

1
2 PRINCE GEORGE

3 OCT 13 1989

4 COURT REGISTRY

No. 10987
Prince George Registry

5 IN THE SUPREME COURT OF BRITISH COLUMBIA

6
7 BETWEEN:)

8 RICHARD EDWARD TURNER and)
9 HEATHER PATRICIA TURNER)

10 PLAINTIFFS)

11 AND:)

12 INSURANCE CORPORATION OF)
13 BRITISH COLUMBIA)

14 DEFENDANT)

REASONS FOR JUDGMENT

OF THE HONOURABLE

JUDGE RYAN

15 David W. Ramsay, Esq.

Counsel for Plaintiffs

16 Dick Byl, Esq.

Counsel for Defendant

17 Dates and Place of Trial:

September 28, 29, 1989
at Prince George, B.C.

18
19 The plaintiff Richard Turner claims damages for injuries
20 suffered in a motor vehicle accident which occurred outside
21 Smithers on Highway 16 on October 27, 1986. The plaintiff Heather
22 Turner claims damages for property loss as registered owner of the
23 vehicle involved in the accident.

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25 There is no issue as to quantum as it has been agreed
26 between the parties. The only issue is liability. That issue
27 rests on the credibility of the plaintiffs and their witness, Mr.
28 Hoffman.

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4 Mr. Turner is 38 years old. He works in the logging
5 industry and has driven a truck for 12 years. Mr. Turner also
6 operates Roadhouse Sound, a small business which supplies sound
7 equipment for entertainers.
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9 On October 26, 1987 Mr. Turner drove to Smithers to deal
10 with a problem with some sound equipment he had in a local hotel.
11 He took his employee Larry Hoffman with him in a 1984 Chevrolet
12 pick up owned by Mrs. Turner. On the return drive to Prince
13 George, Mr. Turner and Mr. Hoffman were involved in a motor vehicle
14 accident.
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16 Mr. Turner testified that the accident occurred when a
17 semi-trailer truck pulling two trailers ran him off the road and
18 vanished down the highway.
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20 At trial Mr. Turner said that he was proceeding east on
21 Highway 16 near Fraser Lake between 7:00 p.m. and 7:30 p.m. Mr.
22 Hoffman was in the passenger seat. The two had been talking
23 together. As they approached an overpass Mr. Turner testified that
24 he saw a truck coming in his direction. He said that he had a
25 feeling the truck was on the wrong side of the road. He said by
26 the time he was one-half way over the overpass he saw the truck was
27 in his lane. He said that he flashed his lights, honked his horn,
28 called to Mr. Hoffman to "hang on" and swerved to the left to avoid
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4 a collision. The pick up went down an embankment, across a road
5 and into a field. Mr. Turner said after the pick up went over the
6 embankment he blacked out. He said that when he regained
7 consciousness Larry Hoffman yelled at him to ask if he was "okay".
8 Mr. Turner testified that he said that he was hurt. He said he
9 asked Mr. Hoffman to get help. He did not know how long Mr.
10 Hoffman was gone, but he came back alone. Mr. Turner said that he
11 put the vehicle into four wheel drive and backed onto a smaller
12 road. Mr. Turner testified that Larry Hoffman drove him ninety
13 miles home. They did not stop in nearby Fraser Lake to contact
14 the police or find a hospital. They stopped in Vanderhoof where
15 Mr. Hoffman telephoned Mrs. Turner to advise her of the accident.
16 They did not seek medical help or a police station in Vanderhoof.
17 Mr. Hoffman apparently did not ask Mrs. Turner to call the police.

18 Mr. Turner said he arrived home around 9 o'clock that
19 night. He said he was in great pain, but he believed at the time
20 that he would be able to do to work the next day. He said the next
21 day he was still in pain. He did not contact I.C.B.C. or the
22 R.C.M.P. that day because he did not believe the damage to the pick
23 up was that bad. It was not until a friend from a body shop had
24 looked at the vehicle that Mr. Turner reported the accident to the
25 R.C.M.P. on October 30 and I.C.B.C. on October 31st.

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27 Mr. Turner said that he had looked out the window of his
28 home the day after the accident and had seen that there was damage
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3 to the right fender and the windshield was broken. Before it was
4 towed to the body shop he saw that there was also damage underneath
5 the vehicle.
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7 Mr. Turner was cross-examined on a statement that he made
8 to an I.C.B.C. claims adjuster on November 18, 1986. The statement
9 he made at that time is significantly different than the story he
10 told under oath at trial. Mr. Turner told the claims adjuster that
11 he had seen the truck in his lane on the highway before the
12 Stellacko Bridge. He said he swerved to the left to miss the truck
13 before the bridge and went over the embankment. He said the truck
14 went into a gully and stopped twenty feet before the river. The
15 evidence disclosed that there were two bridges in the area, a
16 railway overpass and the Stellacko Bridge which passes over the
17 river. Mr. Turner explained that he had not confused the bridge
18 with the overpass, he just thought the overpass was called the
19 Stellacko Bridge. He said that he did not come to rest near the
20 river but he had mistaken a nearby pool of water for the river.
21 Mr. Turner agreed that he had driven this road at least twenty-two
22 times. I find it hard to believe his explanation for the
23 difference in his stories. Even if one accepts the confusion with
24 respect to the two bridges and the river surely Mr. Turner would
25 recall whether he had gone over the embankment before or after the
26 overpass. His explanation that he meant that he saw the truck
27 before the overpass is simply not believable.
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3 I will not repeat the evidence with respect to whether
4 Mr. Turner wanted to contact the police or go to a hospital that
5 night and whether he knew where the police stations and hospitals
6 were in the area. Suffice it to say his evidence was equivocal and
7 contradictory on these subjects.
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9 I did not find Mr. Turner to be a credible witness. I
10 cannot say that his demeanour in the witness stand has a lot to do
11 with my decision. Mr. Turner had trouble answering questions
12 on cross-examination in a forthright manner. I accept, however,
13 that Mr. Turner is not a sophisticated or skilled witness. His
14 skills lie elsewhere. I do not accept Mr. Turner's evidence
15 because it was clearly inconsistent while under oath and
16 inconsistent with his earlier statement to the I.C.B.C. adjuster.
17 In addition to that, Mr. Turner's actions following the accident
18 were not those of a man who has been run off the road by another
19 driver.
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21 Although he was in pain Mr. Turner made no effort at all
22 to contact the police so that they might track down the culprit
23 who did this to him. The severity of his pain may account for some
24 of this behaviour. But Mr. Turner was well enough to stop in
25 Vanderhoof to have Mr. Hoffman contact Mrs. Turner. There was
26 nothing preventing him from telling Mr. Hoffman to contact the
27 police then also. One would expect that he would have wanted
28 nothing more than to get that other driver off the road.
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4 Mr. Turner was also slow to determine the damage to his
5 vehicle and to contact I.C.B.C. Again, although he was in pain I
6 would have expected his natural curiosity to have led him to
7 determine the damage to his car as soon as he could. Although he
8 said he had assumed the damage was not that bad initially, I would
9 have expected that a man in the position he said he was in would
10 have contacted the Insurance Corporation more quickly than he did.
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12 I am also puzzled by the damage to Mr. Turner's pick up.
13 Although it suffered a smashed right fender and a broken windshield
14 I heard no evidence as to how this damage was sustained. It does
15 not seem to correspond to the accident as it was described in the
16 evidence.
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18 I have not forgotten that Mr. Turner's evidence at trial
19 was corroborated by Mr. Hoffman's. Mr. Hoffman is a friend and
20 employee of Mr. Turner. Again, the actions that Mr. Hoffman
21 testified to under oath are not those of a man who has almost been
22 killed by a truck on the wrong side of the road.
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24 It is interesting to note that Mr. Hoffman's statement
25 to an I.C.B.C. adjuster in December 1986 is somewhat similar to Mr.
26 Turner's. He, too, told the adjuster that the truck was seen as
27 they approached the Stellacko Bridge. He, too, said that the pick
28 up came to rest near the river. At trial Mr. Hoffman said that he
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3 did not know where he got the name Stellacko, he said he does not
4 know the area. As for the river he said he believed it was nearby.
5 In my view the reason why Mr. Hoffman mentioned the bridge and the
6 river was because he had probably been talking to Mr. Turner. His
7 evidence changed at trial to again conform with Turner's. Mr.
8 Hoffman was also equivocal and inconsistent with respect to whether
9 they had tried to contact the police that night and why they had
10 not done so or succeeded. His evidence in this area was
11 unsatisfactory.

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13 Mrs. Turner's evidence did not materially advance her
14 husband's case because she was not present at the time of the
15 accident.

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17 The plaintiffs and defendant agreed that this case gives
18 rise to several issues if I accept the plaintiff's version of the
19 events. Did the plaintiffs give I.C.B.C. reasonable written notice
20 pursuant to s.23(2) of the Insurance (Motor Vehicle) Act? Were
21 reasonable efforts made to locate the driver of the truck?
22 (s.23(5)). Did the registered owner, without reasonable cause,
23 fail to report the accident within forty-eight hours to the police?
24 And, finally if the answers to these issues are not in the
25 plaintiffs' favour, can this court relieve against forfeiture?
26 These interesting questions need not be answered given my
27 conclusion on the issue of credibility.

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3 Given the difficulties with the plaintiff's evidence and
4 that of his witness, he has failed to meet the burden of proof
5 required. I am not satisfied on the balance of probabilities that
6 an unidentified driver ran the plaintiff off the road. Mr.
7 Turner's action is dismissed with costs.
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9 The registered owner of the vehicle, Mrs. Turner, bases
10 her claim against the Insurance Corporation on the actions of the
11 unidentified driver. As those facts have not been established her
12 claim is also dismissed with costs.
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14 C. Ryan L.J.S.C.

15 C. RYAN, L.J.S.C.
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17 Vancouver, B.C.

18 October 4, 1989
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