

No. C865770  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Vancouver, B.C.  
January 27, 1988

BETWEEN:

JOHN WILFRED CAISSIE

Plaintiff

AND:

INSURANCE CORPORATION OF  
BRITISH COLUMBIA

Defendant

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE TAYLOR

L.E. KANCS, Esq. and  
S. AUSTIN, Esq.  
D. BYL, Esq.

appearing for the Plaintiff  
appearing for the Defendant

THE COURT (ORAL): This claim against the Insurance Corporation by an insured for "no fault" disability benefits and "collision" coverage arises out of an accident which the insurer says happened while the insured was under the influence of alcohol and drugs to such an extent that he was incapable of proper control of his vehicle.

The plaintiff, who is now 27, was injured two and a half years ago, and his car damaged beyond repair, when he "dozed off" while driving, allowing the vehicle to "drift" off the road and travel some 500 feet on the shoulder before going into the ditch

1 where it overturned. The accident happened about  
2 4:30 a.m. as the plaintiff was driving some 50 miles  
3 to the railway work camp where he worked after an  
4 extended night of entertainment in Prince George  
5 including both beer-drinking and the smoking of  
6 hashish.

7 An ambulance attendant noted that the plaintiff  
8 had odour on his breath as was being taken to  
9 hospital after the accident. A nurse who attended  
10 him on the emergency ward noted a heavy odour on his  
11 breath and recorded that he said he had been "pretty  
12 drunk earlier". The plaintiff's maximum estimates  
13 of his alcohol and hashish ingestion add up to nine  
14 beers and part of a hashish "joint" over a seven-  
15 hour period ending 30 to 45 minutes before the  
16 accident.

17 There is evidence of his brother and several  
18 drinking companions to the effect that the plaintiff  
19 was in control of his faculties at the times they  
20 observed him during that period.

21 The statutory conditions of insurance are deemed  
22 by regulation 55(8) (a) of the Revised Insurance  
23 (Motor Vehicle) Act Regulations (1984) to have been  
24 breached by the insured whenever a claim "arises out  
25 of or is related to his operation of a vehicle while  
26 he is under the influence of intoxicating liquor or  
27 a drug to such an extent that he is incapable of

1 proper control of the vehicle." The defendant  
2 insurer bears the burden of establishing such  
3 incapacity, that it was caused by the intoxicants  
4 mentioned and that it resulted in the accident  
5 taking place which has led to the claim concerned.

6 There can be no doubt in this case that the  
7 plaintiff was "incapable of proper control of the  
8 vehicle" and that it was this incapacity which  
9 caused the accident. I say that because it is  
10 common ground that the accident was the result of  
11 the plaintiff "dozing off" for long enough that the  
12 vehicle left the road entirely. A driver whose  
13 condition is such that he dozes off in that way  
14 cannot be said to be capable of properly controlling  
15 his vehicle. The question to be decided is whether  
16 the dozing was a result of the continuing influence  
17 of alcohol and hashish which the plaintiff had  
18 ingested during the previous seven hours.

19 Mr. Kancs argues forcibly for the plaintiff that  
20 this has not been established, pointing out that the  
21 plaintiff had not been to bed for some 24 hours and  
22 that during that period he did a full shift on the  
23 railway maintenance job as well as having a full  
24 evening at various bars and at a private party in  
25 Prince George so that tiredness alone could well  
26 have caused him to fall asleep.

27 Mr. Byl says for the insurer that the alcohol and

1 drug ingestion must have formed at least part of the  
2 cause of the dozing off and that this is sufficient  
3 to meet the onus which lies on the defendant.

4 Whatever his true consumption of alcohol and  
5 hashish may have been, I believe that the plaintiff  
6 told the truth when he advised the nurse at the  
7 hospital that he had been "pretty drunk" during the  
8 preceding night. It seems to me likely that this  
9 was sometime after the period when his brother saw  
10 him, around 1:00 a.m, and before 3:30 a.m. when he  
11 set out for the camp. During that period he  
12 probably had some beers at the night club where his  
13 brother saw him and he also bought beer at a  
14 bootlegger and consumed some of it, on top of that  
15 which he had consumed already between 8:30 p.m. and  
16 1:00 a.m. During the same period he smoked hashish.

17 I do not accept the evidence of Mr. Chumm that  
18 the plaintiff was in a fit state to drive safely  
19 when he left Mr. Chumm's home. Mr. Chumm says that  
20 the plaintiff was cautious in his drinking all  
21 night, which is not consistent with the statement  
22 the plaintiff made to the nurse that he had in fact  
23 been "pretty drunk". Mr. Chumm was unaware that the  
24 plaintiff had smoked hashish and concedes that this  
25 might cause him to reconsider his view as to the  
26 plaintiff's fitness to drive.

27 I find that the plaintiff was intoxicated at

1 least during the last two or three hours before he  
2 set out for the journey back to the camp, and that  
3 he was still to a significant extent under the  
4 influence of alcohol and hashish when the accident  
5 occurred 30 to 45 minutes later. One of the well-  
6 known effects of alcohol is to induce drowsiness and  
7 thus to accentuate the effects of any existing  
8 fatigue. Hashish is known to to be capable of  
9 having similar effects. I am compelled to the  
10 conclusion that but for his ingestion of alcohol and  
11 hashish the plaintiff would probably have safely  
12 completed the remaining few miles back to the work  
13 camp. A person of his age without sleep for 24  
14 hours might, of course, doze off in the way that the  
15 plaintiff did, but is not normally likely to do so.  
16 A person who consumes significant quantities of  
17 intoxicants so as to become, as the plaintiff said  
18 he was, "pretty drunk" is however very likely to do  
19 that. The effect of drunkenness and drug taking on  
20 pre-existing fatigue will at least be to hasten the  
21 time at which dozing off occurs.

22 In the circumstances of this case, I conclude  
23 that the insurer has met the burden which lies on it  
24 of showing that the accident occurred while the  
25 plaintiff was under the influence of alcohol and a  
26 drug, and that it was that influence which caused  
27 him to doze off when he did, so as to be incapable

Reasons for Judgment

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1 of control of his vehicle and that the accident  
2 resulted from that incapacity. It follows that the  
3 action must be dismissed.

4 (CONCLUDED)

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