

IN THE SUPREME COURT OF BELIZE, A. D. 2011

CLAIM NO. 785 OF 2011

BETWEEN

(LISTON MYERS

CLAIMANT

(

(AND

(

(DOUGLAS RODRIGUEZ

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Richard Bradley Jr. for the Claimant

Mr. Michael Peyrefitte for the Defendant

D E C I S I O N

The Facts

1. On December 12th, 2009 Liston Myers 21 year old Tour Guide of Gales Point, Manatee was travelling on a Red and Blue Lifen motorcycle heading from Belize City to Belmopan. Douglas Rodriguez, construction worker of No. 84 La Croix Street Address in Belize City was driving a Blue and White Honda Accord car licensed C-32431 heading from Belmopan to Belize City. On or about 6:45 pm to 7:00 pm on this day, there was a collision involving these two vehicles between miles 6 and 7 on the Western Highway. Each party claims that the accident was caused by the other. Liston Myers suffered injuries to his left femur and amputation of his left wrist. Douglas Rodriguez suffered

lacerative wounds to his left eyebrow, left side lower lip, scalp in the left frontal region, blunt chest and back trauma. The motorcycle which appears to have been uninsured and unlicensed was totally destroyed, while the car was insured by Home Protector Insurance was also seriously damaged. Liston Myers claims damages for injuries he alleges were caused by Mr. Rodriguez's negligence, while Douglas Rodriguez counterclaims against Liston Myers for injuries he suffered due to Mr. Myers' negligence.

The Issues

2. i) Was the accident caused by the negligence of the Claimant or of the Defendant?
- ii) Should contributory negligence be considered in this matter?
- iii) What is the quantum of damages to be awarded?

The Claimant's Case

3. At trial there were three witnesses called for the Claimant: the Claimant himself Liston Myers and two witnesses, Mitchell Lewis and Andrew Baird. Mr. Myers said that on December 12th, 2009 he was travelling on the George Price Highway on his motorcycle at about 6:45pm. He was on the right hand side of the highway travelling from the direction of Belize City heading towards Gales Point, Manatee when he was involved in an accident. At about Miles 6 and 7 Mr. Myers observed a car coming from the opposite direction heading towards Belize City. He said that as the car appeared to be swerving into the right lane in which he was riding, he decided to ride his motorcycle as close to the edge as possible, but the car still collided into him. After the impact, Mr. Myers said

he was flung from his motorcycle onto the side of the road into some bushes. He fell unconscious. When he regained consciousness he was lying on his back in the bushes. He called for help and several persons came to him. He was in a lot of pain and unable to move; when he looked at his left hand he saw that his left hand had been completely torn off. He also had severe pain in both his legs and later discovered his left femur had been fractured. The ambulance came and took him to Karl Heusner Memorial Hospital (KMH), where he was admitted and remained until January 4th, 2010. He suffered traumatic amputation of the left forearm and Grade III A and an open fracture of the left femur as a result of the accident. His motorcycle was completely damaged. He was treated with surgical repair of the stump of his left forearm and internal fixation of the left femur fracture. He was readmitted to KMH on two subsequent dates 4th to 10th September, 2010 and 26th September to 24th October, 2010 due to infections of his foot. He has suffered permanent disability (50% then upgraded to 100%) and has been unable to return to his work as a tour guide. He seeks damages for negligence against the Defendant for causing this accident.

4. Under cross-examination by Mr. Peyrefitte, Liston Myers admitted that the motorcycle he was riding had no license or insurance. He also admitted that he never had a license to ride the motorcycle but used his Social Security card when he was stopped by the police. He disagreed with Counsel's suggestion that since he had no vehicle license and insurance and no drivers' license for the motorcycle he did not belong on the road in the first place. It was also put to him that he was overtaking a bus on the highway when the

accident occurred; to which he responded *"That dah wah big dry lie, sir. No bus never deh"*. He also denied that the accident was his fault.

5. Andrew Baird testified on behalf of Mr. Myers. He is an Operating Nurse at Karl Heusner Memorial Hospital with over 16 years experience and he lives at Hattievillle Village. He said he encountered the accident between miles 6 and 7 on the Western Highway, and he offered to assist the injured person on the road. He observed severe injuries to that person's left arm and foot. He reassured the injured person that he was being assisted by professionals and that the ambulance was on its way. He put some clean cloth on the injury and applied pressure to the arm of the person. He later learnt that person name to be Liston Myers. Mr. Baird also observed a Hispanic man who appeared to him to be intoxicated. His eyes were glossy, his pupils dilated and he was staggering, as if under the influence of drugs or alcohol. About 20 minutes later the ambulance arrived and Mr. Baird assisted in putting Mr. Myers into the ambulance.
6. Mr. Baird was cross-examined by Mr. Peyrefitte. He admitted that he did not see the accident happen. He also did not make any report to the police about the person at the scene who appeared to be intoxicated. He admitted that he never said he smelt alcohol on this person. He said that based on his experience as a nurse the Hispanic male person displayed signs of intoxication. While Mr. Baird agreed with Mr. Peyrefitte's suggestion that the symptoms displayed might be of internal injuries, the witness insisted that those symptoms looked like signs of alcohol intoxication to him.

7. Mitchell Lewis was the final witness called on behalf of Liston Myers. He is a fireman who lives in Hattieville. On the 12th December, 2009 at about 6:50 pm, Mr. Lewis says he was driving his Isuzu Rodeo on the George Price Highway between miles 6 and 7 when he saw a vehicle turned on its side. He said the area was dark but light was coming from the bushes. He pulled over to the side of the road to determine if anyone was injured in the accident. Mr. Lewis said he saw some men coming out of the overturned Honda, and he saw a damaged motorcycle on the right hand side of the road. He said he checked to see if there were any skid marks but he didn't see any.

He saw the driver of the car and asked him what happened. He learnt his name to be Douglas Rodriguez who told him that the person on the motorcycle was overtaking a bus and collided into his vehicle. Mr. Lewis said he told Rodriguez that if a bus was involved in this accident the bus would have rendered aid. Mr. Lewis then told his wife to call 911, and went to look for the young man who was lying in the bushes. He learnt the young man's name to be Liston Myers, and noted that Mr. Myers' left leg was broken in two places, his left hand was severed and the bone was sticking out. The ambulance arrived shortly thereafter and Mr. Lewis assisted in getting Mr. Myers into the ambulance.

8. It was put to Mr. Lewis in cross-examination whether he saw the accident; he answered no. It was further put to him that his comments on there being no bus involved in the accident were pure speculation. He said yes. When he was re-examined by Mr. Bradley, Mr. Lewis clarified that he was at a police checkpoint at mile 4 on the highway when the police stopped and checked for licence and insurance. He said Mr. Myers was ahead of

him on the cycle and after the police let Mr. Myers pass on his motorcycle, Mr. Myers was about a one-minute gap ahead of him. After Mr. Lewis left the checkpoint, he said his vehicle was the only vehicle behind Mr. Myers. The witness said at the scene of the accident no bus passed him going in either direction. He could see all the way down to the end of the stretch of road from one curve to the next and there was no bus.

9. The Defence then called Douglas Rodriguez, the Defendant. Mr. Rodriguez testified that he is a construction worker and his job site varies according to the location of the work that he does. He said that in December 2009 he was employed as part of a group of men constructing Benny's on the Northern Highway. On Saturday December 12th, 2009 around 5:15 pm, Mr. Rodriguez said he was driving from Belmopan to Belize City on the Western Highway. The vehicle belonged to his brother William Rodriguez and it was licensed LP C-34321 and insured with Home Protector Insurance Company. He says he was travelling with two of his friends, Juan Carlos Ardon and Manuel Martinez. At about 6:45 pm Mr. Rodriguez said that he was driving at about 45 miles per hour on a straight stretch of road approaching miles 6 and 7 on the Western Highway. He saw an approaching bus travelling in the opposite direction so he reduced the speed he was driving. When the bus passed about 4 feet (or 5 seconds later) a small dim light on the same side of the bus was travelling on the middle of the road and moved to the right side which was his left side. Mr. Rodriguez said that he recalls the evening was dark and there were no direct street lights on the road. The motorcycle was travelling at a speed of about 40 miles per hour and the motorcycle only had a small light in the middle and was very dim. The motorcycle did not have any indicator nor did it have any reflector,

making it difficult to be seen at night. The accident happened very fast so that Mr. Rodriguez said he did not realize it was a motorcycle until the driver made impact with the mirror on the left side of his car; then the body of the motorcycle hit the fender of the car and got stuck under the fender. He said he recalls trying to swerve to his right side of the road but the impact caused him to lose control of his vehicle and that impact then pulled the car to the left of the road. Mr. Rodriguez's vehicle turned over three or four times and it then landed on top of some mangrove trees. He managed to break out of his vehicle through the sunroof, assisted his friends in getting out then went to check on the driver of the cycle to try to assist him. He said he realized when the ambulance arrived that the driver of the cycle had lost his right hand and had injuries to his leg. He details damage to his brother's vehicle and states that police took photos of the damaged vehicle in his presence at the Hattieville Police Station. Mr. Rodriguez said he suffered injuries and went to the hospital to be checked where a medicolegal form was given to him (DR 6). He also received a letter from Dr. Francis Smith due to continuous pain he had in his chest and back (DR 7).

10. Under cross-examination by Mr. Bradley, Mr. Rodriguez denied that he and his two friends had been at a party in Hattieville Village drinking beer on that day after 5:15 pm. He also denied that the reason he could not see Mr. Myers on the road was because he was intoxicated. He said if he had been drunk, the police would have taken him to jail. He denied counsel's suggestion that he and his friends were putting grass in their mouths at the scene to cover up the scent of alcohol on their breath. He said he thought the bus that passed him was an express bus because it never stopped after the accident

happened. He then went on to say that the road was being fixed up by a bridge. At the suggestion that Mr. Myers moved his cycle to the far right of the road to avoid him, Mr. Rodriguez said no, Mr. Myers was trying to overtake the bus. It was put to him that he never saw Mr. Myers in time or any at all. He said he never saw Myers because Myers was overtaking. It was also put to the witness that the left side of his vehicle made contact with Mr. Myers on his cycle; he denied that suggestion, saying it was Mr. Myers who hit him, and that he tried to avoid him to his right but Mr. Myers knocked him to his left side. It was put to the witness that it was in no way possible that this old second hand scooter could overtake the express bus. His answer was that they were fixing up the road by 6 miles, the bus was taking its speed and Myers wanted to overtake the bus; he doesn't know what was in Myers' mind. He was asked why didn't he brake and stop his vehicle before the accident happened. He said his vehicle was on three wheels so he couldn't stop. It was put to Mr. Rodriguez that it was he who caused the accident; he denied that.

11. The final witness for the Defence was Juan Manuel Martinez. He said that he met two of his friends Douglas Rodriguez and Manuel Martinez in Belmopan on Saturday December 12th, 2009. He had just left work, and shortly after 5:00 pm he travelled back with them to Belize City to visit his mother. The witness said he was sitting in the back seat of the car and he recalled Douglas Rodriguez reducing the speed of the vehicle between mile 6 and 7, and he looked into the space between the driver's seat and Manuel's seat to see what the matter was.

Mr. Martinez said that he then saw an approaching bus on the opposite side of the road travelling from Belize City to Belmopan at a fast speed. Seconds after the bus passed them, he saw a dim light coming from the same side like the bus but unlike the bus this dim light was closer to their side of the road. Mr. Martinez said that he realized that the dim light was a motorcycle when it was about to make impact with the left front side of Douglas's car. He recalls the car moving towards the left side of the road as if going off the side of the road; this was at the same time when the person driving the motorcycle hit the car. The accident happened in a matter of seconds; it was the fault of the motorcycle driver and his friend Douglas Rodriguez did all he could to avoid it but he could not avoid it in time.

12. Under cross-examination by Mr. Bradley, Mr. Martinez was asked whether he and his friends had stopped for a party in Hattieville and were drinking alcohol on the day in question; he said no. It was put to him that there was no bus on the road at the material time; he replied yes there was and he saw it. When questioned as to the color of the bus he said he couldn't recall. He was asked to explain how a motorcycle travelling at 40 miles per hour could overtake a bus going 25 miles faster than the motorcycle; he said he just assumed the bus was going 65 miles per hour. He denied the suggestion that Douglas Rodriguez had swayed unto the right side of the road and knocked Mr. Myers down. He also denied that it was Douglas Rodriguez who caused the accident.

Legal Submissions on behalf of the Claimant

13. Mr. Bradley on behalf of Mr. Myers submits that the Defendant's version of events is a lie. The Defendant says that he was driving at a speed of 45 mph and slowed his speed

when a bus approached from the opposite direction. About four feet later or five seconds later after the bus passed the car he was driving, he saw a dim light in the middle of the road which moved to his side of the road. Mr. Bradley argues that this is an impossibility because if the Claimant's motorcycle was four feet behind the bus, the Defendant would not have occasion to see that "*the motorcycle had a small light in the middle*" which "*was very dim*", nor that the cycle did not have any indicator or reflector, as the Defendant avers in his Witness Statement. The Defendant said that the cycle was travelling at about 40 mph at that point in time. However, the Defendant's sole witness, Juan Manuel Martinez avers in his witness statement that the bus was travelling 65 mph. Mr. Bradley submits it is impossible for a cycle travelling at 40 mph to overtake a bus travelling at 65 mph, as there is a speed difference of 25 mph. There was no bus, as was verified by the Claimant's witness Mitchell Lewis who was present on the stretch of highway where the accident occurred on that day. Mitchell Lewis testified that at the police checkpoint, the police stopped both the Claimant and him; the police gave the Claimant a one minute gap in front of Lewis, and after leaving the checkpoint Lewis' vehicle was the only one on the highway behind the Claimant.

Mr. Bradley further submits that the Claimant should not be found to be contributorily negligent just because he did not have a license or insurance for the motorcycle. He cites Civil Appeal No. 15 of 2011 ***Madrid Cruz v. Jose Alvarenga*** where the Court of Appeal held that not having a license or insurance in and of itself did not amount to contributory negligence. Mr. Bradley argues that to prove contributory negligence the Defendant needed to establish that the Claimant did not have the skill and experience

to handle and control the motorcycle. In addition, the Claimant said under cross examination that he knew the Rules of the Road. He had to travel on his motorcycle out of necessity as there was no transportation to and from Gales Point Village Manatee, except for school buses which do not run on Saturdays. Finally Mr. Bradley submits that the Defendant ought to be found wholly at fault for causing the accident and the injuries sustained by the Claimant.

Legal Submissions on behalf of the Defendant

14. Mr. Peyrefitte on behalf of the Defendant submits that the case comes down to the credibility of the witnesses. He says that the Claimant's recklessness in being on the road without a license and insurance makes it easy to believe he was equally reckless in trying to overtake a bus on the road without paying attention to oncoming traffic from the other side of the road. The witness Andrew Baird tried but failed to show that the Defendant was under the influence of alcohol at the time of the accident; he admitted under cross-examination that no test was administered to the Defendant to determine whether he was drunk and therefore Mr. Baird could not deny the possibility of a person having glossy eyes and slurred speech after an accident. The witness Mitchell Lewis should not be believed because while he said he saw the Claimant at the checkpoint, the Claimant said he was never checked and police told him to go through. Mr. Peyrefitte argues that the bus was perhaps already ahead at the checkpoint but Mr. Lewis did not see that bus as it was nighttime. Mr. Peyrefitte submits that the Defendant was licensed to be on the road, and his vehicle was licensed and insured. The speeds given by the Defendant were approximate, and one of the reasons the accident happened was

because the bus was going faster than the motorcycle. Mr. Peyrefitte contends that the essence of the case is that the Claimant, an unlicensed driver driving an unlicensed vehicle was being reckless on the road trying to overtake a bus. He submits that the Defendant is not responsible for the accident and that the Claimant at the very least contributed to his injuries.

Decision

15. Having reviewed the evidence in its entirety and considered the submissions made on behalf of the Claimant and the Defendant, I find on a balance of probabilities that the Defendant's negligence caused the accident. I found the Claimant's version of the events as to how the accident occurred to be credible and supported by the witness Mitchell Lewis who I also found to be a witness of truth; Mr. Mitchell was an objective person who just happened to be present at the checkpoint immediately after the Claimant passed through. I believe the Claimant that there was no bus. Mr. Meyer's demeanour in the witness box when he characterized the Defendant's assertion that there was a bus as a "*big dry lie*" struck me immediately as having the ring of truth. In my view, the Defendant lost control of the car he was driving and veered into the Claimant's motorcycle, hitting the Claimant and causing the accident. To my mind, I do not accept as true that the Defendant saw the light from an oncoming bus and then from the motorcycle. I find it incredible that the Defendant claimed he was driving so slowly and slowed down even more when he saw this oncoming bus, yet he was unable to avoid hitting this motorcycle. I also found the witness Andrew Baird to be very authentic in the forthright manner in which he delivered his evidence as to Defendant's

glossy eyes, slurred speech and staggering at the scene immediately after the accident. While it is true that there was no medical test done on the Defendant to verify if alcohol was the cause of these symptoms, I find Mr. Baird's observations and conclusions as medical nurse of 16 years experience to be highly persuasive. I reject the Defendant's version of the accident and I also reject the evidence of his witness Juan Carlos Ardon as Mr. Ardon is the Defendant's friend, and therefore clearly a witness with an interest to serve. I do not find that the Claimant was contributorily negligent and in so doing I take account of the Court of Appeal decision in ***Cruz v. Alvarenga*** (cited above) where the Court held that the Claimant not having a driver's license by itself does not amount to contributory negligence. I find that the Claimant has proven on a balance of probabilities that the accident was caused entirely by the Defendant's negligence.

16. While Mr. Bradley has filed extensive submissions on behalf of the Claimant of the quantum of damages to be awarded, Mr. Peyrefitte has not addressed the issue of quantum in his submissions at all. I will therefore set a date for submissions to be filed on behalf of the Defendant to assist the Court in determining the appropriate quantum of damages to be awarded in this matter.

17. Judgment is in favor of the Claimant. Costs awarded to the Claimant to be assessed or agreed.

Dated this 19th day of December, 2016

Michelle Arana
Supreme Court Judge