

IN THE SUPREME COURT OF BELIZE, 2001 A.D

ACTION NO. 230 OF 2001

BETWEEN: 1. SHARON JOSEPHINE CASTELLANOS PLAINTIFFS
 2. ROCHELLE CASTELLANOS (A MINOR) BY
 MARK CASTELLANOS (HER BROTHER AND
 NEXT FRIEND)
 AND
 1. ARTHUR HINDS DEFENDANTS
 2. CYNTHIA WADE

Mr. W. Elrington S.C., for the claimants.
Mr. Dean Barrow S.C., for the defendants.

AWICH J

10.8.2007

J U D G M E N T
(Assessment of Damages)

1. On 9.6.2004, judgment on the question of liability was delivered and awards for special damages were made. Assessment of general damages for each claimant was not made. It was the request of the parties that only the question of liability be decided.

2. The claim by the two claimants, injured in a motor vehicle accident on 8.12.2000, on the Western Highway, was in negligence. It was alleged and proved that the accident was the result of negligence by Mr. Arthur Hinds, the first defendant; he was the driver of a truck of

registration No. A-844, one of the vehicles in the accident. The second defendant, Ms. Cynthia Wade, was the employer or principal of the first defendant. The second vehicle in the accident was a car of registration No. C - 23927; it was driven at the time by one, Alber, the daughter of the first claimant. Alber died as the result of the accident. The two claimants were passengers in the vehicle driven by Alber.

3. In the judgment, of 9.6.2004, I made the determination that the first claimant was liable in negligence, and the second defendant was vicariously liable. I also made the determination that the driver of vehicle No. C – 23927 was responsible for her part in the negligence and could be partly liable for the negligence. The driver is deceased; there is no joint claim by her estate in this claim, so strictly speaking, there cannot be a determination of contributory negligence. However, the defendants remain liable only for their part in the negligence that caused the accident and the injuries. That part is 50%; the defendants are liable to pay damages assessed, to the extent of 50%. Their liability is joint and several.

4. Special damages have already been awarded in the judgment of 9.6.2004. In assessing the general damages payable to the two claimants, I have to consider in respect of each: the nature and extent of the injuries sustained, the pain and suffering, the nature and gravity of the resulting physical disability and if permanent, the resulting loss of amenities if any, and the claimant's future prospects of engaging in gainful employment. The assessment will be a single sum, the result of taking into account all the above factors; it will not be the arithmetic total of the individual figures otherwise attributable to the factors considered. A local case that gives that guidance is, *Jose Sanchez v Peter Gianchandani, supreme Court of Belize Action No. 385 of 1999*. A case from the region is, *Carnillac v St Louis (1965) 7 WIR 491*.

5. Rachelle Castellanos suffered what Dr. J. Rodriguez described as "blunt abdominal trauma". She was treated with antibiotics and "I.V. therapy", and was discharged from hospital after three days. There has not been any further medical complaint from her; that suggests full recovery. She was 12 years old at the time of the accident. Consideration of damages due to her took into account the injury

which I regarded as minor, and pain and suffering. There was no permanent consequence of the injury she suffered. I assess total damages at \$4,000.00 (four thousand), and I award to Rachell Castellanos 50% which is \$2,000.00 (two thousand). The award carries interests at 3% from the date of the judgment about liability, 9.6.2004.

6. Injuries sustained by Sharon Castellanos were extensive and left her with a limp due to injuries to the pelvic, and a lasting mild pain. The injuries she suffered were: “multiple pelvic fractures, left humeral fracture and fracture of the proximal third of the left ulna”. She required in-patient treatment for one month and three months bed rest, and had physiotherapy treatment for six months. She has permanent curvature (deformity) of the left arm at 22 degrees, and the range of motion of the arm is reduced by 5%. There is also recurrent pain at the hip. Permanent disability of the shoulder is 16% and of the hip is 9%. Degeneration was predicted. She was 42 years old at the time of the accident.

7. In a case in which there were less injuries, but loss of gainful employment was included, the Supreme Court of Belize awarded \$100,000.00. (one hundred thousand). The case is, *Narval Belisle and Ahmed Shaheed v Teddius Thompsom, S.C. Action No. 41 of 2000*. I make a similar award of general damages in this case. However, I have to reduce that by 50%. Damages awarded to Sharon Castellanos is therefore \$50,000.00 (fifty thousand). Interest at 3% per annum will accrue from the date of judgment, 9.6.2004.

8. Costs to the two claimants pro-rata, to be agreed or taxed.

9. Delivered this Friday the 10th day of August, 2007
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court of Belize