

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 703 OF 2015

(EMIL BRADLEY **CLAIMANT**
(
BETWEEN (AND
(
(DANNY TEJEDA **DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Jaraad Ysaguirre of Barrow & Co. for the Claimant

Mrs. Nazira Uc Espat Myles of Myles & Co. for the Defendant

Hearing Date:

19th July, 2017

J U D G M E N T

Facts

1. This is a claim for damages arising from a road traffic accident which occurred on the 17th June, 2015 on the George Price Highway. There was a collision between the Claimant's vehicle (a Silver Toyota Hilux Pickup Truck) and the Defendant's vehicle (a Gold Toyota Corolla Car). Both parties allege that the accident was caused by the negligence of the other in this claim and counterclaim. The court heard evidence from both litigants and their witnesses and reserved its judgment pending the filing of written

submissions by Claimant and Defendant by August 17th, 2017. Mr. Jarad Ysaguirre duly filed his submissions on behalf of the Claimant on August 16th, 2017. To date no written submissions have been filed on behalf of the Defendant by Mrs. Nazira Uc Myles. The court now proceeds to determine this matter.

The Issue

2. Was the accident caused by the negligence of the Claimant or the Defendant? Was there contributory negligence by either party? What is the quantum of damages to be granted to the successful party?

The Claimant's Case

3. At trial, Mr. Emil Bradley testified and called two witnesses. He said that he was driving his pickup truck on the George Price Highway travelling from an east to west direction towards San Ignacio Town when he saw the Corolla and another car ahead of him in the same lane. Upon reaching the last speed bump in Esperanza Village, he noticed that a gold car in front of him was coming to a stop and pulling to the right side of the road. He said that he then attempted to overtake the gold car when it suddenly swerved into the next lane and collided with his pickup truck. After the accident a man exited the gold car purporting to be the driver of the gold car. Mr. Bradley says that his truck was extensively damaged to its right front door and he incurred significant expense in repairing it as well as renting a replacement vehicle pending completion of the repairs. The total cost of the repairs to the pickup was \$6, 000 and the rental cost was \$6, 240 (receipts were tendered as Exhibits "EB 1" and "EB 2" respectively). Mr. Bradley claims

\$12, 240 in damages plus fixed costs of \$2, 100 and interest to date of \$328.44 for a total sum of \$14, 693.44.

Mr. Bradley was cross-examined extensively by Mrs. Nazira Espat Myles on behalf of the Defendant. He said that the day was not dark and was still clear at the time of the accident. He said he was travelling at a speed of around 40 to 45 mph. He recalled that there were two vehicles ahead of him. A gold car was in front and another behind that gold car, while Mr. Bradley was behind the second car. The gold car did not pull to the side of the road when it came to the bump; it was travelling on the right in its lane while it approached the speed bump. The gold car came to a complete stop. Mrs. Espat Myles confronted him with his witness statement where he had said the gold car was pulling off the road and he admitted that he had said that. He agreed that at the time he attempted to overtake the two vehicles he was still travelling at around 40 to 45 mph. He was already overtaking when the gold car turned into the right side of his truck. He agreed that based on those facts then the right side of his vehicle should have been damaged and the front of the gold car should also have been damaged. He agreed that after the accident both vehicles were about 20 feet apart on the highway. He was shown a photo of the scene ("ST 1") which showed his truck and the gold car after the accident. He agreed that he attached no photos to show the damage to his vehicle and he had no detailed report from his mechanic explaining the damage to the vehicle. He said all he had were receipts showing what he spent on repairs and rental. He was asked whether he drove the highway often, and he said yes. When asked about whether he would simply make a turn if there was no oncoming traffic, he replied that it depends if

he is turning left or right, and if he were turning left he would pull to the right, like the law says and make sure that traffic was clear, then make a left. If he were making a right turn, then he would automatically turn right. He disagreed with Counsel's suggestion that he did not even see when the gold car was turning into the left side of the road. He disagreed also with the suggestion that he was not paying attention to whether the gold car was turning or not: he said he was paying attention and was focused. Finally he disagreed with the suggestion that his witnesses Alden Jones and Georgana Robateau were only present because he had offered to help them financially.

4. Mr. Bradley also called two witnesses. The first was one was Alden Jones. Mr. Jones said that on the 17th June, 2015 he was at his home which is located along the George Price Highway in Esperanza Village. At around 6:15 pm he was sitting on his verandah when he saw three vehicles coming along the highway travelling towards San Ignacio Town, when he saw the vehicles approach a speed bump. He saw a silver pickup truck attempting to overtake a gold car that was in front of the bump, but then the gold car suddenly turned left to cross the highway without using any signal to indicate its direction and collided into the pickup truck. He claims that after the accident he saw a female driving the gold car; the female was the daughter of Mr. Tejeda whom he knew. He said he knew Mr. Tejeda and his family for quite some time. He said he went to check on everyone to make sure that they were okay after the collision.
5. Under cross-examination, Mr. Jones said that the speed bump is about 50 yards from where he lives. He pointed out where his house is located in a photo Exhibit ST 1 from

where the accident occurred. Around that time it was not yet dark and it was still clear. The road is about 3 or 5 feet away from his white fence. He agreed that there is a small orange tree between his house and the speed bump; he said it did not block his view. The witness said he saw three vehicles coming along the highway: the gold car in front, the next vehicle behind the gold car, and the pickup truck behind the second vehicle. There was no traffic coming from the opposite direction at that time. Each vehicle was about one vehicle length apart from each other. He said in answer to a question from the court that he knows how to drive and has been driving since 2008. The pickup truck was travelling at around 20 to 25 mph, and it slowed down when it came to the bump, but it did not stop. He said at the bump the pickup's speed was about 5 mph. The pickup was pulling out into the left lane and about to overtake the other vehicle when the accident occurred. He denied that he was offered money by Mr. Bradley for his testimony. He also denied that he called and asked Mr. Tejeda for money a few days before the trial so that he would not come to testify.

6. The final witness for the Claimant was Ms. Georgana Robateau. She was sitting on her verandah outside her home when she noticed three vehicles coming from the direction of Belmopan heading towards San Ignacio. She saw the gold car approach the speed bump and the silver pickup attempt to overtake the gold car directly in front of the bump. She said that the gold car suddenly made a left turn without putting on its indicator and collided into the silver pickup truck. Ms. Robateau saw a female get out of the driver's side of the gold car and walk away; she then saw a male person climb from the passenger side into the driver's seat of the car. When that person exited the car she

recognized him as Mr. Tejada who she had known for a while. She never knew the driver of the pickup but later learnt his name to be Mr. Bradley.

7. This witness was also cross-examined. She said that her house was located about three houses away from the bump, and about two vehicle lengths from the center of the highway. There were fruit trees in her back yard, one tree to the side and none in front of the house. She, her common law husband and another man were sitting on the verandah chatting, facing the road. She saw the three vehicles coming along on the highway. There was not much space between the vehicles. She saw the pickup come out to the left to try to pass the gold car. She saw the pickup reduce its speed at the bump. As she is not a driver she cannot say what speed the truck was coming but she saw that the driver of the pickup truck had on his left indicator. She agrees that she never mentioned the indicator in her witness statement. The silver pickup never made it over the bump, the gold car had already passed the bump and the second car was halfway over the bump when the collision occurred. The person talking with Ms. Robateau and her common law husband was Sandy Tejada; her common law husband knew the Tejedas better than she did. She never saw what part of the gold car hit the truck. After the collision the second car passed the gold car and went on its way.

The Defendant's Case

8. There were two witnesses on behalf of the Defence. The first was the Defendant, Danny Tejada. He said that he and his daughter Tamarie Tejada were heading home in his car. He was driving and his daughter was seated in the right front passenger seat. He was

driving on the right hand side of the George Price Highway when he approached the bump in Esperanza Village. Upon reaching the bump, he said that he slowed down almost to a stop, put on his indicator that he would cross the road into Sedacey Street which is a feeder road on the left side of the road and began turning to make the turn as there were no vehicles coming in the opposite direction. There were two vehicles behind him. He says that he remembers the vehicles because when he made the stop at the bump and put on his indicator, he looked in the rear view mirror and saw that those vehicles had also stopped waiting for him to turn as he had indicated. He began to make the left turn on the highway and when his car was about 75% off the highway, he saw the pickup truck coming from the same direction as he was, overtake the vehicle behind him and jump the speed bump, hitting the left front side of the car he was driving. As his car was already turned horizontally on the highway, the pickup truck hit the left side of the car which faced vehicles traveling from Belmopan to San Ignacio. Mr. Tejeda said that the pickup was travelling at a speed of approximately 50 mph when he noticed the pickup truck jumping the bump. He alleges he heard the Claimant say at the scene that his insurance can't pay as the week before he had been in an accident. His vehicle was badly damaged so he counterclaims for the cost of the vehicle and the cost of rental of another vehicle.

The Defendant was cross-examined by Mr. Ysaguirre on behalf of the Claimant. He denied that his daughter was the person driving his car at the time of the accident. He agreed that it would have been prudent to call his daughter as a witness to give her version of events since she was a witness in his vehicle, but he said he did not think

about it because of her age; she was 16 at the time of the accident, and 17 at trial date. He disagreed with counsel's suggestion that the reason he didn't call his daughter as a witness was because he didn't want to let her come to court to say she wasn't driving when in fact she was. Mr. Tejeda stated that before he made the left turn his car was positioned not in the middle of the road but on the side of the road. He clarified and said it was on the right hand side of the road, in the middle of his lane. There was no oncoming traffic in the opposite (left) lane. He saw the vehicles behind him so he slowed down on his side of the road. He denied counsel's suggestion that he was obstructing the traffic behind him on the highway. Mr. Tejeda said that he would usually slow down with vehicles behind him when he needed to make left turns on the highway. He has been driving for about 16 years. He is aware of "*part of*" the Motor Vehicle and Road Traffic Regulations, "*not everything*". He knows that when he is going to make a turn on the road he is not supposed to obstruct any traffic. Mr. Tejeda disagreed with Counsel's suggestion that he knew he was not supposed to obstruct traffic oncoming and traffic behind him. He also denied that he should have pulled to the side and waited till the road was clear to turn. Finally he was asked whether he had approached one of the Claimant's witnesses before trial and offered to pay him so that he does not come to testify. Mr. Tejeda was reexamined very briefly by Mrs. Espat Myles to clarify that when he spoke of being in the middle of the road, he meant he was in the middle of his right lane.

9. The final witness for the Defendant was Sandy Tejeda. He said that he is the brother of the Defendant Danny Tejeda and that he was in Esperanza Village near the highway

when the accident took place. He was approximately 100 yards away from the speed bump when he saw his brother's cream colored Toyota car approach the bump and came to a stop. He saw the indicator on to turn to the left into Sedacy Street where they lived in Esperanza Village. He also saw other vehicles behind his brother's vehicle. He recalls seeing a grey pickup truck suddenly pass the other cars, jump the speed bump, and hit his brother's car. He immediately got up and went to check on his brother; his niece and brother were unharmed but the left front side of his brother's vehicle was damaged. He took photographs of the scene after the collision (Exhibit ST 6); he also heard the man in the pickup truck talk about a previous accident he was in and that his insurance had to pay. He had to take his niece home as she was complaining of a neck pain.

Mr. Jaraad Ysaguirre cross-examined Sandy Tejada on behalf of the Claimant. He was asked whether he could see who was driving his brother's vehicle at the time of the accident. He agreed that he assumed that it was his brother and not his niece who had been driving. His niece went right home after the accident. Sandy Tejada agreed that at the time of the accident his brother was about to do his left turn his vehicle was in the right lane. He said the vehicle was not off the road, it was on the road on his side. When counsel suggested to him that his brother made no attempt to allow the traffic behind him to pass before he made his left turn, the witness said the other vehicles gave his brother a break to go as they saw his signal was on. He agreed that his brother was in the middle of the road, in the middle of his lane on the right, and he never allowed the vehicle behind him to pass before making a turn.

Legal Submissions on Behalf of the Claimant

10. On behalf of the Claimant, Mr. Ysaguirre argued that the accident occurred due to the negligence of the Defendant. He cites the ***Motor Vehicles and Road Traffic Regulations of Belize*** s. 114 (3) which state that:

“Each Driver of a motor vehicle shall comply with the following rules:

(3) He shall not cross a road or turn in or commence to cross or turn in a road or proceed from one road into another road or drive from a place which is not a road into a road or from a road into a place which is not a road unless he can do so without obstructing any other traffic of the road and for this purpose he shall be held to obstructing other traffic if he causes risk of accident thereto.”

Additionally, s. 115 of the same regulations states that:

“The burden of ascertaining whether the road be clear in every direction shall rest the driver of a motor vehicle which alters its speed or direction and the driver of such vehicle shall give way to other vehicles.”

The regulations illustrate that a driver must give way to traffic in any direction if he is attempting to turn make a turn on the highway. The foregoing sections of the regulations along with s.114 (4) (b) of the Motor Vehicles and Road Traffic Regulations make it abundantly clear that a driver attempting to make a left turn on the road that he should keep the far right of the road so as to not be an obstruction to any other traffic on the road and turn when the road is clear.

Mr. Ysaguirre also relies on **Halsbury’s Laws of England** (5th Edition Volume 78 para. 1) which states that Negligence is,

“A specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all.”

In determining this matter the Court must look at the cause of the accident and whether the accident would have occurred if it were not for the Defendant's negligence. Mr. Ysaguirre submits that the accident only occurred because of the Defendant's negligence. The Defendant, under cross examination stated that he was aware of the Rules of the Road yet the evidence shows that he did not pull to the side of road to allow the traffic behind him to pass his Corolla before making a left turn on the highway or crossing the road. The Defendant when asked under cross examination stated that he was of the opinion that he acted reasonably and prudently when driving by turning on the highway while there was traffic directly behind him. He stated that there was no oncoming traffic in the opposite lane so he thought it was safe to do so. This shows that he was fixated on the oncoming traffic and not on what was behind him. The fact that a collision was caused because of him attempting to turn on the highway when two cars were directly behind him shows that what he did was not prudent or reasonable in the circumstances. In fact, it was negligent of him to do so and in clear violation of the laws of Belize. The Defendant's actions when driving shows that he was not aware of the regulations that he is legally bound to follow. This blatant illegality is a clear sign of negligence on the part of the Defendant. It is completely plausible to assume that if the regulations were followed by the Defendant

the accident would not have occurred. In accepting that this theory is very likely or possible, then rightly it should follow that the Defendant was negligent in turning when he did therefore he is the cause of the accident involving the Claimant and should rightfully be responsible for the damages that the Claimant has suffered. The Defendant asserts that the Claimant overtook his Corolla when it was unsafe to do so and that he followed all the applicable traffic regulations before attempting to turn, but it is clear from his answers under cross examination that he was unaware of the proper procedure that he should follow when attempting to make a left turn.

Credibility of the Defendant's Case

11. Mr. Ysaguirre further submits that the Defendant's witnesses cast serious doubt on the Defendant's case. The Defendant's brother, Sandy Tejada couldn't verify whether or not it was the Defendant in fact that was driving the car or not. He stated that he assumed that his brother was driving. The fact that the Defendant's daughter immediately left scene after the accident should be taken into consideration when determining the credibility of the Defendant's witnesses. Sandy Tejada could not decide if he took his niece home after the accident or if she went home on her own. When asked if he was obstructing traffic before making the turn, the Defendant refused to accept or admit that he was obstructing traffic despite the fact that two vehicles were behind on the road. This is clearly an obstruction! The Defendant made failed attempts to show that the Claimant paid his witnesses to testify in court. No doubt was cast on the integrity of the witnesses for the Claimant as being paid or hired to testify. This should aid in the credibility of the Claimant's version of events and the account of his witnesses. The

Claimant submits that on a balance of probabilities that the accident is as a result solely of the Defendant's negligence and the Claimant has shown proof of payment of the damages it has suffered by tendering his receipts into evidence. The Claimant humbly prays that this Court finds in his favor and award him damages and costs.

Decision

12. Having carefully considered the facts and the law in this matter, I find in favor of the Claimant. As Mr. Ysaguirre rightly submits, the evidence clearly shows that Danny Tejada failed to follow the Rules of the Road and in so doing caused the accident. I also agree, having observed the photographs which show a smooth road, a clear dry day with sufficient light, and having heard the witnesses' testimony on behalf of the Claimant that there was no oncoming traffic, that in all the circumstances the accident would most likely not have occurred if Mr. Tejada knew the Motor Vehicle Regulations and followed them at the material time. By his own admission, Mr. Tejada drove in a manner which was contrary to what the law required under s. 114 and s. 115 of the Motor Vehicles and Road Traffic Regulations and in so doing he caused an obstruction which caused the accident. I therefore find on a balance of probabilities that the accident was caused solely by the negligence of Mr. Danny Tejada. Judgment is awarded in favor of the Claimant in the sum of \$14, 693.44 with interest at the rate of 6%

(pursuant to section 166 of the Supreme Court of Judicature Act) which includes the sum of \$2, 100.00 awarded as fixed costs to the Claimant.

Dated this Monday, 16th day of April, 2018

Michelle Arana
Supreme Court Judge