



CL 130/2020

**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS**

**BETWEEN:**

**NELIA CHIN**

**Plaintiff**

**and**

**FRITZNER GEDEON**

**RITHO GEDEON**

**Defendants**

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**JUDGMENT**

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**Before:**

**Mr Justice Carlos W. Simons OBE QC**

**Appearances:**

**Mr Mark Fulford of F. Chambers Law for the Plaintiff.**

**The Hon. Mr Alvin Garland of Garland & Co. for the 1<sup>st</sup>  
Defendant.**

**Trial Dates:**

**21 and 24 January 2022.**

**Venue:**

**Via Microsoft Team Link, Court No. 5, Providenciales.**

**Date to be Delivered:**

**Friday, 22 April 2022**

## **The Facts**

1. This is a simple road traffic running down accident case in which the essential facts are not disputed. On December 18, 2019, at about 7:45 am the Plaintiff was standing on the (north) east-bound side of the Leeward Highway in the vicinity of the All Saints Baptist Church in the Bight, Providenciales.
2. The Plaintiff who was 56 at the time, was on her way to work as a housekeeper at the Tree-Haus Villa, Cherokee Road (west of her location) and needed to cross the Highway to the (south) west-bound side, to board her jitney (taxi) that was waiting for her. She said she looked carefully to ensure there was no oncoming traffic and made it safely across the two east-bound lanes of the Highway to the median. She did the same on the median. She said in her witness statement she “looked carefully before crossing the westbound side of the highway and ensured again that the road was clear and free from incoming (sic) vehicular traffic”.
3. The defendant was driving in left (south) the two west-bound lanes of the Highway in the direction of his work at Digicel where he was due to report at 8:00 o’clock. He says he was “coming slow then I just saw someone knocking my car...I was traveling 35 miles per hour”. He had struck the Plaintiff as she made her way across two traffic lanes to board her taxi. She suffered injuries to her right foot that and her big toe on that foot had to be amputated. She was discharged from the Hospital on 6 January 2020 after almost three weeks.

## **The Claim and the Defence**

4. On these facts the Plaintiff says the defendant was negligent and she claims special and general damages as pleaded and prayed in the Statement of Claim, plus costs and interest.
5. The defendant says it was the Plaintiff’s own negligence that caused or contributed to the accident, and he sets out particulars of same at paragraph 11 of his defence. He admits that the Plaintiff suffered injury and was taken to hospital from the scene of the accident but otherwise denies, or puts the Plaintiff to proof of the injuries, loss and damage that she claims.

## **The Decision**

6. Having heard the evidence, I find as a fact that the defendant was negligent in the ways pleaded at paragraph 14 a. to i. of the Statement of Claim. I further find that it was in consequence of the accident that the Plaintiff sustained the injuries pleaded, and in the absence of agreement, and subject to assessment and proof she is to recover the damages, both general and special that she prays, and in addition, statutory interest.
7. On the evidence, or rather lack of it, I specifically reject the defendant’s denial of paragraphs 14 and 15 of the Plaintiff’s Statement of Claim. There is no question but that the Plaintiff suffered the injuries pleaded, and they could not have been in consequence of any event other than the accident – by all accounts she had just sprinted across three quarters of a busy highway.

8. However, I do also find on the evidence as a fact, that the Plaintiff was contributorily negligent in the way pleaded at paragraph 11 of the defence, in particular as asserted at 11 a., b., e., and f. I estimate the degree to which the Plaintiff's own carelessness for her safety to be 25%, and her recovery of damages is to be reduced accordingly following assessment and proof of the various items within the heads of damages she has claimed, and I have awarded.
9. As I have not seen any, or at least any sufficient evidence/proof of actual loss, and neither has the matter been contested before me, I have treated this as a trial of liability only. Counsel are invited to attempt to agree quantum based upon the findings I have made above and the apportionment I have allocated as between the parties, and present a consent order to the Court. Failing such agreement within one month hereof, the Plaintiff's counsel may apply for an assessment after filing and exchanging the necessary supporting documents.

### **Costs**

10. The Plaintiff is to have her costs of the action.

**Hon. Carlos W. Simons OBE QC**  
**Judge of the Supreme Court**  
**22 April 2022**

