

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 140 OF 2020

<b>BETWEEN: (THEDRAN REID</b>	<b>CLAIMANT</b>
(	
<b>(AND</b>	
(	
<b>(ISSAK BANMAN</b>	<b>FIRST DEFENDANT</b>
(	
<b>(SANTOS CHOC</b>	<b>SECOND DEFENDANT</b>

**BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN**

**HEARINGS: January 18, 2022 & January 19, 2022.**

**Written Submissions 2022:**

**February 18, 2022 – Claimant**

**February 23, 2022 - Defendants**

**APPEARANCES: Ms. Payal Ghanwani for the Claimant**  
**Ms Misty Marin and Mrs. Kia Diaz-Tillett**  
**for the Defendants**

**JUDGMENT**

**BACKGROUND**

1. On or about the 10th day of November 2018, Thedran Reid, the Claimant was driving his 2003 Toyota Tacoma pickup truck, at night along the Hummingbird Highway travelling towards Belmopan City. On the one lane bridge in St. Margaret’s Village, the Claimant’s vehicle collided head on with an Admiral pickup truck coming from the opposite direction

and being driven by Santos Choc, the Second Defendant. The First Defendant is the owner of the Admiral truck.

2. The Claimant filed a Claim form and statement of claim dated 5<sup>th</sup> March 2020, claiming against the Defendants, Issak Banman and Santos Choc, the following:
  - a. General damages caused by a motor vehicle accident which occurred on the 10<sup>th</sup> day of November 2018 along the Hummingbird Highway on the one lane bridge in St. Margaret's Village as a result of the negligence of the Second Defendant.
  - b. Special damages in the sum of BZ\$107,910.12;
  - c. Interest on any damages found to be due to the Claimant pursuant to section 166 and 167 of the Supreme Court of Judicature Act, Cap 91;
  - d. Costs; and
  - e. Such further or other relief as the Court deems fit.
  
3. According to the Claimant, he was lawfully driving his motor vehicle along the Hummingbird Highway on the one lane bridge in St Margaret's Village when the 2<sup>nd</sup> Defendant, who being the servant and/or agent and/or permitted driver of the 1<sup>st</sup> Defendant so negligently drove, managed and/or conducted the 1<sup>st</sup> Defendants motor vehicle being license plate number BMP-C-1376 along the said one lane bridge failing to give way to the Claimant causing the 1<sup>st</sup> Defendant's vehicle to collide into the front of the Claimant's motor vehicle and as a consequence the Claimant sustained personal injuries, suffered loss and damage and incurred expenses.
  
4. The Claimant claims as particulars of negligence of the Defendants:
  - a. The Second Defendant was driving too fast in the circumstances.
  - b. Failed to stop at the entrance of the one lane bridge to give precedence to my Tacoma that was advancing in the opposite direction and almost off the one-way bridge.

- c. Failed to keep any or any proper lookout along the roadway.
  - d. Failed to give any sufficient warning of his approach.
  - e. Failed to see the Tacoma in which Iverson and I were travelling in any or any sufficient time to avoid the collision into it.
  - f. Drove too close to the Tacoma.
  - g. Failed to drive within braking distance of the Tacoma.
  - h. Failed to take any or any effective measures to prevent his vehicle from colliding into the front of the Tacoma in which Iverson and I were travelling.
  - i. Collided into the front of the Tacoma in which Iverson and I were travelling.
  - j. Failed to stop, slow down, to swerve, or in any other way so to manage or control the pickup truck to avoid the collision.
  
4. The Defendants have filed a Defence and Counterclaim dated 30<sup>th</sup> day of April, 2020 by which the Defendants deny the particulars of negligence stated in the Statement of Claim and aver that the accident was caused by the Claimant who so negligently and/or recklessly drove his vehicle that he collided into the vehicle driven by the 2<sup>nd</sup> Defendant and as a consequence the 1<sup>st</sup> and 2<sup>nd</sup> Defendant suffered loss, damage and incurred expenses in addition the 2<sup>nd</sup> Defendant suffered injuries.
  
5. The Defendants counterclaim for damages for negligence, and special damages in the sum of BZ\$7,500.00 for the 1<sup>st</sup> Defendant, and special damages in the sum of BZ\$58,698.11 for the 2<sup>nd</sup> Defendant, general damages, interest and costs.
  
6. The Defendants claim as particulars of negligence of the Claimant:
  - a. Driving without due care and attention.

- b. Driving too fast in the circumstances.
  - c. Failing to stop at the entrance of the one lane bridge to give precedence to the vehicle driven by the 2<sup>nd</sup> Defendant that was advancing in the opposite direction and almost off the one-way bridge.
  - d. Failing to keep any or any proper lookout along the roadway.
  - e. Failing to give sufficient warning of his approach.
  - f. Failing to see the motor vehicle in which the 2<sup>nd</sup> Defendant was travelling in any or any sufficient time to avoid the collision into it.
  - g. Failing to drive within the braking distance of the vehicle driven by the 2<sup>nd</sup> Defendant.
  - h. Failing to take any or any effective measures to prevent the pickup truck from colliding into the motor vehicle in which the 2<sup>nd</sup> Defendant was travelling.
  - i. Colliding into the front of the motor vehicle in which the 2<sup>nd</sup> Defendant was travelling.
  - j. Failing to stop, slow down, to swerve or in any way so to manage or control the pickup truck to avoid the collision.
7. Each Party blames the other for the road traffic accident which occurred at about 7:30 p.m., on a dark, narrow, single lane bridge near St. Margaret's Village on the Hummingbird Highway.

## THE ISSUES

8. The issues to be determined by this Court, per the joint pre-trial memorandum of the parties' dated 15 day of September, 2021<sup>1</sup> are as follows:
- a. Whether the collision was caused by the negligence of the Second Defendant, or the Claimant, or both?
  - b. Whether the Claimant has proven the special damages claimed?
  - c. What is the quantum of the general and special damages to be awarded to the Claimant if it is found that the accident was solely caused by the negligence of the Second Defendant?
  - d. Whether the Defendants have proven the special damages claimed?
  - e. What is the quantum of the general and special damages to be awarded to the Defendants if it is found that the accident was solely caused by the negligence of the Claimant?

Whether the collision was caused by the negligence of the Second Defendant, or the Claimant, or both?

9. The Claimant's written submissions posit - and I agree - that the first matter which should to be addressed is who is to blame for the road traffic accident which caused this claim. The Court must determine (i) whether the Second Defendant breached his duty of care to the Claimant and is liable to him; or (ii) whether the Claimant breached his duty of care to the Second Defendant and is liable to the Defendants; or (iii) whether both the Claimant and Second Defendant breached their duty of care and to what extent.
10. It is trite law that a motorist always has a duty to drive with reasonable care. The duty to drive with reasonable care is both statutory and arises at common law. The statutory duty is contained in The Motor Vehicles and Road Traffic Act<sup>2</sup> which provides as follows:

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<sup>1</sup> Trial Bundle, Tab 25 page 411

<sup>2</sup> Chapter 230, Laws of Belize

***“82.- (1) Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, commits an offence and is liable to a fine of two hundred and fifty dollars or to imprisonment for six months, or to both, and in the case of a second or subsequent conviction, either to a fine of five hundred dollars or to such imprisonment as aforesaid, or to both such fine and term of imprisonment.”***

11. The duty of care is summed up in the Supreme Court of Jamaica case of Cecil Brown v. Judith Green and Ideal Car Rental by McDonald Bishop J:

***“[i]t is clear that there is, indeed a common law duty as well as statutory duty for motorist to exercise reasonable care while operating their motor vehicle on a road and to take all necessary steps to avoid an accident.”***<sup>3</sup>

12. The position of a driver is also correctly stated in the case of Devon Higgins & Shanice Brown v Uriah Campbell & Winston Campbell & Orville Senior<sup>4</sup> from the decision of Thompson-James J who stated as follows:

***“A driver of a vehicle on the road owes a duty of care to take proper care and not to cause damage to other road users whom he reasonably foresees is likely to be affected by his driving. In order to satisfy this duty, he should keep a proper look out, avoids excessive speed and observe traffic rules and regulations.”***

13. What is reasonable will always depend on the facts and circumstances of the case and in particular the circumstances with which a driver is faced at any given moment in time.

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<sup>3</sup> Claim No. 2006HCV02566 at paragraph 34

<sup>4</sup> Supreme Court of Jamaica Consolidated Cases No 2011HCV04465 & 2011 HCV04716

14. The Claimant's case is that the accident was caused solely because of the negligence of the Second Defendant; and the Second Defendant claims that the accident was caused by the negligence of the Claimant, or in the alternative, by both parties.
  
15. Both the Claimant and the Defendant, in written submissions rely on the views of Lord Pearson in the case of Henderson v. Harry E. Jenkins<sup>5</sup> who stated in relation to the burden of proof, as follows:  
  

*“In the action for negligence, the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants and if he is not satisfied the plaintiff's action fails.”*
  
16. I agree with the proposition cited by the Claimant's written submissions that since the common law duty of care is codified in the Motor Vehicles and Road Traffic Act, Chapter 230 of the Substantive Laws of Belize, the effect is to cement the fact that drivers have a duty of care to other persons on the road to drive with due care and attention and with reasonable consideration for other road users. Both drivers approaching the single lane bridge near St, Margaret's Village on the Hummingbird Highway owed each other a duty of care to drive with due care and attention on the night of the collision on November 10, 2018.
  
17. The Parties' account of how the incident occurred, are conflicting versions in respect of both how the accident happened, and who caused it. Both sides are dispute liability. The Court must therefore determine the matter on the evidence provided to the Court, and on a balance of probabilities.

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<sup>5</sup> 1969 A.E.R. 756 at page 766

## THE EVIDENCE

18. There were only three eyewitnesses who testified as to the road traffic accident which is the subject of this claim: the Claimant, his passenger, Mr. Iverson Alvarez, and the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant accepted under cross-examination that he was not present at the time the accident occurred and cannot say what happened at the time of the accident, and could not assist the court with any evidence as to how the accident occurred, or who caused the accident.
19. The Claimant's evidence, is that on November 10, 2018, he was travelling, in his Toyota Tacoma pickup with Mr. Allan Iverson, his passenger, along the Hummingbird Highway towards the direction of Belmopan City.<sup>6</sup>
20. Mr. Reid testified that he and Iverson left Punta Gorda at approximately 4:00 p.m. to head back to Belize City but stopped at Bella Vista Village to eat.<sup>7</sup> After leaving Bella Vista, the Claimant was approaching the single lane bridge in St. Margaret's Village at about 7.30 p.m.
21. Mr. Reid claims that on arriving at the bridge, he reduced his speed to 15 miles before coming to the entrance of the bridge.<sup>8</sup> He says that before entering the one lane bridge, he saw the lights of a vehicle travelling in the opposite direction coming in the distance.
22. According to Mr. Reid, that vehicle was *"far away from the entrance of the bridge"* at the *"opposite end"*, and he says that he drove on to the bridge, *"travelling at approximately*

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<sup>6</sup> Witness Statement of Thedran Reid dated July 6, 2021 at paragraph 5

<sup>7</sup> Ibid, paragraph 7

<sup>8</sup> Ibid, paragraph 9



**20 to 25 miles per hour**".<sup>9</sup> This means that after seeing the lights coming from the opposite direction, Mr. Reid increased his speed upon driving on to the bridge.

23. According to Mr. Reid, when he was "**more than halfway through the bridge**", he then saw "**the vehicle that was coming in the opposite direction pull to its right at the entrance of the bridge like it was going to pull over to give me way**". Then he says that he noted that the vehicle failed to stop,<sup>10</sup> and it mounted the bridge "**and headed straight into my direction at high speed**".<sup>11</sup>
24. Mr. Reid claims that he "**immediately began reducing the speed of the Tacoma to try and bring it to a stop and began flashing my headlights to alert the driver of the oncoming vehicle of my presence**".<sup>12</sup>
25. He testified under cross-examination that he began "**flashing his lights to alert the other vehicle of his presence on the bridge**", and that he did so twice and that on the third occasion, he held it down a little longer on high beam so that the other driver could see him. According to Mr. Reid's witness statement, the other driver "**failed to stop and collided head on into the Tacoma.**"<sup>13</sup>
26. Mr. Reid in fact, seems to have only begun to flash his headlights when he was already on the bridge, and not when he says in his witness statement that first saw the other vehicle approaching "**far away from the entrance of the one lane bridge at the opposite end**".<sup>14</sup>

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<sup>9</sup> Ibid, paragraphs 10 and 11

<sup>10</sup> Ibid, paragraph 12

<sup>11</sup> Ibid, paragraph 13

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid, Paragraph 10

27. In cross-examination, Mr. Reid also testified that he was familiar with the area and St. Margaret's Village because of his job servicing air conditioners and that he drove through the area four times per month or more. He insisted that he slowed his speed on approaching the bridge to check for traffic and that he saw the lights of the approaching truck "*far away*", and that it was a "*couple hundred yards*" away when he saw it. He said that he entered on to the bridge before the 2<sup>nd</sup> Defendant did, and that he was more than halfway through the bridge when the 2<sup>nd</sup> Defendant entered. He testified that when he saw the other vehicle on the bridge, he was already trying to stop and said that at the point of impact, he had already stopped.
28. The Claimant's passenger, Mr. Alvarez, says that the Claimant slowed down upon arriving at the one lane bridge, prior to the entrance, before entering the bridge to check for oncoming traffic because only one vehicle could be on the bridge at a time.<sup>15</sup> He does not however say that Mr. Reid stopped his vehicle, nor does he say that once on the bridge, Mr. Reid increased his speed.
29. Mr. Alvarez's testimony is that he saw a vehicle was coming in the opposite direction but from the lights he could see that it was, "*far away from the entrance of the bridge at the opposite end*"<sup>16</sup>.
30. Mr. Alvarez testified that when the Claimant entered the bridge it was clear of traffic<sup>17</sup>; and that the Claimant's vehicle was more than halfway through the bridge nearing the exit when he noticed the "*vehicle in the opposite direction pull right but then failed to stop*". Mr. Alvarez does not say in his witness statement that Mr. Reid ever flashed the headlights of the Toyota Tacoma at the other vehicle.

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<sup>15</sup> Witness Statement of Iverson Alvarez dated July 26, 2021 at paragraph 6

<sup>16</sup> Ibid, paragraph 7

<sup>17</sup> Ibid, paragraph 8

31. Mr. Alvarez’s testimony is that the oncoming vehicle failed to stop at the entrance of the one lane bridge, advanced **“fast towards us”** thereby colliding directly into the vehicle in which he and the Claimant were travelling in<sup>18</sup>; and he recalled the Claimant attempting to stop the Tacoma before the other vehicle collided into them.<sup>19</sup>
32. The evidence of the 2<sup>nd</sup> Defendant, Mr. Choc is that on the night in question, he was driving a 2007 ZX Auto Admiral pickup owned by his employer, the First Defendant.<sup>20</sup>
33. Mr. Choc says that he was traveling home from work in the pickup headed to the Stann Creek Valley from Belmopan when he reached the bridge at St. Margaret Village. He testifies that he knows the route well and has travelled it many times at night and that **“there are no signs or streetlights”** in the area, and that **“I know when to stop before approaching the bridge.”**<sup>21</sup>
34. According to Mr. Choc, he slowed down because he knew he was approaching the entrance of the one lane bridge, and saw bright lights of another vehicle approaching the bridge.<sup>22</sup>.
35. He says that he saw the other vehicle which he now knows belongs to the Claimant **“and noticed him dim his lights”**<sup>23</sup> According to Mr. Choc, **“I know that this signal indicates that the other driver is intending to give you the right to go ahead”**.<sup>24</sup>

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<sup>18</sup> Ibid, paragraph 9

<sup>19</sup> Ibid, paragraph 10

<sup>20</sup> Witness Statement of Santos Choc dated June 29, 2021 at paragraph 6

<sup>21</sup> Ibid, paragraph 9

<sup>22</sup> Ibid, paragraph 10

<sup>23</sup> Ibid, paragraph 12

<sup>24</sup> Ibid, Paragraph 13

36. Mr. Choc says that he *“proceeded to go onto the bridge and as I was almost approaching the exit, I saw big bright lights advancing in my direction on to the bridge. I did not see the Claimant’s vehicle advancing towards me or I would have stopped.”*<sup>25</sup> He also states that *“in a few seconds the Claimant’s vehicle collided with the front of my vehicle”*.
37. The 2<sup>nd</sup> Defendant admitted in cross-examination that he did not stop at the entrance of the one lane bridge. He says that he *“did not see the Claimant’s vehicle advancing”* towards him. That is not a credible statement. Neither of the two drivers stopped on entering the bridge.
38. The 2<sup>nd</sup> Defendant said under cross-examination that he failed to see the Claimant’s vehicle advancing towards him, because of the *“big bright lights coming towards him”*. But, he already knew of the presence of the Claimant’s vehicle from when it was approaching the bridge, and he never says that he saw the Claimant’s vehicle stop or slow down. The 2<sup>nd</sup> Defendant proceeded to drive on to the bridge in any event.
39. Having reviewed the evidence, it is clear that what the Claimant says he was signaling, was not what the 2<sup>nd</sup> Defendant claims that he was interpreting. The Claimant says he signaled to let the 2<sup>nd</sup> Defendant know he was there and was on the bridge already; but the Second Defendant says that he thought that he was being signaled by the Claimant to proceed. Neither driver in fact stopped prior to entering this one lane bridge near St. Margaret’s Village to see what the other driver was going to do.
40. I note with care, that Mr. Choc admitted under cross-examination that as a prudent driver he knows that the use of flashing headlights by a driver is used to warn or signal the other

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<sup>25</sup> Ibid, Paragraph 14

driver of your presence. This is in contradiction to what he claimed in his witness statement, which is that a driver dimming his lights *“usually indicates that the other driver is intending to give you the right to go ahead.”*<sup>26</sup>

41. One thing is undisputed. The bridge is a short one. Photographic evidence disclosed by the Defendants <sup>27</sup>show the site of the accident on the bridge and show the position where the vehicles ended up after the accident. It is clear that the pick-up truck being driven by the Second Defendant ended up nearer the entrance of the bridge in the direction which he was coming from. But this Court cannot conclude with any certainty that this is where the point of impact actually occurred on the bridge.
42. Even though each of the drivers on the Hummingbird Highway near St. Margaret’s Village that night – Mr. Reid and Mr. Choc - say that they saw the lights of the other vehicle approaching the bridge, and both claimed to have slowed down on approaching the bridge, neither driver actually stopped their respective vehicle, to see if the other driver would proceed or give way on entering this short one lane bridge.
43. On a one lane bridge such as this one, especially on the Hummingbird Highway, at night, in an area without any lights, it was the duty of each of these drivers to exercise reasonable care and do the prudent thing.
44. The prudent driver would have exercised reasonable care by bringing their vehicle to a stop before entering this short bridge, in order to verify the situation, and to see what the other driver would do first before proceeding on to the bridge. Neither of these drivers did that. Instead, both drivers on that fateful night, proceeded to drive on to that one lane bridge and

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<sup>26</sup> Witness Statement of Santos Choc at paragraph 13.

<sup>27</sup> Defendant’s List of Documents, Schedule 1, Part 1, at #17: “Pictures of site of accident labeled a to d”.

did so with sufficient speed to cause extensive front end damage to both vehicles upon the inevitable collision.

45. One way bridges on the Hummingbird Highway, especially at night and in a dark area, require extra care and precaution from any prudent driver, and each of these drivers, both of whom claimed to know this section of the road very well, ought to have exercised that extra amount of care and precaution on the night in question. Instead, both drivers proceeded on to the bridge, obviously trying to clear it before the other one entered, with predictable and disastrous results.
46. I find that the collision on the night of November 10, 2018, was in fact caused by the negligence of both drivers - the Claimant as well as the 2<sup>nd</sup> Defendant.

## **DAMAGES**

47. In the circumstances, both drivers bear responsibility for the damage that occurred to the vehicles and for the resulting personal injuries, as well as the damage and loss occasioned.
48. This Court will not therefore, award any damages, general or special, to either the Claimant or the Defendants in respect of the motor vehicle accident which occurred on November 10, 2018 along the Hummingbird Highway on the one lane bridge near St. Margaret's Village.

## ORDERS

49. The following Orders are made:

- a. The collision was caused by the negligence of both the Claimant and the 2<sup>nd</sup> Defendant. Neither the Claimant's claim, nor the counterclaim of the Defendants succeeds.
- b. Both sides are to bear their own costs

DATED THIS 4<sup>th</sup> DAY OF APRIL 2022



LISA M SHOMAN

JUSTICE OF THE SUPREME COURT