen and there was a failure on the driver's part to keep a proper lookout or that he was moving at an inappropriate speed. Having considered the evidence this court finds that Carlos did see Tezzrah. This is why he was able to plead his defence as he did.
26. According to Carlos in that defence she was wearing a sky blue uniform and rushed out from in front of the bus unto the highway in an effort to rapidly cross. Considering the point of impact (4ft towards the highway from the mid side of the bus) if Tezzrah darted out from in front of the bus she would have had to run alongside the side of the bus before running towards the truck or run diagonally out unto the highway. Either way, Carlos seated high in a box truck would have been in a position to see her. If on the other hand she did not run from the front of the bus but darted out from beside the middle of the bus directly towards the point of impact, then she must have been standing by the bus and Carlos would likewise have been in a position to see her. It was a clear day. His visibility, he said, extended all the way from the curve down to the bus at the bus stop. Daniel supports this. Tezzrah did not simply materialize. If Carlos was indeed going at an appropriate speed he would have had ample time to see her, and react as a reasonable, experienced driver would.
27. For all these reasons I find that Carlos drove that truck negligently and caused it to collide with Tezzrah resulting in her injury and death.

Did Tezzrah Thompson's own negligence contribute to her injury and death.

28. This court also finds Tezzrah to be negligent. She was on the highway, not crossing at a pedestrian crossing. On the cusp of eleven years old, she was allowed to cross a busy highway, adjacent to an intersection, unassisted and unsupervised. To my mind an ordinary girl of that age, accustomed to crossing this busy highway (as Tiffany testified) is reasonably expected to show more prudence. Not as much as an adult, certainly. But at the very least I believe she must have been aware of the basics of safe road crossing and the need to keep a careful lookout. She seemed not to have exercised any reasonable care for her own safety as she failed to see the truck and attempted to cross while traffic was oncoming. Both Tezzrah and Carlos should have seen each other. They were both negligent in their own way. Having considered all the circumstances of this case. I place Tezzrah's negligence at 40% and any damages awarded will be reduced accordingly pursuant to section 6(5) of the **Torts Act**. The court also notes Section 15 which precludes the court during the assessment of damages from taking into account any sum payable on the deceased person's death under any contract or insurance etc.

If Carlos Rodriguez' negligence did cause the injuries and death of Tezzrah Thompson was he the employee or agent of National at that time

29. The court considers the facts as stated by the defence, uncontroverted by the Claimant and supported by the testimony of Carlos and Pauline. Carlos, an independent contractor, was driving that truck on behalf of, by the instruction of and with the authority of the National. He is given driving

trips as they arise and as he is available. He is allowed to, and is paid more when he does, use his own truck to perform the said task. National states that as an independent contractor Carlos is responsible for any negligent driving.

30. The Claimant presents *Winfield and Jolowitz on Tort 17th ed at pg 910* which explains:

“Where A, the owner of a vehicle, expressly or impliedly requests or instructs B to drive the vehicle in performance of some task or duty carried out for A, A will be vicariously liable for B’s negligence in the operation of the vehicle.... It is now clear that mere permission to drive without any interest or concern of the owner in the driving does not make the owner vicariously liable nor is there any doctrine of the “family car”.

31. The editors then refer to *Omrod and anor v Crosville Motor Services Ltd. and anor [1953] 2All ER 753. At 754* Denning LJ stated:

“It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner’s consent, driving the car on the owner’s business or for the owner’s purposes.”

32. It is clear that National expressly requested and instructed Carlos to drive its vehicle to collect its own produce. So invested and interested was National, that one of their own employees went with him. That trip concerned only National and whether or not Carlos was an independent contractor or being paid for the task of driving, he was, for the purposes of the law, National’s Agent. I therefore find National to be vicariously liable for Carlos’ negligence.

If Carlos Rodriguez did cause the injuries and death of Tezzrah Thompson what damages is Tiffany Williams entitled to:

33. It is reminded that this award of damages is not intended to place a value on human life because there could be no such value. One cannot imagine the pain of losing a child. I offer my sincerest sympathy to those who loved and nurtured Tezzrah.
34. I award special damages to the Claimant in the sum of \$5,325.57 as specifically pleaded and proved. An award of \$3,500. for loss of expectation of life as is conventional and fair.
35. Since I find some fault on both parties, the responsibility should be shared. The final sum shall be reduced by 40%.
36. Interest is also awarded on these sums at the rate of 4% per annum from the date of death up to the date of this judgment. Thereafter, interest will accrue at the statutory rate of 6%.
37. Costs to the Claimant from each Defendant in the agreed sum of \$8,000. This costs shall likewise be reduce by 40%.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**