



# The Educator



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## What is negligence?

Often, in road traffic accident cases, in determining who is at fault, the Court must look at the cause of the accident and whether the accident would have occurred if it were not for the a driver's negligence.

As a starting point, let us look at the recent Supreme Court of Belize case of ***Emil Bradley v. Danny Tejada*** [2018] (delivered 16<sup>th</sup> of April, 2018). This is a claim for damages arising from a road traffic accident which occurred on the 17th June, 2015 on the George Price Highway. There was a collision between Mr. Bradley's vehicle (a Silver Toyota Hilux Pickup Truck) and the Mr. Tejada's vehicle (a Gold Toyota Corolla Car). Both parties allege that the accident was caused by the negligence of the other in this claim and counterclaim.

***Emil Bradley*** is a claim for damages arising from a road traffic accident which occurred on the 17th June, 2015 on the George Price Highway. There was a collision between the Claimant's vehicle (a Silver Toyota Hilux Pickup Truck) and the Defendant's vehicle (a Gold Toyota Corolla Car). Both parties allege that the accident was caused by the negligence of the other in this claim and counterclaim.

Mr. Bradley said that he was driving his pickup truck on the George Price Highway travelling from an east to west direction towards San Ignacio Town when he saw the Corolla and another car ahead of him in the same lane. Upon reaching the last speed bump in Esperanza Village, he noticed that a gold car in front of him was coming to a stop and pulling to the right side of the road. He said that he then attempted to overtake the gold car when it suddenly swerved into the next lane and collided with his pickup truck.

Mr. Tejada said that he was driving on the right hand side of the George Price Highway when he approached the bump in Esperanza Village. Upon reaching the bump, he said that he slowed down almost to a stop, put on his indicator that he would cross the road into Sedacey Street which is a feeder road on the left side of the road and began turning to make the turn as there were no vehicles coming in the opposite direction. There were two vehicles behind him. He began to make the left turn on the highway and when his car was about 75% off the highway, he saw the pickup truck coming from the same direction as he was, overtake the vehicle behind him and jump the speed bump, hitting the left front side of the car he was driving. As his car was already turned horizontally on the highway, the pickup truck hit the left side of the car which faced vehicles traveling from Belmopan to San Ignacio. Mr. Tejada said that the pickup was travelling at a speed of approximately 50 mph when he noticed the pickup truck jumping the bump. He alleges he heard Mr. Bradley say at the scene that his insurance can't pay as the week before he had been in an

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accident. His vehicle was badly damaged so he counterclaims for the cost of the vehicle and the cost of rental of another vehicle.

The Honourable Madam Justice Michelle Arana heard the plaintiff's arguments that according to **Halsbury's Laws of England**, Negligence is:

*"A specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all."*

Mr. Bradley, the Claimant argued that the accident occurred due to the negligence of Mr. Tejada, the Defendant. He cites the **Motor Vehicles and Road Traffic Regulations of Belize** s. 114 (3) which state that:

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

Additionally, s. 115 of the same regulations states that:

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

## The Issue

Was the accident caused by the negligence of the Claimant or the Defendant? Was there contributory negligence by either party? What is the quantum of damages to be granted to the successful party?

In this Newsletter we will address the first two questions only.

Madam Justice Michelle Arana noted that the regulations illustrate that a driver must give way to traffic in any direction if he is attempting to turn make a turn on the highway. The foregoing sections of the regulations along with s.114 (4) (b) of the **Motor Vehicles and Road Traffic Regulations** make it abundantly clear that a driver attempting to make a left turn on the road that he should keep the far right of the road so as to not be an obstruction to any other traffic on the road and turn when the road is clear.

## A prudent or reasonable person

Madam Justice Michelle Arana determined that the fact that a collision was caused because of Mr. Tejada attempting to turn on the highway when two cars were directly behind him shows that what he did was not prudent or reasonable in the circumstances. In fact, it was negligent of him to do so and in clear violation of the laws of Belize.

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## Follow the Law

Mr. Tejada's actions when driving shows that he was not aware of the regulations that he is legally bound to follow. This blatant illegality Madam Justice Arana said:

is a clear sign of negligence on the part of the Defendant. It is completely plausible to assume that if the regulations were followed by the Defendant the accident would not have occurred. In accepting that this theory is very likely or possible, then rightly it should follow that the Defendant was negligent in turning when he did therefore he is the cause of the accident involving the Claimant and should rightfully be responsible for the damages that the Claimant has suffered.

The Court noted that by his own admission, Mr. Tejada drove in a manner which was contrary to what the law required under s. 114 and s. 115 of the **Motor Vehicles and Road Traffic Regulations** and in so doing he caused an obstruction which caused the accident. Therefore, on a balance of probabilities that the accident was caused solely by the negligence of Mr. Danny Tejada, Judgment was awarded in favor of the Claimant in the sum of \$14, 693.44 with interest and costs.

## Can you see me?

In the recent Trinidad and Tobago High Court case of **Darren Roome, v Joseph Corapse and Motor One Insurance Company Limited** and **Mathew Tambie, v Joseph Corapse and Motor One Insurance Company Limited** [2018] (Delivered on: 23rd May, 2018), one of the issues for the court to decide was whether the Defendant Joseph Corapse was liable in negligence for the injuries sustained by the Claimants Darren Roome and Mathew Tambie, and whether the Claimants contributed by any Negligence on their part to the accident.

The First Defendant Joseph Corapse, was never insured to drive the vehicle which he borrowed from the owner, so proceedings against the Second Defendant Motor One Insurance Company Limited, had at some time in the past insured the involved Motor Vehicle to be driven by its owner's son. Mr. Corapse was never insured to drive the vehicle which he borrowed from the owner, so proceedings against the Second Defendant were discontinued. It follows, since Mr. Corapse was driving uninsured at the time of the accident, he will not benefit from any indemnity cover under the owner's motor policy for a finding of liability to pay damages to the Claimants.

## Fried chicken

Mathew Tambie, a 28 year old, described himself as a car washer and part time construction worker and Darren Roome are lifelong friends. The friends had planned on getting fried chicken on the night of September 16, 2011 in Chaguanas, Trinidad. They were riding their on bicycles fitted with white reflector lights at the front and red reflector lights to the rear, but turned back as they felt they couldn't reach home before the curfew that was in effect in effect in the Chaguanas Borough, Trinidad which operated from 9:00 p.m. to 5:00 a.m.

## The accident

Tambie said he was riding behind Roome and they were both riding "along the sidewalk or the extreme right side of the Southern Main Road." Around 8:30pm the collision took place on the Southern Main Road, Caroni, Trinidad at a part of that road where traffic runs East to West and West to East. In that area one lane heads East and one lanes heads West. There is a drain to the northern side of the road where Roome and Tambie eventually ended up after the collision with the Defendant Joseph Corapse. At the time of the collision, the road was wet.

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The collision took place on the northern side of the roadway i.e. the side where traffic heads East. The Defendant Joseph Corapse was travelling East on the Southern Main Road at the point of the collision whilst Roome and Tambie were riding West on their bicycles in the (wrong) direction towards the flow of traffic.

The cyclists were thrown in the air; one was dragged by the vehicle along a drain and both ended up in the drain at the side of the Southern Main Road. Injuries sustained were severe especially for Roome some of whose facial features were scraped off. Both Roome and Tambie were taken unconscious to the hospital after the 1st Defendant, Joseph Corapse fled the scene.

## The Defendant's case

The Defendant's case is that the accident was caused by the Claimants' Negligence in riding on the wrong side of the road, failing to keep a proper look out, not riding with lights or suitable clothing and riding in the path of his vehicle.

## The Claimants' case

The Claimants say the accident was caused by the Defendant's negligence in failing to keep a proper look out, failing to brake or manage his vehicle so as to avoid the collision, driving dangerously, at excessive speed without making allowance for the wet, slippery road surface and driving onto the pavement without heeding the presence of the Claimants.

## The Court's Findings

The court noted, "[t]he cyclists did not emerge suddenly out of nowhere as they were consistently proceeding along the same path. The Defendant had on his car lights and saw them 20 feet away, in time to take evasive action had he not been speeding". Her Honour Madam Justice Eleanor Joye Donaldson-Honeywell accepted the Claimants as witnesses of truth that they were riding to the extreme side of the road. There was no evidence of any other vehicle in the road that could have obstructed the Defendant's ability to avoid hitting the cyclists.

## Contributory negligence

The Claimants bear some responsibility for the accident as they were riding along the wrong side of the road. Justice Donaldson-Honeywell found that the side path where the Claimants were riding was part of the roadway and though intending to be careful they should have been on the other side of the road. If they had been, this accident may not have occurred.

Roome was a witness who displayed more self-assurance in his intellectual abilities. On the other hand he was clearly uncomfortable about his appearance, shying away when looked at directly. It could clearly be seen that parts of his facial structure were missing, including his nose. Unlike Tambie, who presented as a person who was somewhat developmentally challenged, he did not admit to riding recklessly. He said they were riding carefully because it was a busy road and they were aware of vehicles that would "voosh past". He admitted that he did not know he should lawfully have been riding on the other side of the road but said he felt it was safer to ride along the side of the road facing the traffic so he could see it coming and avoid it.

On this point of riding on the wrong side of the road, Counsel for the Defendant submits that the Claimants were at least contributorily negligent and thereby liable for the injuries sustained in the accident. She points out that The Motor Vehicle and Road Traffic Act Chapter 48:50, in its interpretation section describes "'traffic' to include "bicycles, tricycles, motor vehicles, tramcars, vehicles of every description, pedestrians and all animals being ridden, driven or led" and the Regulations thereunder provide at 38:

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'Every driver of a motor vehicle shall comply with the following Rules:

Rule 38 (5) (1) He shall keep the motor vehicle on the left of the road unless prevented by some sufficient cause save where the road is wide enough to accommodate 3 motor vehicles abreast and is marked off by the competent authority with a centre line allowing vehicles occupying the centre to turn right'.

Contrary to the findings in the Supreme Court of Belize case of **Emil Bradley v. Danny Tejada** [2018] (which was not argued in **Darren Roome**), Counsel for the Claimant **Roome** underscored that the alleged breach of the **Road Traffic Regulations** [of Trinidad and Tobago] cannot of itself be taken as evidence of negligence of the Claimants for purposes of civil liability. He cites the English case of **Powell v Phillips** [1972] where the Court of Appeal stated:

*"It is clear that a breach creates no presumption of negligence calling for an explanation, still less a presumption of negligence making a real contribution to causing an accident or injury. The breach is just one of the circumstances on which one party is entitled to rely in establishing the negligence of the other and its contribution to causing the accident or injury. Here it must be considered with all the other circumstances ...it must not be elevated into a breach of statutory duty which gives a right of action to anyone who can prove that his injury resulted from it."*

However, this argument was not specifically addressed by the TT Court.

## Mitigation

The contributory negligence was mitigated by the fact that the Claimants' bikes had reflectors and they wore bright clothing to be seen easily by motorists. The Defendant saw them and failed to take evasive action.

It was the finding of Madam Justice Donaldson-Honeywell that her determination as to liability was informed more by the extent to which the credibility of the witnesses was supported by corroborating evidence and withstood cross-examination. She found the Defendant was driving at an excessive speed, in an area he was unfamiliar with, on a wet road surface at night and he made an extreme swerve causing him to leave his path and veer into the Claimants path on the extreme right side of the road. Donaldson-Honeywell J: accepted the Claimants as witnesses of truth that they were riding to the extreme side of the road and that there was no evidence of any other vehicle in the road that could have obstructed the Defendant's ability to avoid hitting the cyclists.

## Award

Accordingly, the Court found that the Claimants were each 25% contributorily negligent in the accident and the Defendant is 75% liable in negligence in both cases. Tambie was awarded \$39,521.00 being 75% of \$52,694.00 in general damages and \$15,150.00 being 75% of \$20,200.00 in special damages plus interest and costs. He was also awarded the sums of \$7,200.00 for future medical expenses. Roome was awarded \$207,900.00 being 75% of \$277,200.00 in general damages and \$3,825.00 being 75% of \$5,100.00 in special damages plus interest and costs. He was also awarded the sums of \$217,600.00 and \$877,799.00US for future medical expenses and \$78,480.00 for future loss of earnings.

However, as noted above, Joseph Corapse, was never insured to drive the vehicle which he borrowed from the owner, so proceedings against the insurer Motor One Insurance Company

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Limited, were discontinued as Mr. Corapse was driving uninsured that night, he will not benefit from any indemnity cover for the finding of liability to pay damages to the Claimants.

## Editor's Note:

This is yet another case that demonstrates the need for the creation of something that compensates victims of negligent uninsured or untraced drivers (commonly known as Hit and Run accidents), in the form like the Motor Insurance Bureau (MIB) – a need that had been the focus of several issues of *The Educator*. Calls from the Courts such as in Trinidad and Tobago, Jamaica and the Privy Council have all fallen on deaf ears.

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## Strange but true

An experienced Police Officer, for almost 30 years, who had appeared as a witness more than 30 times, and who was the driver of a friend's car when he hit two cyclist, and left the scene of the accident and went home despite observing both Claimants in the drain and the severe facial injuries to one of the claimants, and who did not wait to ensure an ambulance came for the Claimants and did not report the accident immediately, said that he did not know that it was an offence for him to be driving the vehicle without insurance.

Source: the Trinidad and Tobago High Court case of **Darren Roome, v Joseph Coraspe and Motor One Insurance Company Limited** and **Mathew Tambie, v Joseph Corapse and Motor One Insurance Company Limited** [2018] (Delivered on: 23rd May, 2018)

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