

IN THE SUPREME COURT OF BELIZE, A. D. 2016

CLAIM NO. 497 OF 2016

(SHARON LESLIE

CLAIMANT

(

BETWEEN (AND

(

(GEORGE NEUTON RENEAU

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Nazira Myles for the Claimant

Mrs. Liesje Barrow Chung for the Defendant

J U D G M E N T

Facts

1. On March 15th, 2016 there was an accident between Mile 9 and 10 on the George Price Highway involving vehicles driven by the Claimant, Sharon Leslie and the Defendant, George Reneau. Ms. Leslie was driving a white Isuzu Sidekick and Mr. Reneau was driving a red Isuzu Rodeo. Both parties

were travelling in the same direction. The Claimant alleges that the accident was caused by the negligence of the Defendant, while the Defendant alleges that the accident was as a result of the Claimant's negligence.

Issues

2. i. Was the Defendant wholly or in part negligent in driving his motor vehicle which caused the road traffic accident resulting injury to the Claimant and damage to her property?
- ii. Was the Claimant wholly or in part negligent in driving her motor vehicle which caused the road traffic accident resulting in injury to the Defendant and damage to his property?
- iii. What, if any, damages is the Claimant entitled to?
- iv. What, if any, damages is the Defendant entitled to?

Evidence on behalf of the Claimant

3. There were three witnesses called on behalf of the Claimant, and the first witness was the Claimant herself, Sharon Leslie. Ms. Leslie had given a witness statement that she is a self-employed business owner and cook of Country & Western Paradise also known as Pier 2 Restaurant and Bar at Mile

8.75 on the George Price Highway. She submitted a business name certificate as proof of her occupation (Exhibit "SL 1"). She owned a white Isuzu Sidekick insured with Insurance Corporation of Belize. At about 12:15 p.m. on March 15th, 2016 Ms. Leslie was driving her white Isuzu along the George Price Highway heading in the direction from Belize City to Belmopan. She had a passenger in the front seat of her vehicle, one Edward McGregor. She was heading to Chukka's Air Boat Tour to retrieve some keys. Ms. Leslie said that she was driving slowly because she was not travelling very far from her home and business. She claims that she looked in both directions on the highway before turning onto the highway to ensure that there was no oncoming traffic. Ms. Leslie states that she was on the highway and had reached the tour location a short distance after Mile 9, she put on her indicator to turn left into Chukka Airboat Tours. Before she made the turn to her left lane to drive into the tour location, Ms. Leslie said that she ensured through her rear view mirror that there were no vehicles immediately behind her. The Defendant's vehicle was at a distance. Once she was satisfied that it was safe to turn left, Ms. Leslie started to make a turn with her vehicle. Once she had already turned the steering wheel to move the vehicle to the left, and the vehicle had slightly turned onto the left lane, she looked in her rear view

mirror again and by that time, the Defendant was speeding straight at her on her left lane as he was overtaking. Ms. Leslie said that she tried to straighten her vehicle back onto the right lane to avoid the Defendant hitting her but before she could get back in the right lane completely, the Defendant's vehicle collided with hers. The impact of the collision flung her vehicle forward into a rail that was on the left side of the highway in front of the tour location. Her vehicle did not come to a stop until it hit the metal rail. Ms. Leslie said that she then went unconscious briefly until she heard Edward calling her name repeatedly. Upon regaining consciousness, she was taken out of the vehicle and transported to Karl Heusner Memorial Hospital. She was later released and stated she did not have any cuts or bruises, but she went to Belize Medical Associates hospital that same day due to a persistent pain in her neck.

4. Ms. Leslie was cross-examined by Mrs. Barrow-Chung on behalf of the Defendant. She was asked whether she had been involved in a previous traffic accident on February 23rd, 2005. The previous traffic accident involved the rolling over of her vehicle. No injuries were sustained by Ms. Leslie in that prior incident. On that previous occasion, the vehicle she was driving was behind a vehicle on the highway that stopped suddenly. The witness said

that to avoid hitting that vehicle, she could not turn left as there was a curve and she tried to go right but there was a pond. Ms. Leslie said that she turned over on the left side and flipped over into the bushes. Her vehicle was damaged beyond repair and she suffered personal injuries for which she is claiming damages.

5. On the day of the accident in the present case, Ms. Leslie said she had been driving at approximately 30 to 35 mph on the highway, but that she decreased her speed as she approached where she was going. When asked whether there were other vehicles on the road at that time, she said none except a parked vehicle on her right. The parked vehicle was not exactly in front of her, but more to the right on the other side. It was suggested by counsel that Ms. Leslie was rushing back to her home to prepare for opening her restaurant later that evening and she was therefore driving in excess of 35 mph. She disagreed. The witness said that the Defendant's vehicle was one mile away when she first saw it. She does not know how fast he was driving. She did not pull off the road to her right. She did not wait for the Defendant to pass. The Defendant was behind her, she edged over to the left to start making a left turn, then she saw the Defendant trying to overtake so she did not turn. She does not know how far the Defendant was behind her

when she was attempting to turn, but she agreed that he could have been closer to her vehicle than she thought. Mrs. Barrow-Chung suggested that Ms. Leslie failed to observe the Rules of the Road. She disagreed saying that she knew the rules but she did not give way to the Defendant because she did not have to give way to him.

6. The second witness for the Claimant was Leevan Lewis who said in his witness statement that he is a construction worker who had been fishing at Mile 9 1/2 on the George Price Highway on the day of the accident. He had Ms. Leslie's house key and had been at that location for about an hour when she saw her coming up the road in her white Isuzu Sidekick. He observed that upon approaching him she put on her left indicator when a red Isuzu Rodeo coming behind her at a very fast speed hit her vehicle to the back and caused the vehicle to be pushed to the left shoulder of the road. When the accident took place, the Isuzu Rodeo came to a stop about one vehicle length from where the accident occurred. He ran over to where the vehicle was and saw the entire back seat of the vehicle up against the two front seats having both occupants trapped inside. They later crawled out of the vehicle and were taken away by ambulance along with occupants of the other vehicle.

Under cross-examination by Mrs. Barrow-Chung, Mr. Lewis admitted that he was Ms. Leslie's neighbor and that he had her house key. He says she was not driving fast, but very slowly, almost to a stop. The red SUV came up behind her and slammed her before she even turned. There was one other vehicle parked off the road, on the right.

7. The final witness for the Claimant was Edward McGregor. He was a passenger in Ms. Leslie's vehicle seated in the right front passenger side at the time of the accident. He had been hired by Ms. Leslie to do some work for her at her home. He waited for her at her house as there was no one there when he arrived. Upon her arrival home, Ms. Leslie told Mr. McGregor that she needed to go and get a key from someone about a mile away from where she lived heading in the direction of Hattieville. When they arrived at a short distance away, he saw a man waiting at the entrance to Chukka compound. Ms. Leslie commented that she will have to turn in to the compound because there was a vehicle parked on the right shoulder of the road so she couldn't pull off there. Mr. McGregor felt the vehicle move towards the left side of the road and as she was moving to pull off the road on the left hand side, he felt the vehicle swerve, followed by a strong push to the vehicle. He lost consciousness for a few minutes and when he came

to, he saw the person who was to give Ms. Leslie the key trying to help get her out of the vehicle. The impact of the accident had Ms. Leslie's vehicle completely on the left hand side of the road against the metal barrier in front of Chukka.

8. Mrs. Barrow Chung then cross-examined Mr. McGregor. He was asked whether he was aware of another vehicle coming behind them. He said no. Ms. Leslie did not pull off the right hand shoulder of the road. He said it was safe for her to make the intended left turn because she had her signal on to make the left. There was no vehicle in front of her as far as he could see. She slowed down to make the left turn.

Evidence on behalf of the Defendant

9. There were two witnesses for the Defendant. The first was the Defendant, George Reneau. Mr. Reneau said that he was the driver of the red Isuzu Rodeo at the time of the accident. He was traveling with his wife at about 12:15 p.m. that day in his Isuzu Rodeo from and east to west direction on the George Price highway heading towards Hattieville. Upon approaching Mile 9, he saw a white Isuzu Sidekick a bit in front of him. He continued to drive closer to the Sidekick. He intended to overtake that vehicle but before

attempting to do so, he ensured that the road was clear of any oncoming traffic and that it was safe to overtake. While attempting to overtake, the witness noticed that the Sidekick suddenly turned left, without indicating, into the left lane in a manner as to cross the road. Mr. Reneau then attempted to swerve right to avoid the Sidekick but the Sidekick also swerved causing his vehicle's driver side to collide with Ms. Leslie's back right hand side. His Isuzu Rodeo was damaged and he suffered personal injuries for which he is claiming damages.

10. Mr. Reneau was cross-examined by Mrs. Myles for the Claimant. He was asked what time did he come down to Belize City that day. He said around 9:00 a.m. heading back home on the actual road, it was only his vehicle and that of Ms. Leslie. He saw a blue Mazda Tribute parked on the right hand side of the road. The witness was asked at what point in time did he see Ms. Leslie's vehicle. He replied about 100 yards away; from a distance he could have seen her vehicle, as he had stopped at 8 miles shop to buy and he headed off from there. When he came back onto the road at mile 8, he saw her vehicle ahead of him at a far distance. He was 30 to 40 feet away from Ms. Leslie's vehicle when he went on to the left side of the road. Mr. Reneau said Ms. Leslie did not completely straighten back into her lane.

When he saw her move on to her left lane, he was 5 to 10 feet away from Ms. Leslie, about one vehicle length away. Her vehicle was in the left lane at an angle, almost the whole car was on the left lane. He says that Ms. Leslie turned suddenly without any indicator. He illustrated how Ms. Leslie's vehicle was at an angle between the right and left lanes. His vehicle hit her vehicle on her passenger side at the back, on the rear of the vehicle on the passenger side. He did not have time to blow his horn as it all happened so fast. At the time of the accident he was travelling at a speed of 40 to 50 mph. When he made the decision to try and overtake Ms. Leslie, he says she was travelling at a speed of 15 to 20 mph and trying to make a left turn at the same time. He did not agree with counsel's suggestion that that speed was akin to slowing down and almost coming to a stop. Mr. Reneau was not re-examined.

11. The next witness for the Defendant was his wife Nicole Allen. She said that she is a Human Resource Officer at the Port of Belize Ltd. She was a passenger in her husband's vehicle at around midday on the day of the accident and they were traveling to their home in Hattievillle Village. They were travelling at a speed of 50 mph and while he was driving Ms. Allen saw a white Sidekick driving in front of them at around Mile 9 of the highway.

Upon getting closer to the Sidekick, her husband tried to overtake the car. Ms. Allen observed that there was no oncoming traffic that would hinder him from overtaking at that time. While he attempted to overtake, the Sidekick suddenly turned to pull off the highway into a feeder road on the left side of the highway without indicating that it was going to do so. In an attempt to avoid an accident with the Sidekick, Mr. Reneau tried to swerve back into the right lane but another vehicle was parked on the right side of the highway which immediately drove off when the accident occurred. After the accident, Ms. Allen and Mr. Reneau went to the hospital where they were treated for injuries.

12. Ms. Allen was cross-examined by Mrs. Myles for the Defendant. She was asked what she had been doing in Belize City on the day of the accident. Ms. Allen said she had gone in to hospital to remove stitches after a recent surgery. She was not certain of the distance from which they saw Ms. Leslie's vehicle, but she was visible from a couple yards away, about 60 yards away. It is from that same distance that Ms. Allen says she first saw the vehicle that was parked on the right hand side. Ms. Allen said that Ms. Leslie was slowing down because she was turning off into a feeder road. Her husband did not blow his horn when he was attempting to overtake Ms. Leslie. Ms. Allen said

that Ms. Leslie did not actually turn, she was turning off and then she pulled back onto the highway. Her vehicle was coming over to the right and coming across the highway. Learned counsel asked Ms. Allen whether Ms. Leslie's vehicle was facing where she was going to turn or whether it was straight but the vehicle moved towards the right. Ms. Allen said Ms. Leslie's vehicle was straight but moving towards the right. She agreed with counsel's suggestion that the Rules of the Road require that vehicles coming from the rear should keep a distance away from other vehicles on the road. She also agreed that despite the presence of broken lines on the road drivers are still required to take precautions when overtaking another vehicle. Ms. Allen says that they did take precautions. She says that Ms. Leslie's vehicle was hit on the passenger side to the back on the right hand side.

13. Upon re-examination by Mrs. Barrow-Chung, Ms. Allen clarified that she saw Ms. Leslie turning off into a feeder's road. She did not see any light or anything flashing on her car that she was turning off into the road. Ms. Allen said that she saw the vehicle suddenly pull back into the lane, which they were overtaking. They tried to avoid hitting Ms. Leslie's vehicle, but another vehicle was parked right along the side of the road because there were some

men fishing. They would either have hit Ms. Leslie's vehicle or the vehicle that was parked along the side of the bridge.

Legal Submissions on behalf of the Claimant

14. Mrs. Myles refers to ***Gilbert Kodilinye's Commonwealth Caribbean Tort***

Law p. 95:

"The Motor Vehicle and Road Traffic Regulations of Belize s 114(3) and 115 states that:

'114. 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 on the road and for this purpose he shall be held to obstructing other traffic if he causes risk of accident thereto.'"

Regulation 115 provides as follows:

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

Mrs. Myles says that the Claimant detailed particulars of negligence as follows:

- a. Drove without due care and attention;
- b. Failing to keep any or any proper lookout or to have any or any sufficient regard to other users of the highway;
- c. Driving at a speed that was in the circumstances excessive;
- d. Failing to drive within braking distance of the motor vehicle in which the Claimant was traveling;
- e. Failing to adequately or at all observe or heed or act upon the presence, path, position, and approach of the Claimant’s table;
- f. Failing to see the Claimant in sufficient time to avoid the collision or at all;
- g. Failing to brake or otherwise maneuver so as to avoid a collision with the Claimant;

h. Overtaking vehicles (the Claimant) when it was unsafe to do so.

Mrs. Myles also pointed out the particulars of negligence detailed by the Defendant as follows:

- a. Drive without due care and attention;
- b. Turning from a major road into a minor road without ensuring that the road behind her was clear;
- c. Attempting to pull onto the right soft shoulder of the road before crossing the highway so as to give way to traffic behind her;
- d. Turning when it was unsafe to do so.

15. Mrs. Myles submits that the Claimant's version of how the accident occurred is more accurate and should be believed. The Claimant's witnesses were reliable and their evidence was vastly supported by the Defendant and his wife's evidence. All the witnesses agree that there was another parked vehicle on the right side shoulder of the road where the Claimant stopped with the intention to make the left turn therefore the Claimant could not necessarily pull off the road where she was going to make the left turn. It was clear from the evidence of witnesses for the Claimant and the Defendant that the Defendant's vehicle was at a distance from the Claimant and not

immediately behind the Claimant. It is therefore clear that there would have been no need for the Claimant to pull off the road as there was no oncoming traffic nor traffic behind her that would be obstructed by her turning. Mrs. Myles further submits that since both the Defendant and his wife testified that they saw the Claimant from a distance, there was sufficient time for the Defendant to take heed and notice the Claimant slowing down and indicating to turn. The Defendant who was driving the vehicle approaching the Claimant from behind also had a duty to maintain a distance from the Claimant's vehicle and to overtake only when it was safe to do so. Mrs. Myles argues that the Defendant was driving at an excessive speed and did not pay any attention to the Claimant in front of him. He did not blow his horn nor did he indicate to the Claimant that he was overtaking. Both the Defendant and his wife admitting to seeing the Claimant slowing down almost to a stop and therefore bore a burden to the Claimant to pay particular attention to the Claimant's movement since they were approaching from behind. Mrs. Myles submits that the Claimant's version of events should be believed as it is supported by her witnesses as well as by witnesses for the Defendant. The Claimant indicated that she intended to make a left turn (indicator on) and proceeded to move to the far left of the

right lane where it immediately bordered the left lane. When she realized that the Defendant was overtaking an coming close, she moved away from the middle of the road more to her right lane and this was when the Defendant also swerved into the right lane and hit her vehicle from behind. This is supported by the Defendant's wife who admitted after extensive questioning in cross-examination that the Claimant's vehicle had not yet turned left and was still facing forward towards Belmopan but close to the left lane. Based on this evidence, Mrs. Myles urges the court to find that the accident was solely as a result of the Defendant's negligence.

Legal Submissions on behalf of the Defendant

16. Mrs. Barrow Chung on behalf of the Defendant cites the Motor Vehicle and Road Traffic Regulations of Belize s 114(3) and s. 115 as follows:

"114. 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

on the road and for this purpose he shall be held to obstructing other traffic if he causes risk of accident thereto.”

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

Mrs. Barrow Chung submits that this accident was caused solely because of the Claimant’s negligence. The Claimant admitted under cross-examination that she was aware of the Rules of the Road, yet the evidence shows that the Claimant did not pull to the side of the road to allow the Defendant’s vehicle, which was the only vehicle behind her, to pass her Sidekick before making a left turn on the highway crossing the road. The Claimant stated that she believed she acted reasonably when driving by turning on the highway notwithstanding seeing and noting the presence of the Defendant’s vehicle behind her. She stated that as there was no oncoming traffic in the opposite land, she thought it was safe for her to do so. Mrs. Barrow Chung submits that this was because Ms. Leslie was fixated on the oncoming traffic and not on what was coming behind her. The fact that a collision was caused because

of the Claimant's attempt to turn left on the highway and then turn right again upon noticing the Defendant's vehicle shows that what the Claimant did was not prudent or reasonable in the circumstances. In fact, it was negligent of the Claimant to do so and in clear violation of the laws of Belize. The Claimant's actions when driving show that the Claimant was not aware of the regulations that users of the road are legally bound to follow. This blatant illegality is a clear sign of negligence on the part of the Claimant. Both witnesses for the Claimant confirmed that the Claimant did not pull to the right side of the highway before making the left turn, notwithstanding the acknowledged presence of the Defendant's vehicle on the highway. Both witnesses for the Claimant were persons employed by her, some doubt is cast on their integrity as witnesses for the Claimant. Mrs. Barrow Chung therefore asks the court to find on this evidence that the accident was caused solely by the negligence of the Claimant.

Decision

17. I am grateful to both counsel for their helpful submissions. Having reviewed the evidence in this matter, I am persuaded on a balance of probabilities that this accident was caused solely by the negligence of the Claimant. I believe the version of events given by the Defendant and his wife because that

version is supported by the evidence of the Claimant herself. All the evidence showed that the Claimant failed to pull to the right to give way to the vehicle behind her as required by Rules 115 and 116 of the Rules of the Road. The Claimant also admitted being in the process of already turning left and then suddenly swerving back to the right lane when she saw the Defendant's vehicle attempting to overtake her. In my respectful view, that is what caused the accident. I find the particulars of negligence alleged by the Defendant to be proven as against the Claimant. On the issues of quantum of special damages, the Defendant has submitted receipts for physical therapy from one Harold Zuniga for treatment he received subsequent to the accident. As the Defendant has already been reimbursed by the Claimant's insurance company for these expenses, the court makes no order regarding these expenses. The Defendant sought compensation for the loss of his vehicle in the sum of \$17,000. However, as Mrs. Myles has correctly pointed out, there has been no supporting evidence tendered such as photographs of the vehicle to show the extent of damages sustained and a mechanic's report to prove the value of the motor vehicle. As special damages must be specifically pleaded and proven, and in this case there is no proof, the court is unable to award special damages for the loss of the

motor vehicle. In relation to the injuries suffered by the Defendant, there is no medical report from any doctor who treated him for injuries suffered as a result of this accident. The only evidence is that of the Defendant himself who told the court under cross-examination that he was treated by Mr. Zuniga for sprains, whiplash, bruises and abrasions. There is no proof of loss of amenities, pain and suffering, nature and extent of injuries suffered or any of the heads of damages set out by Wooding CJ in the classic case of ***Cornillac v. St. Louis*** 1965 7 WIR at p. 491. The Claim is dismissed. Judgment is in favor of the Defendant on the counterclaim in the sum of \$3,000 as general damages to be paid by the Claimant. Costs awarded to the Defendant to be paid by the Claimant to be agreed or assessed.

Dated this Friday, 21st day of June, 2019.

Michelle Arana
Supreme Court Judge