

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: March 1, 2019]

LUDOVICO PERELLA, MARY :
PERELLA, NICOLE FERRARA, :
individually and as guardian and next :
friend of KELSEY FERRARA, a minor, :
and MICHAEL FERRARA :

VS. :

THE GENERAL COUNCIL OF THE :
ASSEMBLIES OF GOD, SOUTHERN :
NEW ENGLAND DISTRICT OF THE :
ASSEMBLIES OF GOD, INC., :
RADIANT CHRISTIAN ASSEMBLY :
OF GOD, INC. JOHN DOE and :
JOHN DOE CORPORATION, ALIAS :

C.A. No. PC-2013-6552

DECISION

I

Introduction

LICHT, J. Defendants Radiant Christian Assembly of God, Inc. (Radiant Christian) and Southern New England District of the Assemblies of God, Inc. (Southern New England District) moved for this Court to apply the substantive law of the country of Bangladesh in the instant action. Ludovico Perella and Mary Perella (Plaintiffs) object to Defendants' motion to apply foreign law.

II

Facts and Travel

On December 31, 2013, Plaintiffs filed a Complaint alleging that Ludovico Perella (Ludovico),¹ a resident of Bristol, Rhode Island, suffered injuries in a car crash while on a mission trip in Bangladesh. Compl. ¶¶ 1, 22.² Mary Perella (Mary), also a resident of Bristol, Rhode Island and the wife of Ludovico, has brought a loss of consortium claim. Compl. ¶¶ 2–3. Defendants are Radiant Christian, the Rhode Island church that planned the mission trip (Comp. ¶ 14); the General Council of the Assemblies of God (General Council), a Missouri Corporation (Compl. ¶ 6); and Southern New England District, a Massachusetts corporation (Compl. ¶ 7). Radiant Christian is part of the Southern New England District and both fall under the governance of the General Council. Compl. ¶¶ 10, 13, 14.

In 2011, Radiant Christian's minister, Larry Mangone (Pastor Mangone), planned a missionary trip to Dhaka, Bangladesh. Radiant Christian's Mot. Apply Bangladeshi Law (Mem.) 5. He did so by coordinating the logistics of the trip with Larry Smith (Smith), the director of the A.G. Mission.³ Plaintiffs' daughter is a member of Radiant Christian who planned to go on the mission and Ludovico decided to accompany her. Pls.' Mem. 3. In order to prepare for the trip, Ludovico met with Pastor Mangone to learn about the trip and the obligations of the participants. *Id.* During this trip, the missionaries stayed in lodging provided by A.G. Mission and were

¹ Because both Plaintiffs have the name Perella, first names are used with no disrespect intended.

² For purposes of this motion, the Court has accepted uncontradicted statements in the Complaint and various memoranda as true. The Court recognizes that they are not evidence and must be proven or stipulated at trial.

³ A.G. Mission is a Bangladeshi non-governmental organization. The mission in Bangladesh was administered by Assembly of God World Mission, a division of the General Council. Radiant Christian's Mem. 4-5.

provided with transportation to missionary sites by A.G. Mission. Radiant Christian's Mem. 5. The trip cost \$2,000 for each participant. Pls.' Mem. 3.

While on the mission trip in Bangladesh, Ludovico was driven to various locations in a vehicle that was purchased by the General Council and then registered in Smith's name. Pls.' Mem. 6. The vehicle was driven by Sushanto, Smith's personal driver. Radiant Christian's Mem. 5. On August 18, 2011, Sushanto was driving Ludovico and others back from a visit to an orphanage when Sushanto collided into the rear end of a truck that was pulled over on the side of the road. *Id.* at 6. As a result of the accident, Ludovico sustained severe injuries to his spinal cord and back. Pls.' Mem. 7.

The Complaint includes claims of vicarious liability, corporate negligence/direct liability, and loss of consortium. Under vicarious liability, Plaintiffs claim that Defendants had substantial control over each other as well as Pastor Mangone, Smith, and Sushanto and are liable for Plaintiffs' injuries. Compl. 6, 10, 14–15. Under the claim of corporate negligence/direct liability, Plaintiffs claim that Defendants breached their duty to exercise reasonable care to Plaintiffs "by implementing policies, practices and/or procedures which jeopardized the safety of individuals including the Plaintiffs and/or by not ensuring that its policies, practice and/or procedures were properly followed." Compl. 4–5, 9, 17.

Radiant Christian has moved to apply Bangladeshi law. Southern New England District also moved to apply Bangladeshi law and relies upon Radiant Christian's memorandum.

III

Standard of Review

When presented with a Conflicts of Law question, the Court must first determine if a “true conflict” exists between the laws of the two states in question. *See Nat’l Refrigeration, Inc. v. Standen Contracting Co., Inc.*, 942 A.2d 968, 973-74 (R.I. 2008). A “true conflict” exists when each state retains an interest in the application of its contradictory laws. *Peavey Co. v. M/V ANPA*, 971 F.2d 1168, 1171 (5th Cir. 1992).

If a “true conflict” is found, the Court must apply an interest-weighting approach with respect to choice-of-law questions. *Harodite Indus., Inc. v. Warren Elec. Corp.*, 24 A.3d 514, 525 n.17 (R.I. 2011). When applying the “interest-weighting approach,” the Court “look[s] at the particular . . . facts and determine[s] therefrom the rights and liabilities of the parties in accordance with the law of the state that bears the *most significant relationship* to the events and the parties.” *Id.* at 534 (quoting *Cribb. v. Augustyn*, 696 A.2d 285, 288 (R.I. 1997)) (emphasis in original).

The interest-weighting approach mandates an examination of these five factors: (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum’s governmental interests; and (5) application of the better rule of law. *Najarian v. Nat’l Amusements, Inc.*, 768 A.2d 1253, 1255 (R.I. 2001). In addition, in a case sounding in tort, the Court must consider four more factors: “(a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicil, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered.” *Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 326-27, 252 A.2d 176, 179 (1969).

IV

Analysis

A

A Conflict Exists

Before the Court examines the choice-of-law question, it must first determine if there is a “true conflict” between Rhode Island Law and Bangladeshi law. *See Nat’l Refrigeration, Inc.*, 942 A.2d at 973-74. Under Bangladeshi law,⁴ the Motor Vehicles Ordinance, 1983 (MVO) allows for the recovery of damages sustained in a motor vehicle accident. Radiant Christian’s Ex. G. Section 128 of the MVO provides that a claim for compensation is to be made before the Motor Accidents Claims Tribunal. *Id.* As for the statute of limitations, Section 128(3) of the MVO states that:

“[n]o application for compensation under this section shall be entertained unless it is made within six months of the occurrence of the accident: Provided that the Claims Tribunal may entertain the application after expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.” Radiant Christian’s Ex. H.

Additionally, under the MVO an injured party can only file an application for compensation against the driver, owner, or insurer of the offending vehicle. *See Ex. G.* The term “owner” under the MVO is defined as “where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement, and the

⁴ When discussing Bangladeshi law, this Court relies, solely for the purposes of this motion, upon a letter provided by Radiant Christian from a Bangladeshi lawyer discussing the merits of the instant case and the Bangladeshi law that applies. *See Radiant Christian’s Ex. G.* Radiant Christian also provided this Court with the ordinance which the Bangladeshi lawyer states is the applicable law to this case. *See Radiant Christian’s Ex. H.* Plaintiffs have not provided this Court with any additional information on Bangladeshi law.

person holding power of attorney.” Radiant Christian’s Ex. H. Finally, there is no comparative negligence law in Bangladesh. Radiant Christian’s Ex. G.

Based on the foregoing, there is an obvious conflict of laws between Rhode Island and Bangladesh with respect to liability for motor vehicle accidents. Rhode Island has (1) a longer statute of limitations, (2) a broader definition of “owner,” and (3) a comparative negligence standard for tort law.

However, this case involves much more than analyzing negligence on a road in Bangladesh. Plaintiffs have not even sued Sushanto or Smith (the purported owner of the vehicle). Rather, claims for vicarious liability, corporate negligence, and loss of consortium have been asserted. Because there has been no submission on what the law of Bangladesh is on these subjects, the Court will assume there is a conflict.

B

Tort Factors

1

The place where the injury occurred

To determine which law to apply, the Court first turns to the relevant factors of contact in this case. First, it is undisputed that the auto accident that injured Plaintiffs occurred in Bangladesh. This factor favors Bangladesh.

2

The place where the conduct causing the injury occurred

The parties contest if the conduct causing Ludovico’s injury occurred in Rhode Island or Bangladesh. Plaintiffs argue that much of the conduct causing the injury occurred in Rhode Island because the trip was planned in Rhode Island. While it is true that Pastor Mangone was in

Rhode Island when he communicated with Smith to plan the mission trip, this fact is inconsequential because the true conduct which caused Plaintiffs' injuries was the alleged negligent driving of Sushanto. This factor also favors Bangladesh. Both factors (a) and (b) point to the application of Bangladesh law; however, "the place of the accident is but one of the significant factors to be considered in weighing of the multiple factor concept." *See Brown*, 105 R.I. 322 at 326, 252 A.2d at 179.

3

The domicile, residence, nationality, place of incorporation and place of business of the parties

The place of incorporation for all three Defendants is within the United States; the General Council is incorporated in Mississippi, Southern New England District is incorporated in Massachusetts, and Radiant Christian is incorporated in Rhode Island. Plaintiffs are both Rhode Island residents. This factor favors Rhode Island.

4

The place where the relationship, if any, between the parties is centered

The relationship between the parties is centered in Rhode Island as that is where Ludovico had contacts with Radiant Christian and paid for and made arrangements to go on the mission trip in Bangladesh. This factor also points in favor of applying Rhode Island law.

5

Weighing the factors

The question before this Court is not if Sushanto was negligent but if Radiant Christian, Southern New England District, and the General Council can be held responsible for the alleged negligence of Sushanto. This issue is similar to that in *Oyola v. Burgos* wherein the Rhode Island Supreme Court held that the location of the injury was not the most important factor in the tort

case under a choice-of-law analysis because the Court was not asked to decide the question of negligence but instead if the Defendants could “face liability.” 864 A.2d 624, 628 (R.I. 2005). The Court reasoned that New York law was not applicable because while New York was where the negligent incident occurred, what was at issue was if a rental car company could be sued for the negligence of a driver who was not authorized under a lease agreement that was entered into in Rhode Island. *Id.* at 628. Thus, factors (c) and (d) pointing to where the relationship between the parties arose were found to be more important than factors (a) and (b); *see Brown*, 105 R.I. 322 at 325, 252 A.2d at 178 (holding that the Rhode Island wrongful death act was the correct law to apply because while the accident occurred in Massachusetts, the relationship between the parties was centered in Rhode Island).

In this case, Ludovico was a passenger in a rear-end accident which leads to an presumption that Sushanto was negligent. But, the negligence of Sushanto is not the issue in this case. Rather, the principal question before this Court is if the churches can be held liable for Sushanto’s negligence because the churches breached a duty to the Plaintiffs. Therefore, factors (c) and (d) which point towards applying Rhode Island law because that is where the relationship between the parties is centered “trump” factors (a) and (b) which favor applying Bangladeshi law. *See Oyola*, 864 A.2d at 628.

C

The Interest Weighing Factors

1

Predictability of Result

While the relevant points of contact in this tort suggest that Rhode Island law should apply, the Court must turn to the policy considerations to fully determine which law to apply.

First, predictability of results does not favor Rhode Island or Bangladesh. Predictability of results “concerns enabling parties to know beforehand the consequences of a certain course of action.” *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1352 (R.I. 1986). Radiant Christian argues that all parties could have justified expectations that Bangladeshi law would apply because the accident occurred in Bangladesh. While the parties may reasonably expect that Bangladeshi law would apply to an accident that occurred on a Bangladeshi road, as stated above, the issue is not about Sushanto’s driving but about the duty of Defendants to Plaintiffs and Defendants’ liability in the course of the mission. Since the parties formed a relationship and planned to go on the mission trip in Rhode Island, the parties could also reasonably expect that Rhode Island law would apply. *See contra Najarian*, 768 A.2d at 1255 (holding that Massachusetts law applied because while both parties were Rhode Island citizens, the negligent conduct occurred in Massachusetts and the relationship between the parties began in Massachusetts when the Plaintiff purchased a movie ticket at Defendant’s Massachusetts movie theater).

2

Maintenance of Interstate and International Order and Advancement of the Forum’s Governmental Interests

The maintenance of international order requires that the Court “identify the purposes or policies which underlie each state’s rule of law, and the degree to which the purposes underlying each rule would be furthered by the rule’s application.” *La Plante v. Am. Honda Motor Co., Inc.*, 27 F.3d 731, 742 (1st Cir. 1994). This analysis subsumes the analysis for the advancement of the forum’s governmental interests; therefore, factors two and four will be discussed together. *See id.* Rhode Island has a clear interest in “regulating the relationships among its domiciliaries.” *See Brown*, 105 R.I. 322 at 330, 252 A.2d at 181. The relationship between Plaintiffs and Defendants was created in Rhode Island. Plaintiffs and Radiant Christian are residents of Rhode Island; the

General Assembly and Southern New England District also are domiciled within the United States. The Bangladeshi parties who were involved in the underlying conduct of the lawsuit, Sushanto, Larry Smith, and A.G. Mission, are not parties to this action. While Bangladesh certainly has a strong interest in regulating and protecting the interests of its residents and organizations, Bangladesh does not have a significant interest in regulating the conduct between Rhode Island residents and U.S. residents. *See id.* If Plaintiffs had brought this action against Sushanto, there would be a more compelling argument that Bangladeshi law should be applied. However, that is not the case before the Court. The underlying negligent conduct of Sushanto is not the significant issue of the case; instead, the issue is if the Defendant churches are liable, in some fashion, for this alleged negligent action. Bangladeshi law and policy will not be offended if Rhode Island law were to regulate this conflict between a Rhode Island resident and Rhode Island, Massachusetts, and Mississippi corporations.

Moreover, “[d]omiciliary states have a strong interest in the welfare of their plaintiffs, and in seeing that their plaintiffs are adequately compensated for their injuries.” *La Plante*, 27 F.3d at 743. Plaintiffs are residents of Rhode Island, and the Court has strong reservations if Plaintiffs will receive adequate compensation under Bangladeshi law. Section 130 of the MVO allows for the Claims Tribunal to “make an award determining the amount of compensation which appears to be just.” *Radiant Christian’s Ex. H.* However, the MVO only allows for a plaintiff to recover against the owner, insurer, or driver of the car. *Radiant Christian’s Ex. G.* There is a dispute whether General Council is the owner of the car involved in Ludovico’s accident, but Plaintiffs have not brought suit against the insurer or driver. Even if the General Council were the owner, Bangladeshi law has a six month statute of limitations and thus the claim for the negligent operation of the vehicle would be barred. In examining the information

provided to this Court on Bangladeshi law, it is unclear if Plaintiff would be able to sue for a claim of corporate negligence or vicarious liability under Bangladeshi law in order to recover for the damages of an auto accident. The claims brought by Plaintiffs are clear avenues under Rhode Island law by which a plaintiff may recover tort damages. A forum state's interest in protecting its citizens "is particularly compelling in a tort case involving substantial personal injury or death because failure there to provide adequate compensation could mean that the plaintiffs will later become burdens on the state." *Turcotte v. Ford Motor Co.*, 494 F.2d 173, 177-78 (1st Cir. 1974). Bangladeshi law and policy will again not be offended by applying Rhode Island law because Bangladesh does not have a strong interest in compensating a non-resident. *See id.*; *see also Dean ex rel. Estate of Dean v. Raytheon Corp.*, 399 F. Supp. 2d 27, 32 (D. Mass. 2005).

3

Simplification of the Judicial Task

Additionally, the simplification of the judicial task favors Rhode Island. While the Court frequently applies the law of other jurisdictions, it is usually the law of one of our forty-nine sister states whose language is the same and whose legal principles are very familiar to the Court. While the Court believes it is fully capable of applying Bangladeshi law, the process would not be simple. Language, physical distance, and an entirely foreign legal system would make the task a challenging one. The parties most certainly and, perhaps even the Court, would have to engage experts on Bangladeshi law. The Court's task would be greatly simplified if Rhode Island law is applied to the case at issue.

Application of the Better Rules of Law

The Court has not yet been provided with any information regarding standards of care, the standard for liability, or if Bangladeshi law allows for a claim of corporate negligence or loss of consortium. As to these issues, the Court has nothing to compare and can only conclude that Rhode Island has the better rule of law.

Defendants have presented evidence that there is a Bangladeshi ordinance which allows for recovery of a plaintiff's injury in an auto accident. Under the MVO, Plaintiffs would have no recovery because of the six month statute of limitations. Rhode Island's three year statute is a better rule of law.

If Bangladeshi law applied and if Plaintiffs could get by the short statute of limitations, Plaintiffs' recovery is determined by the Claims Tribunal awarding "compensation which appears to be just, and specifying the person or persons to whom the compensation shall be paid, and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident" *See* Radiant Christian's Ex. G. This Bangladeshi system for compensating victims of motor vehicle accidents has been described as providing "ad-hoc, erratic sums of compensation offered to selected victims whose death or injury garners a requisite degree of attention." "Road deaths and injuries: The role of tort law," *The Daily Star*, May 29, 2018, available at <https://www.thedailystar.net/law-our-rights/road-deaths-and-injuries-the-role-tort-law-1582732>. Rhode Island's jury system with a judge applying well-developed tort law is the better rule of law to apply.

V

Conclusion

After examining all of the relevant points of contact and policy considerations, the Court finds that Rhode Island has the more significant interest in this case, and therefore, Rhode Island law should be applied. While under this tort action the injury and conduct causing the injury occurred in Bangladesh, the fact that the parties are not domiciled in Bangladesh and the relationship between the parties arose in Rhode Island lean favorably towards applying Rhode Island law. Additionally, four out of the five policy considerations point towards applying Rhode Island law. Counsel shall confer and present an appropriate Order.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Ludovico Perella, et al. v. The General Council of the Assemblies of God, et al.

CASE NO: PC-2013-6552

COURT: Providence County Superior Court

DATE DECISION FILED: March 1, 2019

JUSTICE/MAGISTRATE: Licht. J.

ATTORNEYS:

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