

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GARNET HAROLD STATES,
Plaintiff

AND:

ANDREW JACKSON SMITH,
and JAMES FREDERICK SMITH,
Defendants

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE PARRETT

D. BYL, Esq.

Counsel for the plaintiff

P.J. ROGERS, Esq.

Counsel for the defendants

PRINCE GEORGE, B.C.
6 December, 1990

THE COURT: (oral) This is a motor vehicle action arising from an intersection collision which occurred north of the City of Prince George on November 22, 1988.

Prior to the commencement of this trial all quantum issues were resolved between the parties and the sole issue before me is the issue of liability.

On November 22, 1988 the plaintiff Garnet Harold States in company with his wife Shirley left their home at the Inverness trailer park to attend a hockey game in Prince George. They left that residence at 7:10 p.m. to attend the game, travelling down Inverness to Aintree, down Aintree to Aberdeen and along Aberdeen to its intersection with Northwood Pulp Mill Road. The plaintiff brought his 1985

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1 Plymouth Caravelle to a full stop at the stop sign located
2 at the junction of Aberdeen Road before turning left on
3 Northwood Pulp Mill Road and approaching its intersection
4 with Highway 97 from the east.

5 Earlier that day the defendant Andrew Jackson Smith
6 left Terrace where he had been visiting his family en route
7 to Fort Nelson to begin a job there. The defendant
8 A.J. Smith was driving an older model Ford pickup truck
9 registered in the name of his father James Frederick Smith.
10 That trip would cover some 864 miles in what he expected
11 would take him some sixteen, seventeen hours.

12 After driving through snow and ice for a considerable
13 period, and having some car difficulty the defendant stopped
14 in Prince George where he refuelled and ate dinner. He
15 then proceeded north on Highway 97 and just prior to 7:20 p.m.
16 he approached its intersection with Northwood Pulp Mill Road.

17 Highway 97 is, at this point, a four lane divided
18 highway running north and south. It is intersected from the
19 east by Northwood Pulp Mill Road. The intersection is
20 controlled by traffic lights which are vehicle activated
21 and only change when vehicles from Northwood Pulp Mill Road
22 stop at the intersection. There is an advanced flashing
23 amber light system on Highway 97 to warn northbound traffic
24 when the lights are going to change from green to amber.
25 This large overhead warning sign is located approximately
26 96 meters or 314 feet south of the intersection and when
27 activated shows two flashing amber lights beginning 5.63

1 seconds before the amber light comes on at the intersection.

2 Central to the determination of this case is a
3 credibility issue. Both drivers testified that at the time
4 they approached the intersection, the plaintiff from the
5 east and the defendant from the south, they did so on a
6 green light.

7 Assessing the credibility of witnesses is a process far
8 broader in its application than simply observing the
9 demeanour of witnesses in the witness box. An eloquent
10 description of the proper approach can be found in the
11 judgment of O'Halloran, J.A. in Faryna v. Chorney (1952)
12 2 D.L.R. 354 at page 356:

13 "The credibility of interested witnesses
14 particularly in cases of conflict of
15 evidence, cannot be gauged solely by the
16 test of whether the personal demeanour
17 of the particular witness carried
18 conviction of the truth. The test must
19 reasonably subject his story to an
20 examination of its consistency with the
21 probabilities that surround the
22 currently existing conditions. In short,
23 the real test of the truth of the story
24 of a witness in such a case must be its
25 harmony with the preponderance of the
26 probabilities which a practical and
27 informed person would readily recognize
as reasonable in that place and in those
conditions."

(1) I find as a fact that as the plaintiff brought his
vehicle to a stop at the stop sign, a blue mid-size car
passed in front of them and approached the intersection
activating the traffic signals as it stopped.

Both the plaintiff and his wife testified that such a
vehicle preceded them to the intersection. I found them

1 generally to be truthful, careful witnesses whose evidence
2 on this point was completely unchallenged.

3 In addition, on the evidence, the presence of such a
4 vehicle is the only possible explanation for the change of
5 the lights on Highway 97, confirmed by the defendant in his
6 evidence.

7 (2) I find that the plaintiff left the stop sign on
8 Aberdeen Road and drove at a speed of approximately 15 to 25
9 mph as he approached the intersection which was only 175 feet
10 away.

11 I reject the evidence of the defendant Andrew Jackson
12 Smith which estimated that speed variously as high as 60 mph
13 and described it in various terms which can be summarized
14 as going considerably faster than he was.

15 That evidence, quite apart from the glaring
16 inconsistencies which became apparent during cross-examination,
17 is improbable given the physical surroundings and
18 circumstances. The plaintiff's vehicle is a four cylinder
19 automatic which, after leaving the stop sign, travelled a
20 total distance of some 175 feet before entering the
21 intersection. In the course of that distance, the plaintiff
22 executed a left turn and then a fairly sharp right turn to
23 enter the intersection. It is improbable if not impossible
24 for the plaintiff to have achieved the speeds described by
25 the defendant in the course of those manoeuvres, over that
26 distance in the vehicle he was driving.

27 (3) I find that when the plaintiff entered the

1 intersection, he was trailing the blue vehicle, which had
2 passed in front of him, by some three to five car lengths
3 and that he did so with the green lights illuminated for
4 traffic coming off the Northwood Pulp Mill Road.

5 In arriving at that conclusion I accept the evidence
6 of the plaintiff, that as he approached the intersection,
7 he saw the light change and then checked to his left, to his
8 right and finally directly at the light ahead of him - which
9 was green as he entered the intersection.

10 The plaintiff was unshaken in that evidence and there
11 was, in his evidence, none of the various inconsistencies
12 and contradictions which ran through the evidence of the
13 defendant.

14 (4) I am unable to accept the defendant's evidence for a
15 variety of reasons:

16 (a) He describes northbound vehicles stopped at
17 the red light as he approached the intersection that
18 cleared the intersection before his collision with
19 the plaintiff. No explanation is offered for how
20 they entered and cleared the intersection between
21 the two vehicles entering from the Northwood Pulp Mill
22 Road.

23 (b) At trial he estimated the speed of the States
24 vehicle at 25 to 35 mph. At his examination for
25 discovery, he estimated that speed as "between 40 and
26 50, 60 miles an hour."

27 (c) Although he later, and at trial, claimed to have

1 seen the plaintiff's vehicle when he was 50 to 100 feet
2 from the intersection on the night of the accident,
3 he told Raymond Moxham that he was just " ... cruising
4 along and didn't see it until I hit it ..."

5 I found Mr. Moxham to be a credible witness and I
6 accept his evidence that Mr. Jackson made that statement
7 particularly in light of the fact that he made similar
8 statements to an ICBC adjustor, Riny Meyhew, in person on
9 November 23, 1988 and by telephone on December 6, 1988.

10 I simply do not accept the defendant's attempt to
11 explain away these statements. Those attempts were weak
12 at best and his demeanour was far from convincing.

13 (d) Perhaps most importantly, the defendant's
14 explanation for not seeing the flashing yellow warning
15 lights was that he may have glanced off for a few
16 seconds. Those lights are located some 314 feet from
17 the intersection and are, he agreed, visible for
18 several hundred yards further back. That was his sole
19 explanation.

20 Mr. Jackson also testified that the collision occurred
21 ten to twenty seconds after he saw the plaintiff's vehicle
22 and that he, Jackson, was travelling at 30 to 37 mph in
23 third gear. Those estimates, if accurate, would place
24 Mr. Jackson a minimum of 440 feet and a maximum of 1085 feet
25 back from the intersection when he first saw the vehicle.
26 Those estimates, of course, do not take into account
27 braking time but they indicate, in my view, in graphic terms

1 the difficulty with Mr. Jackson's evidence.

2 (5) I accept the evidence of Allana Girard as
3 confirming the plaintiff's evidence that his light was
4 green as he proceeded into the intersection. Ms. Girard
5 was the attendant working that night at the Chevron station
6 located on the northeast corner of the intersection. From
7 her location in the kiosk she had a clear view of both sets
8 of lights and she was very familiar with the area, having
9 worked at the station for the year prior to the accident.

10 Upon hearing the crash she immediately looked up and
11 observed the Hart Highway lights red and the Northwood Pulp
12 Mill Road lights green.

13 In contrast the defendants called James Harney.
14 Mr. Harney was also from Terrace but apparently did not
15 know the defendant. Mr. Harney testified that he was
16 walking from a phone booth at the back of the Chevron when
17 he heard tires sliding and the impact.

18 At the time of those sounds, his view of the
19 intersection was at least partially obscured, firstly by a
20 Chevron sign and then by a set of gas pumps. As he
21 continued walking some six steps, he saw the green light
22 which he indicated was for the Highway 97 traffic.

23 Mr. Harney was not familiar with the area, indeed his
24 directions were confused and with some of the other errors
25 in his observations, a significant possibility of error
26 exists. At the point in time when the impact occurred, the
27 light had been green for at least five to ten seconds. A

1 delay of even a few seconds in his observations while he
2 walked out from behind the obstructions could well have
3 delayed his observation until after the lights had cycled.

4 On the balance of probabilities and on the whole of
5 the evidence, I find that Mr. Harney's observation was
6 either mistaken because of his lack of familiarity with the
7 area or delayed as I have described.

8 On the basis of the findings I have made, I find that
9 the collision occurred solely as a result of the fault of
10 the defendant Jackson. Whether it occurred as a result of
11 fatigue or inattention, I can reach no other conclusion but
12 that he entered the intersection on a red light and that
13 he failed to observe the flashing warning lights, the red
14 light or the plaintiff's vehicle in a timely manner.

15 The plaintiff is entitled to recover from the
16 defendants damages in the amounts agreed upon.

17 Those amounts are:

18	General damages	\$25,000.00
19	Future Wage Loss	5,000.00
20	Past Wage Loss	2,370.00
21	Special Damages	<u>150.00</u>
22	Total:	\$32,520.00

23 Submissions on costs?

24 MR. BYL: My Lord, in my submission, it's an average case of
25 average difficulty. I submit it's a schedule 3 matter.

26 THE COURT: Mr. Rogers?

27 MR. ROGERS: I have no comments, My Lord.

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THE COURT: There will be costs on the basis of schedule 3.
