

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO. 62 of 2018

DELANO BROWN

CLAIMANT

AND

**DORLA GABOUREL
SAMIR HIJAZI**

**1st DEFENDANT
2nd DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2018

8th October

Closing Submissions

8th October, 2018

Decision

19th October, 2018

Mr. Darrell Bradley for the Claimant.

Mr. Richard Bradley Jr. for the Defendant. (Absent)

The Defendant in person

Keywords: Tort – Negligent Driving – Personal Injuries – Vicarious Liability – Owner’s Breach of Statutory Duty – Vehicle Uninsured – Financial Position of User – Significance of Claim if Owner already Liable - Motor Vehicle Insurance (Third Party Risk) Act Cap. 231 (section 3)

JUDGMENT

1. This is a claim for damages for personal injuries caused by negligent driving. In this judgment only liability will be addressed as damages will be considered later if deemed necessary. Delano Brown alleges that he was

riding his licenced motor cycle in the right lane along Vernon Street in the direction of Central American Boulevard in Belize City when Dorla Gabriel negligently swerved a Volkswagon Jetta into his path causing a collision.

2. As a result, Mr. Brown fell off his motor cycle and suffered injuries to his face, mouth, arms and left leg. His motor cycle was also damaged. He says Ms. Gabourel then fled the scene having failed to render aid or provide any particulars, personal or related to the vehicle. He discovered who she was with the aid of a private investigator. He also discovered that the vehicle was registered to the second named Defendant, Mr. Hijazi, and was uninsured at the time of the incident. Ms. Gabourel had been driving the vehicle as his agent with his knowledge and consent.
3. Mr. Brown further claims that the Defendants breached their statutory duty to ensure that the said vehicle was insured in compliance with the mandatory requirements of section 3(1) of the Motor Vehicle Insurance (Third Party Risk) Act Cap. 231 of the Laws of Belize, which provides that: *“Subject to this Act, no person shall use, or cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third party risks as complies with requirements of this Act.”* By this failure to insure, Mr. Brown says, he has suffered loss.
4. Mr. Hijazi never filed an acknowledgement of service or a defence. There was an affidavit of service filed on February, 5th 2018, evidencing that he had been served personally with the Claim Form and Statement of Claim. The Court accepts that he has been duly served. The Claimant subsequently sought a default judgment against Mr. Hijazi but the Court felt that the application could not properly be dealt with separately from the claim

against the first Defendant. He was after all being sued vicariously in part. The Court declined to enter a default judgment then, opting instead to deal with the application at the same time it disposed of the Claim.

5. In her defence, Ms. Gabourel admitted that at the material time she was indeed the driver of the Volkswagon Jetta owned by Mr. Hijazi. She also admitted that she drove that vehicle as his servant or agent with his knowledge and consent. She denies that she failed to ensure that the vehicle had third party risk insurance. She does not however plead that it did have such insurance.
6. Her version of the events of that day was vastly different to Mr. Brown's. She alleged that *“she crossed from the left side of the street, with her indicator on to show her intention in moving over to the right side of the street and looked to see if there was no traffic in the immediate area. That the going over to the right was done gradually and there was no sudden or inadequate warning.*

That the Claimant came upon the first Defendant's vehicle with great speed and the Claimant tried to do an illegal overtake on the right side causing him to lose control of his motor cycle when he mounted the pedestrian sidewalk.”
7. She continued that Mr. Brown lost control of his motor cycle and fell. She then exited her vehicle to render aid but Mr. Brown approached her vehicle and started hitting her fourteen year old son who was in the front passenger seat. So she drove away. She denies causing any injuries, loss and damage.
8. Having so pleaded and having attended the case management conference, Ms. Gabourel failed to file any witness statements as ordered during that conference. She made no application for relief from sanctions but appeared on the date of trial. On all previous occasions, except pre-trial review, she

had been represented by counsel Mr. Richard Bradley. At pre-trial review the Court explained to Ms. Gabourel that she needed to make urgent contact with her attorney in an effort to be trial ready. Mr. Bradley has never been removed from the record, but he did not appear at the trial either. There was no explanation forthcoming. A notice had been served on him by Counsel for the Claimant, indicating that the Claimant had filed witness statements pursuant to the Court's order and those witness statements which ought to have been exchanged was in a sealed envelope in the Court file.

9. Counsel Ms. Grinage appeared with Ms. Gabourel explaining that she had not been retained, knew very little about the matter and was only attempting to help Ms. Gabourel. She, nor Ms. Gabourel, were able to provide any reason why the witness statements had not been filed or at the very least why relief from sanctions had not been applied for.
10. The Court proceeded to hear the matter on the witness statements filed by the Claimant. Although counsel for the Claimant objected, the Court allowed Ms. Gabourel (partly with the assistance of counsel Grinage and partly on her own) to cross-examine the witnesses. Ms. Grinage remained with her throughout the first day of trial but did not return on the second day. Ms. Gabourel was not allowed to call any witnesses.

The Issues:

1. Did Ms. Gabourel's negligent driving cause the injuries to Mr. Brown and the damage to his motor cycle.
2. Is Mr. Hijazi vicarious liable for any injuries caused to Mr. Brown and any damage done to his motor cycle.
3. Are the Defendant's in breach of a statutory duty to ensure that the

vehicle was insured in compliance with the requirements of section 3(1) of the Motor Vehicle Insurance (Third Party Risk) Act Cap 231.

Did Ms. Gabourel's negligent driving cause the injuries to Mr. Brown and the damage to his motor cycle:

4. The Court considered the evidence of Delano Brown. He was the only eye witness to testify. He informed the incident occurred around 7:10pm on June 3rd, 2017. The one way, two lane road on which he was riding was dry and smoothly paved and visibility was good. He had his headlight on and he was wearing his helmet. He was in the right lane. Suddenly, a vehicle going in the same direction as he was, swerved ahead of him. It entered his path without warning as if to make a right turn into Magazine Road. He says he immediately geared down, swerved and blew his horn. But there was still a slight collision between his bike and the car. There was also contact between his knee and the car. He realized he was falling off his bike and directly on to his face so he tried to break his fall using his hands. His face still made contact with the ground. The bike fell and slid along the street onto the sidewalk and scraped the ground for a few feet.
5. Although the helmet remained on his head it was partially off his face, exposing its lower portion. He tasted blood but did not realize the extent of his injuries. The car slowed but did not stop. So he got up quickly and ran along beside it begging for assistance to be taken to the hospital. Instead the car sped up leaving him clinging to the vehicle until he could no longer hold on.
6. He denied hitting anyone in the vehicle although he remembered seeing a young person in the front passenger seat. He saw no one else on the scene at

the time of the incident. After the car had left, he realized how badly he had been injured and that he was bleeding. A stranger (the first person to arrive on the scene) helped him to get to the Karl Heusner Memorial Hospital. On his way he texted his brother for assistance. The police also visited him at the A & E Department and questioned him. Mr. Brown then chronicled his injuries and his treatment by Dr. Shantel Pakeman.

7. He was released the next day with prescriptions and medication and went to the scene with his brother who took more photographs there. On the 5th June he gave a statement in the matter at the police station. He then engaged the services of a private investigator who was able to obtain certain information which his attorneys used to conduct a search at the Traffic Department. That search revealed the owner of the vehicle to be one Samir Hijazi and that the insurance for the vehicle with RF&G had expired on the 30th May, 2017, which was prior to the incident. Consequently, he received no financial assistance from any insurance as a third party. Mr. Brown exhibits a copy of a letter from the Records Supervisor of the Belize City Council which informs the registration of the vehicle to Samir Hijazi and that their system revealed that the insurance expired on 30th May, 2017.
8. Marlon Skeen, the Managing Director of Security and Intelligent Solutions Ltd., a company which provides intelligence through private investigations also testified. He explained that his investigations led him to Ms. Gabourel as the driver of the said motor vehicle. He visited the scene and he inspected the Volkswagon Jetta. He says he observed blood on the interior of the window frame and inside the door panel of the vehicle and he took photographs. This Court does not know how Mr. Skeen was able to identify what he saw as blood. He continued his investigations and

discovered that the vehicle had no insurance. He exhibits a photograph of the window sticker showing license and insurance. The insurance is reflected there to have commenced on the 5th June 2017. He subsequently billed Mr. Brown \$500.00 for his work.

9. The witness then proceeded to testify about markings he saw on the road and their significance. He even attempted to recreate the scene. It is noted that Mr. Skeen visited the scene days after the incident. Moreover, the Court is unaware of Mr. Skeen's particular set of skills or expertise. He was not appointed an expert of any sort by the Court. His testimony in that regard will be disregarded in its entirety.
10. Orlando Brown also testified. He is the Claimant's brother. He went to the emergency room where he saw and photographed Mr. Brown's condition. He exhibited those photographs. Mr. Brown described the scene to him so he went there after he left the hospital that day. He says he saw debris from the motor cycle headlights and notice two long scrapes on the cement street. He also saw piece of his brother's watch. He took more photographs. Those photographs show scrapes in the surface of the road which extend towards and continue on to the sidewalk. This seems consistent with Mr. Brown's version that the bike slid along the street and on to the sidewalk.
11. Dr. Pakeman and Dr. Mario Flores also testified as to Mr. Brown's injuries and what treatment he received or ought to receive. A consideration of their evidence is relevant to an assessment of damages rather than to liability. The Court will make no analysis of it at this time.

Discussion:

12. The Court could find no evidence to suggest that the accident did not happen as the Claimant testified. Perhaps it would have been far worse had Mr. Brown not had the presence of mind to try his utmost to avoid the collision. I do not believe he was speeding or attempted to do an illegal overtake on the right side causing him to lose control of the motor cycle and mount the sidewalk. To my mind the impact would have been greater if indeed he was speeding. The Court, therefore finds that Dorla Gabourel's negligence caused the collision which resulted in Mr. Brown's injuries and damage to his motor cycle.

2. Is Mr. Hijazi vicarious liable for any injuries caused to Mr. Brown and any damage done to his motor cycle:

13. Ms. Gabourel has admitted that she was Mr. Hijazi's authorized agent at the time she drove the vehicle. He has chosen not to enter a defence. In *Ormrod and Anor v Crossville Motor Service Ltd. and anor [1953] 2 All 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 owners purposes."

14. The Court finds Mr. Hijazi vicariously liable for Mr. Brown's injuries and the damage to his vehicle.

3. Are the Defendant's in breach of their statutory duty to ensure that the vehicle was insured in compliance with the requirements of section 3(1) of the Motor Vehicle Insurance (Third Party Risk) Act Cap 231:

15. Counsel for the Claimant presented the old but still relevant case of **Monk v Warbey [1935] 1 KB 75** and asked that the Court find the Defendants liable for breach of their statutory duty to ensure that the vehicle was insured. In that case the owner of the motor vehicle, Warbey, had permitted another Defendant, Knowles, to drive his vehicle. No insurance policy was in force in relation to Knowles. The motor vehicle collided with the plaintiff's motor coach causing personal injuries. He alleged negligence and sued. He also claimed directly against Warbey for a breach of the duty imposed by section 35 of the Road Traffic Act 1930 (which is similar to our own section 3(1) stated at paragraph 3 above).
16. The Court of Appeal held that a claim was sustainable and the owner of a motor vehicle may be directly liable in damages if there was a breach of the statutory duty and the uninsured driver was impecunious. The penalties prescribed by the section were, therefore, not intended to be the only remedy for the breach of the owner's statutory duty. The rationale here was that the legislation (in Belize the Motor Vehicle Insurance (Third Party Risk) Act) which imposes a third party liability for compensation of victims of car accidents, ought not to be thwarted by owners who allow an uninsured person to drive their vehicle.
17. However, it seems necessary to first consider the user's financial position and their ability to satisfy the judgment as that is perhaps when the cause of action accrues. Lord Greer in **Monk v Warbey** (ibid) seemed to be of the

certain view that it must be demonstrated that the user of the vehicle was unable to satisfy any judgment.

18. Hilbery J in **Corfield v Groves (1950) 1 All ER 488**, though not entirely clear, seemed to say that the financial position of the user was an integral ingredient. **Norman v Aziz [2000] Lloyd's Rep IR 52** introduced the notion of a "*floating accrual*." This means that the cause of action would accrue whenever it became clear that the user was impecunious. That may or may not be at the moment the injuries are inflicted. It simply depended on the circumstances of each case and when the impecuniosity is ascertained. **Norman v Ali [2000] Lloyd's Rep IR 395** the sequel to **Norman v Aziz**(*ibid*), expressed obiter that the correct approach was that the action accrued against the owner at the same time the action in negligence arose against the user, so that they were to be considered as joint tortfeasors. This was, however, not in issue in that case.
19. In the present case no evidence whatsoever has been provided as to the financial affairs of the user, Mrs. Gabourel, and whether or not she may be able to satisfy the judgment. It also appears to the Court, however, that this very valuable tortious remedy is of no real use where tortious liability has already been otherwise clearly established against the permissive owner (e.g. vicariously). A finding of this nature will not improve this victim's rights. This statutory tort really gains significance where a claim in negligence against the owner is impossible. For these reasons, although the tort has been made out against Mr. Hijazi, I decline to make a declaration accordingly.

Determination:

1. The injuries to the Claimant were caused by the negligent driving of the first Defendant.
2. The second Defendant, as the first Defendant's principal, is vicariously liable for the injuries caused to the Claimant.
3. The claim for breach of statutory duty is dismissed against both Defendants.
4. Damages are to be assessed by written submissions which are to be filed no later than close of day on the 2nd November, 2018.
5. Oral Submissions of no longer than fifteen minutes per party are to be made on the 12th November, 2018 at 9:00 a.m.
6. The parties are to agree costs and inform the Court at the hearing on the 12th November, 2018.

Note: Counsel Grinage indicated that she had filed a Notice of Acting at 9:00 a.m. today and was now counsel on record for the first Defendant. The Court allowed her to participate in the directions hearing for the assessment of damages.

**SONYA YOUNG
SUPREME COURT JUDGE**