

IN THE SUPREME COURT OF BELIZE A.D. 2007

CLAIM NO. 202 OF 2007

BETWEEN

**HARRY DAWSON
WALTER CANAS**

CLAIMANTS

AND

ANTHONY LEONARD

DEFENDANT

Mrs. Agnes Segura Gillett for the claimants.
Mrs. Sharon Pitts Robateau for the defendant.

AWICH Chief Justice (Ag.)

25.1.2011

JUDGMENT

1. This claim is for damages to compensate for damage caused to vehicle of registration number BZ-C-26112. The claimant, Harry Dawson, owned that vehicle which collided with buffaloes on the 10th of October 2006, on a highway. The buffaloes are said to belong to Anthony Leonard, the defendant. Originally, the claim was brought by Harry Dawson as the first claimant and Walter Canas as the second claimant. Walter Canas was the driver of the vehicle owned by Mr. Dawson when

the vehicle collided with the buffaloes. He has withdrawn his claim, and Dawson remains the only claimant.

2. The case is a simple case of negligence. The claimant alleges that the defendant was negligent in that he left his buffaloes wandering by the roadside unattended and that two of the buffaloes wandered onto the highway when Mr. Walter Canas, driving in vehicle BZ-C-26112, collided with the animals.
3. Case management conference was held on the 8th of July 2009. Certain case management orders were made, including orders that the claimant and the defendant may each call two witnesses and parties were to file and serve witness statements on or before the 1st day of October 2009. The claimant complied with those orders; the defendant failed to comply with the orders.
4. At pre-trial review I ordered that the defendant would not be allowed to call witnesses since he had failed to file witness statements, and did not make an application for permission to file witness statements late.
5. At trial, evidence was adduced only by the claimant. Mr. Canas, the driver of vehicle BZ-C-26112 was called as a witness and related the story of the collision. According to Mr. Canas, the collision took place on the 10th of October 2006, some time after 6:00 p.m. at Miles 50 on the Northern Highway. It was getting dark. Mr. Canas had driven from

Crooked Tree going to Orange Walk. At Miles 50 one buffalo strayed from a herd onto the highway and was hit by the vehicle driven by Mr. Canas. A second buffalo was also hit. Damage was occasioned to the front part of the vehicle. The accident was reported to the police who went to the scene, inspected the scene and took measurements. The vehicle was towed away.

6. Mr. Canas went with the police to Orange Walk and returned to the scene. He met Mr. Kuylen dragging away the injured buffaloes. Mr. Canas inquired as to who was the owner of the buffaloes. Mr. Kuylen informed Mr. Canas that Mr. Anthony Leonard was the owner of the buffaloes and the farmland abutting the road. Later Mr. Canas visited the farmhouse and met Mr. Kuylen there. Mr. Canas was invited to go back to see Mr. Leonard.
7. Mr. Dawson, the owner of the vehicle, also testified. He said that he got two quotations for the damage to his vehicle. He enumerated the details of the damage to the vehicle. He testified further that, he repaired the vehicle at a total cost of \$9,322.50. He made demands to Mr. Leonard to pay for the repairs, but Mr. Leonard has failed to pay. Mr. Dawson accordingly made court claim for the cost of repair of his vehicle; the claim was for \$8,000.00 and attorney's costs which he quantified at \$3,000.00.
8. The defendant of course, could not adduce evidence and the evidence of the claimant stood alone. Although the evidence stood alone, it was

still the duty of court to ensure that the evidence was sufficient proof of the matters alleged and that those matters proved the requirements for negligence.

9. In my view, the facts of the collision and of the damage occasioned to the vehicle were sufficiently proved. The law regarding negligence on the highway is that a driver must take reasonable care to avoid injury to other road users and persons on land adjoining the highway and their properties.
10. In this case there has been no evidence to prove that Mr. Canas did not take care to avoid injuring property belonging to Mr. Leonard. The two buffaloes were the property. They were injured by Mr. Canas, but there has been no proof that Mr. Canas should have foreseen that buffaloes would stray on the road, and that he did not take reasonable care to avoid the collision.
11. The general law about negligence is that every person has a duty to avoid acts or omissions that could cause foreseeable injuries to others that he is taken to owe duty of care to. In this case Mr. Leonard, the owner of the buffaloes, did not take care of his buffaloes at all, he left them by the highway unattended. It is reasonable to conclude that he should have foreseen the risk of injury that his unattended buffaloes posed to road users. The facts proved negligence. Mr. Leonard was liable to Mr. Dawson for negligence.

12. Judgment is entered for Mr. Harry Dawson against Mr. Anthony Leonard for damage caused to motor vehicle BZ-C-26112. I award damages in the sum of \$8,000.00, the sum claimed, plus costs which shall not be less than \$3,000.00. The costs of \$3,000.00 was based on a demand for \$8,000.00; and it was expected that the claim would not proceed to trial. The claim has unnecessarily proceeded to trial; costs have escalated, the defendant must pay.

13. **Delivered this Tuesday the 25th day of January 2011**
At the Supreme Court
Belize City

SAM LUNGOLE AWICH
Acting Chief Justice
Supreme Court