

Date of Release: April 6, 1994

No. 25440
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)	
)	
LORA SIMMS, guardian ad litem)	REASONS FOR JUDGMENT
for ADRIAN GARTH SIMMS, and the)	
said LORA SIMMS)	
)	OF
PLAINTIFFS)	
)	
AND:)	THE HONOURABLE
)	MR. JUSTICE MEIKLEM
SEAN ALVEDUS ANDERSON)	
)	
DEFENDANT)	

Counsel for the Plaintiffs:	Dick Byl, Esq.
Counsel for the Defendant:	John L. Perry, Esq.
Place and Date of Trial:	Smithers, B.C. March 7, 1994

The only issue at this trial was liability, the quantum of damages being agreed upon at \$17,500 for general non-pecuniary damages and special damages of \$3,000 inclusive of interest.

At the conclusion of the trial I found negligence on the part of the defendant and contributory negligence on the part of the infant plaintiff and apportioned liability to each at fifty per cent and awarded judgment accordingly. I indicated to counsel that I would deliver brief written reasons setting out my findings

arrived at late in the day at trial.

The collision of the defendant's Ford 4x4 pickup with the plaintiff on his bicycle occurred in the intersection of Bowser Street and 11th Avenue in New Hazelton on September 29, 1992 at approximately 7:45 p.m.

The plaintiff and the defendant were both very familiar with the location and travelled frequently through this intersection which is within one block of the plaintiff's residence. The plaintiff was two weeks short of his fourteenth birthday and had been riding a bicycle from age six or seven.

There was some conflict in the evidence as to the lighting conditions at the time of the accident. No evidence was led as to the time of sunset on that date. All witnesses agree that the defendant's headlights were on. The plaintiff's evidence is that it was dusk but not dark; that the road surface was dark with rain, and that he couldn't see the colour of the truck because of the rain and darkness. Mrs. Hobenscheild, who reside in the house immediately adjacent to the intersection, described it as "black" as opposed to dusk and the defendant describes it as dark where the accident was although there was some light remaining on the western horizon.

There was an illuminated street light on the south-east corner

of the intersection towards which the plaintiff was riding and there was another street light some 200 feet to the north of the intersection.

Bowser Street runs north and south and is a through street. Eleventh Avenue intersects Bowser at right angles and there are stop signs for traffic in both directions at Bowser Street. The defendant was travelling in an easterly direction on 11th Avenue and collided with the plaintiff who was riding his bicycle in a southerly direction on Bowser Street. There is no dispute that the plaintiff was riding on the easterly side of the north bound lane of Bowser Street (the wrong lane) and he was struck as he crossed in the path of the defendant on the easterly side of the intersection.

In his opening, plaintiff's counsel indicated there was an issue as to whether the defendant stopped at the stop sign before entering the intersection. The defendant's evidence is that he did stop; although he stopped somewhat past the stop sign in order to obtain a view past a tree which partially obscured the view to the south on Bowser Street. The plaintiff's evidence is that as he approached the intersection he saw the defendant's vehicle one to two car lengths prior to the stop sign on 11th Avenue. He just kept riding, thinking that he had the right-of-way, and expecting the truck to stop. He said that the next time he saw the truck it was out of the corner of his eye just as it was about to strike

him, he said that he did not think the truck stopped, but he did not pay much attention to him. On cross-examination he said he just was not looking at the truck or thinking about what the truck was doing.

The intersection where the collision occurred is one block south of the main street of New Hazelton from where the plaintiff had come. The plaintiff said that he first saw the defendant's vehicle as he crossed from the right hand side to the left hand side of Bowser Street at a point to the north of Mrs. Hobenscheild's driveway. From the photographic evidence, this point would be five or six car lengths from the point of impact a distance equivalent to or greater than the distance the defendant's truck was from the point of impact at that time. The plaintiff said he was bicycling at approximately 5 mph and when he first saw the defendant's vehicle it was going 15 to 20 mph.

The inference that I take from this evidence is that the defendant in fact stopped at the stop sign as he testified.

The defendant's negligence was failing to see the plaintiff who was there to be seen and was travelling on a through street and who did not appear suddenly from a side road or a driveway as in the Theriault v. Aubin 22 M.V.R. (2d) 80 case which was cited to me. The defendant admitted that this intersection was a place where pedestrians travelled frequently. He admitted that he did

not see the plaintiff prior to impact.

The plaintiff's negligence consists of not keeping a proper look out while riding his bicycle unlawfully on the wrong side of the road and without a headlight. He was wearing dark clothing. He pedalled into the path of a vehicle which he had previously noted but which he failed to pay sufficient attention to. In the circumstances he should have appreciated the risks in driving his improperly equipped bicycle, on the wrong side of the road, wearing dark clothing and without regard for the traffic of which he was aware. This falls well below the standard of care expected for a child of his age and experience.

I apportion liability fifty per cent to each party.

"I. C. Meiklem, J."

Prince George, B.C.
April 6, 1994