

IN THE SUPREME COURT OF BRITISH COLUMBIA

PRINCE GEORGE, B.C.  
27 OCTOBER, 1989

BETWEEN:

VERNON GORDON MARTEL,  
Plaintiff

AND:

ALBERT MOYLE and THE  
CITY OF PRINCE GEORGE,  
Defendants,

)  
)  
) REASONS FOR  
) JUDGMENT OF  
)  
) MR. JUSTICE OPPAL

K. REPSOCK, Esq.

appearing for the plaintiff

D. BYL, Esq.

appearing for the defendants

THE COURT: (Oral) The plaintiff was injured in a motor vehicle accident on July 8, 1985 when his motorcycle struck the defendant's automobile on Lansdowne Road in Prince George.

Liability is the sole issue to be determined on this hearing.

There is a conflict in the evidence. The plaintiff's position is that the defendant while cutting a corner, came across the centre line and struck his motorcycle. The position of the defendant is that he was lawfully in his own lane of traffic and the plaintiff came across and struck



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1 his vehicle.

2 I will now review the evidence in more detail;

3 Somewhere between three and four O'clock in the afternoon  
4 on the 8th of July, the plaintiff, Mr. Martel, was  
5 operating his motorcycle in generally a north/east direction  
6 on Lansdowne Road. Lansdowne Road runs generally, as I said,  
7 in a north/east and south/west direction. It is a two lane  
8 paved roadway. The two lanes are separated by a broken line.  
9 The area and Lansdowne Road, where this accident took place,  
10 is on an incline. The roadway was in good condition. The  
11 weather conditions were sunny at the time. The plaintiff  
12 was climbing the hill and had entered a curved portion of  
13 the roadway. He testified that he was going between thirty  
14 and thirty-five miles per hour. The speed limit there is  
15 said to be thirty miles per hour. He said that as he was  
16 going up the hill he noticed the defendant's vehicle, which  
17 was coming down the hill and towards him. He said that it  
18 was cutting the corner and then came into the northbound  
19 lane by roughly one foot. He said that he was unable to get  
20 out of the way and collided with the left-front of the  
21 defendant's vehicle.

22 The defendant, Mr. Moyle, testified - and, not  
23 surprisingly, disagreed with that version of the evidence.  
24 It is his evidence that he was coming down the hill in his  
25 own lane of traffic and he was travelling at approximately  
26 30 miles per hour. He said that he saw the motorcycle -  
27 which was going very fast - he estimated the speed at

1 fifty-five miles per hour but could not be sure. He said  
2 he put on his brakes. He said he was four to six inches  
3 to his side of the centre line. He said that the motorcycle  
4 was leaning over and he was directly in the southbound lane  
5 of traffic - that is, in Mr. Moyle's lane of traffic.  
6 He said that Mr. Martel, the plaintiff's motorcycle, then  
7 hit the barrier. It all happened very quickly. After he  
8 hit the barrier, he then struck the centre portion of his  
9 vehicle. He said that at the time of the collision, he was  
10 going between two and three miles per hour. He said he  
11 knows this because he looked at his speedometer.

12 There are a number of difficulties or weaknesses in  
13 the evidence of both the plaintiff and the defendant.  
14 The plaintiff was cross-examined very skillfully by Mr. Byl  
15 and he admitted on the examination for discovery that he  
16 had lost control of his vehicle. He said that on more than  
17 one occasion. I have no doubt at all that he knew what he  
18 was talking about when he was asked those questions.  
19 He also admitted to Constable Huziak, a member of the RCMP  
20 who interviewed him on July 12th, four days after the  
21 accident, that he must have been going too fast. He also  
22 stated that he thought he was late. I should say, in this  
23 courtroom, Mr. Martel stated quite emphatically that he was  
24 in complete control of the vehicle at the time of the  
25 accident and that he did go into, what he calls, a slippage  
26 after he hit some rocks which were on the travelled portion  
27 of the roadway. He denied going into the on-coming lane of

1 traffic. Mr. Moyle's evidence is corroborated - or his  
2 position is corroborated somewhat by Harley Stewart, an  
3 eighteen year old person, who was standing at a bus stop a  
4 short distance away. He said that he saw the motorcycle  
5 pull up Sinclair Road at the Sinclair Road stop sign.  
6 As he was going up the hill it accelerated, it appeared to  
7 be going too fast. It crossed the centre line and hit the  
8 vehicle - which was not going too fast. He said that the  
9 car was in his proper lane of traffic.

10 There are some weaknesses with respect to his evidence  
11 as well. He obviously made a mistake when he described the  
12 clothing which was worn by the plaintiff at the time.  
13 He also gave a statement to ICBC some short time after the  
14 accident in which he told the person who was interviewing  
15 him that the motorcycle had crossed the centre line and  
16 hit the retaining wall. He admitted that he was inaccurate  
17 in that.

18 I must consider those weaknesses in the testimony which  
19 I have heard in this courtroom. In my view, first of all  
20 what I must consider is whether the defendant was at all  
21 negligent and secondly, if his negligence was the cause of  
22 or contributed to the accident.

23 I find there was some negligence here on the part of  
24 the defendant and that negligence did play a role in the  
25 accident. The negligence which I attribute to the defendant  
26 is that he was not keeping a proper look out. There are  
27 some vague references in his evidence - and uncertain

1 references in his evidence as to what he did when he saw  
2 the plaintiff's vehicle.

3 In my view, this accident took place around the centre  
4 line. I am unable to make a conclusive finding as to where  
5 it took place but I do find that had the defendant been  
6 more certain as to where the vehicle was coming from, he  
7 could have avoided this accident. Having said that, I also  
8 find that the plaintiff was negligent for I now have to  
9 consider whether there was negligence on the part of the  
10 plaintiff - or to put it another way; was the plaintiff  
11 contributorily negligent - and I find clearly that he was.  
12 And there are a number of pieces of evidence which clearly  
13 point to his negligence. First of all, I do believe that  
14 he was going too fast for the conditions. He admitted this.  
15 That observation was made by Mr. Stewart. It was made by  
16 Mr. Moyle. And he told the same to Constable Huziak.  
17 I also believe that the accident took place because he was  
18 unable to control his vehicle and that those were acts of  
19 negligence which contributed to the motor vehicle accident.  
20 I also accept the contention that the physical evidence  
21 here favours the defendant, that is, where the point of  
22 impact was on his vehicle, where some of the debris on the  
23 roadway was. In my view, all of those factors point to the  
24 fact that clearly the plaintiff here was negligent and his  
25 negligence is attributable to the accident.

26 I must now consider the appropriate division of  
27 liability. In my view, an appropriate division of

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liability is as follows; the plaintiff will be held seventy-five percent responsible for the accident whereas the defendant, Mr. Moyle, is twenty-five percent liable for the accident. Is there anything else that should be addressed?

MR. BYL: No, My Lord, thank you.

MR. REPSTOCK: No, My Lord.

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