

IN THE SUPREME COURT OF BRITISH COLUMBIA

PRINCE GEORGE, B.C.

November 13, 1986

8	BETWEEN:)	REASONS FOR JUDGMENT
9	MARK SCHNURR)	
10)	
	PLAINTIFF)	
11	AND:)	OF THE HONOURABLE
12	KEVIN W. LUNDRIGAN)	
)	
	DEFENDANT)	JUDGE MCKINNON, L.J.S.C.

13	D. BYL, Esq.	appearing for the Plaintiff
14	T.V. COLE, Esq.	appearing for the Defendant

17 THE COURT: (Oral) The plaintiff seeks damages sustained in a
18 collision between his bicycle and a pick-up truck at the
19 intersection of Highway 16 and Burrard Street near Vanderhoof,
20 B.C. The collision occurred about 9:20 A.M. on August 13th,
21 1985 when the defendant turned left from Highway 16 north
22 onto Burrard Street, and the plaintiff, who was westbound on
23 Highway 16 intending to turn right, lost control of his
24 bicycle near the intersection and cut through a service
25 station onto Burrard striking the side of the defendant's
26 vehicle.

27 The plaintiff contends that he lost control when it

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1 became apparent to him that if he continued west on
2 Highway 16 and turned onto Burrard in the right turn lane,
3 he would, with certainty, collide with the defendant's truck.
4 He realized a collision was imminent when only about 20 feet
5 from the intersection and was at this time going about 15
6 miles per hour, far too fast to stop. He took what he felt
7 was the only course open and that was to veer right into the
8 service station, but this, unfortunately, was not successful
9 in avoiding a collision.

10 The defendant, through interrogatories, admits he never
11 saw the plaintiff or the bicycle until the moment of impact
12 when he saw him at the periphery of his vision, but by this
13 time the collision was inevitable. There was some dispute
14 about the turn made by the defendant, but I am satisfied that
15 the turn which was made was a wide turn into the east or
16 outside lane of Burrard as opposed to the inside or lane
17 closest to the centre line. I accept the plaintiff's
18 evidence that the precise location vis a vis lanes is shown
19 accurately on page five of exhibit number one.

20 There was also some dispute about precisely where the
21 impact took place on Burrard Street. The plaintiff says it
22 was close to Highway 16 about 20 feet north, whereas the
23 defendant and Constable Smith place it between 45 and 75 feet
24 from the intersection. Constable Smith, of course, could
25 only testify as to where he saw the vehicles after impact.
26 Mr. Lundrigan, the defendant, was equivocal saying at one
27 point in his interrogatories that he was "a few yards from

1 the intersection." Then he says he "thinks" the impact was
2 75 feet from the intersection. I prefer the plaintiff's
3 estimate because it is more in keeping with his route through
4 the station lot. This was so near some posts he was afraid
5 of striking them. A view of the photos indicates this route
6 is very near the intersection.

7 The only real significance about the point of impact is
8 to place the defendant's vehicle in the outside or curb lane
9 right from its entry into the intersection. The plaintiff
10 argues that notwithstanding any precise legislation
11 prohibiting the type of turn made by the defendant, a review
12 of Section 155(a) of the Motor Vehicle Act is reasonably
13 close. This coupled with one's common sense about such
14 turns is sufficient, he says, to demonstrate that such a turn
15 is wrong and, therefore, negligent in the circumstances.

16 The theory, as I understand it, is that a person such
17 as the plaintiff is entitled to conclude that the curb lane
18 on Burrard would be free for westbound traffic on Highway 16
19 to turn left. Indeed, the third lane westbound on Highway 16
20 is designated by an arrow as a right turn lane. The plaintiff
21 further argues Section 176 of the Motor Vehicle Act, which is
22 the section governing left turns and says that he was so
23 close that he constituted an immediate hazard and the
24 defendant was required to yield to him.

25 The defendant argues that on the evidence the only
26 person who could have avoided this collision was the plaintiff
27 because he was the only one who observed both parties. It

1 was the plaintiff who admitted seeing the defendant a hundred
2 feet from the intersection and seeing him shortly thereafter
3 start his turn. Notwithstanding this observation, he
4 continued at a good speed of 15 miles per hour confident
5 that he could make the turn without difficulty. Only when he
6 got near, did he conclude the turn could not be made, but
7 then he opted to turn right into the service station where
8 he lost control.

9 Mr. Cole argues that Mr. Lundrigan, by Section 176, is
10 only obliged to ensure there is no through traffic before
11 turning, which he did; therefore, he was not offending any
12 statutory duty. He further points to the plaintiff's own
13 admission that he often observed vehicles make such a wide
14 turn, thus, he says the plaintiff approached the intersection
15 at a speed far in excess of that of a prudent man armed with
16 this knowledge. I must say at first blush this has a nice
17 ring to it, but on reflection, what Mr. Cole is saying is
18 that if one does not bother to keep a sharp look-out, one
19 can be excused and the blame placed entirely on the other
20 party who admits to seeing events. It is reminiscent of the
21 old last chance doctrine.

22 I have been unable to extract any precise statutory
23 duty upon the defendant to enter Burrard in the lane closest
24 to the centre line, but this is surely the prudent route to
25 follow. It is also, in my view, strongly suggested by
26 various sections of the Motor Vehicle Act and, particularly,
27 Section 167(2)(c). The defendant's admitted failure to

1 observe the plaintiff cyclist at all and his wide left turn
2 into a lane clearly marked for traffic in the plaintiff's
3 lane renders him negligent. In making this finding I do not
4 conclude that there is a statutory duty upon the defendant
5 to enter Burrard in the lane closest to the centre line. I
6 merely say that on these facts, the failure of the defendant
7 to see the plaintiff and his ultimate use of the right turn
8 lane, which was in use and properly so by the plaintiff, is
9 negligence.

10 I am also of the view that the plaintiff contributed to
11 the collision. I was impressed with his candid responses.
12 He admitted a fairly high rate of speed coming down the hill,
13 which was clocked by Constable Smith on radar at 38 kilometres
14 per hour. He admitted to a speed of perhaps 15 miles per hour
15 with 20 feet of the intersection, even though he saw the
16 defendant commence a turn much before and within a period of
17 time when he could quite easily have stopped. He was aware
18 that vehicles often turn wide at this particular intersection,
19 and although he could not recall the conversation with
20 Constable Smith, I am satisfied that he was in a hurry at the
21 time and did not take the care he should have. In my view,
22 the plaintiff approached the intersection at a speed much
23 faster than he should have given the circumstances. I fix
24 the contributory negligence on the part of the plaintiff at
25 20 per cent.

26 The plaintiff was disoriented following the collision.
27 He says he was unconscious, although the medical reports filed

1 as Exhibits 3 and 4 say he was not unconscious. In any event,
2 he suffered some disorientation, abrasions, lacerations with
3 stitches to the forehead and a sore neck. He was hospital-
4 ized some thirty hours, off work four days and substantially
5 recovered within three weeks. His residual complaints are
6 a scar one and a quarter to one and a half inches long which
7 troubles him. He does not consider this a badge of honour.
8 He is bothered by it and intends to seek plastic surgery in
9 the future to remove as much of it as possible. The other
10 residual complaint is a sore neck on those occasions when he
11 engages in strenuous activity such as wood chopping, cross-
12 country skiing or playing a game known as survival. He took
13 medication for this at first, but now does not as it did not
14 assist. This pain is invariably gone after a night's sleep.
15 In the result, we have a 22 year old man who sustained
16 painful abrasions and lacerations, but whose condition apart
17 from the residual problems resolved within three weeks of
18 the collision. The medical report filed as Exhibit 4
19 suggests the neck pain, at least, will resolve in time.

20 Plaintiff's counsel referred me to Chisholm versus
21 I.C.B.C., Vancouver Registry number V841462; Nedokus versus
22 Pouliot et al, Nanaimo Registry CC5953; and Ainscough versus
23 Walton, Vancouver Registry B820613; and Jones versus
24 Armstrong, Victoria Registry number 843/1980 in support of
25 his claim for damages in the range of eight to ten thousand
26 dollars.

27 Defendant's counsel referred me to Teneycke versus

1 Kringhaug, Nelson Registry SC401-1983; Taylor versus Lenfesty
2 et al, Vancouver Registry number B940337 in support of his
3 contention that any award should be much more modest.

4 The plaintiff was a very credible witness. He answered
5 questions without hesitation and sometimes to his detriment.
6 He did not maximize his injuries, rather he simply described
7 them in a straightforward way. The residual injuries are,
8 of course, the most serious. I believe the neck problem will
9 resolve itself as suggested by the medical reports and
10 perhaps surgery will reduce the noticeable scar, but it is
11 presently quite prominent.

12 In all of the circumstances, I award general damages of
13 \$7,000.00 plus agreed wage loss of \$160 and agreed specials
14 of \$113.54 for a total of \$7,273.54. This will be reduced
15 by 20 per cent for a net award of \$5,818.83. Costs to the
16 plaintiff.

17 (SUBMISSIONS BY COUNSEL)

18 THE COURT: I think I will give the plaintiff his costs in this
19 case, Mr. Cole.
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