



NO. B863397
PRINE GEORGE REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES L. McCONAGHY

PLAINTIFF

AND:

BRENDA LEE BRIGNALL
and ROMEO CHASSE

DEFENDANTS

AND:

INSURANCE CORPORATION OF
BRITISH COLUMBIA

THIRD PARTY

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE McKENZIE

E.E. Bowes

For the Plaintiff; .

D. Byl

For the Defendant Brignall
and the Third Party;

In Person

Defendant Romeo Chasse;

Dates and Place of Trial:

16 - 27 May, 1988,
Vancouver, B.C.

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4 Liability is disputed but quantum is agreed upon at \$24,227.32 for cost of
5 repair to the plaintiff's logging truck and trailer and \$2,000 for profit lost during the
6 repair.

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8 The damage resulted when the truck, hauling logs on 28 February 1986,
9 around 11:00 A.M. along a gravel road which varied in width from about 18 ft. to 22
10 ft., was approached from the opposite direction on a curve by the defendant's pickup.
11 The vehicles did not touch but the logging truck went off the road on its own side into
12 a snowbank and toppled over to its right. The pickup stopped undamaged in the
13 snowbank off the opposite edge of the road. Each driver blames the other; each
14 driver says he did the right thing and the other the wrong thing. In the light, or
15 darkness, of the contradictory evidence it is a vain task to try to reconstruct with
16 any certainty those fleeting moments before the upset.

17
18 The logging truck driver says the pickup came at him from the middle of
19 the road forcing him off to the right, and the pickup driver says the logging truck
20 first crossed over to his side of the road and then swerved back to its right and came
21 to grief.

22
23 Neither version is supported by helpful outside evidence, such as tire
24 marks, so I am left to choose between the version of the logging truck driver, on the
25 one hand, and that of the pickup driver and his three passengers, on the other hand,
26 and the two versions are in headlong conflict.

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28 The road was variously described as a logging road, an industrial road, and
29 a public highway. It matters little to which class it belongs because counsel agree
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4 that drivers on it are bound by the normal rules of the road including the rules that
5 drivers stay on their own side of the road, and that a loaded logging truck has the
6 right of way over an empty logging truck and other approaching vehicles.

7
8 It is not a limited access road over which a private owner can prescribe
9 his own rules such as the rule which obliges all drivers to have and use a two-way
10 radio, called a "crystal radio", to transmit their positions, according to mile or
11 kilometer boards, and receive transmissions from other vehicles. The evidence about
12 the obligation to use such a radio on this road is most uncertain. Some defence
13 witnesses say that, among a number of signs where the road met the highway, was
14 one which read "Radio Controlled" and gave the name of the prevailing channel, while
15 the logging truck driver maintains there was no such sign. Now none is present
16 among the collection of signs which prescribe maximum weight and size, warn against
17 overtaking loaded trucks, and direct drivers to wait in turnouts for approaching
18 trucks.

19
20 This road is not exclusively used by logging trucks or other loggers'
21 vehicles. At a point about two miles from the highway, and about 200 feet from the
22 accident scene, a road branches off to the garbage dump used by residents of a
23 nearby village. No crystal radios are in their cars or in those of people who use the
24 road to cut and haul firewood. This pickup driver normally drove his own car on the
25 road when coming to work and it had no crystal radio, but on this day he was driving a
26 borrowed vehicle with one.

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28 I find that the plaintiff was not obliged by law to be equipped with a
29 crystal radio. He lacked one despite being told twice by the foreman of the logging
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3 "show" for which he was hauling that he should have one for his own safety and that
4 of others. I find that he did not consider such a purchase worth it as he was only
5 going to continue hauling for less than a month, and so informed the foreman. The
6 only other truck hauling from the same show had a crystal radio.
7

8 I accept the pickup driver's evidence that upon entering the road he
9 called: "Going up empty with pickup", and closer to the accident scene called:
10 "Right above the hill". He also asked during this first call if any truck was coming
11 and got no response.
12

13 A factor of consequence is that both drivers were employed on the same
14 show. The pickup driver was a faller. He knew upon leaving the highway and
15 entering the road at the time he did that he would meet a loaded logging truck
16 coming his way and he was looking out for it.
17

18 The pickup belonged to the wife of the foreman on the show. The
19 defendant Chasse had borrowed it to fetch a tire in Prince George for a skidder and
20 the tire was in the box of the pickup. He carried as passengers, alongside him in the
21 single bench seat, his grown son and two other men who worked for him or with him.
22 I infer that he was wasting no time because the skidder was inoperable for lack of a
23 tire. I do not find that he was racing but he was not dawdling. He and his passengers
24 minimized his speed to the 20 - 25 mph range and, for his part, the truck driver
25 makes the lowest possible estimate of his own speed at 20 - 25 mph. However, I
26 cannot find excessive speed by either driver and do not find speed to be a material
27 factor in this accident.
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4 Nor do I find that the weather or road surface condition had much to do
5 with it. There were snowbanks off both verges and some ice on the surface of the
6 road with gravel showing through. The pickup carried tire chains in its box and the
7 occupants installed them after the accident so that with three men pushing it was
8 dislodged from the snowbank.

9
10 Considering all features of this road at this time, I hold that to drive
11 safely upon it required a high degree of alertness, caution and constant vigilance by
12 both drivers and a special obligation on the pickup driver to watch out for and give
13 way to oncoming, loaded logging trucks.

14 LOGGING TRUCK DRIVER'S VERSION:

15 He was driving down a "bit of a hill" going into a curve to his left doing
16 20 - 25 mph with his engine retarder on, using his brakes when needed and no gas. His
17 headlights and many other lights were on. All of a sudden the pickup appeared
18 rounding the curve 250 feet ahead coming toward him in the middle of the road. To
19 avoid the pickup he kept veering to his right but the pickup stayed in the middle of
20 the road until it was 50'-60' away, when it veered to its right. When the pickup had
21 just passed the cab of the logging truck the truck driver tried to steer it back onto
22 the road but it would not respond to the wheel, being too far over to the right into
23 the snowbank having left the curved road to travel on a tangent in a straight line.
24 Slowly the truck tumbled over to its right —"in a slow motion". The load of logs
25 remained intact with the binding secure. The truck was going 10 - 15 mph when it
26 left the road. The driver got out of the truck unassisted although his door was facing
27 upward. He suffered only minor cuts and bruises. The truck was about 20 feet off
28 the edge of the road.
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4 The pickup was standing in the middle of the road and he spoke to its
5 driver. He recalls a little bit of the conversation. He asked the pickup driver to go
6 and get two skidders and a loader to pull the truck out. The pickup driver said:
7 "Everything will be O.K. -- will be looked after." He does not recall the exact words
8 but he took the pickup driver to mean that "the insurance would look after it -- his
9 fault sort of thing".

10 VERSION OF PICKUP DRIVER AND HIS PASSENGERS:

11 The pickup driver testified that he saw the cab of the loaded truck 400-
12 500 ft. away (at Discovery he said 500-600 ft.) cutting the corner coming downhill
13 "pretty fast". He pulled his pickup off the roadway to his right -- "gave him the
14 whole road". He estimates the truck speed at 35-40 mph "at least" and that "he went
15 by me a little bit sideways". He saw a trailer wheel lock. The trailer was about 3-
16 1/2 feet away from the front of the pickup when it went by. He asserts that the
17 pickup was always on its own side of the road.

18
19 He said the road was icy and slippery. He was expecting this truck: "I
20 had a feeling he would be down -- that's why I'm looking around the corner for him."
21 He denies he was "startled" by the truck. Startled is, perhaps, too strong a word. He
22 agreed in cross-examination that he was surprised to see the truck coming so fast.
23 His son thought he was surprised because of the suddenness of his swerve to the ditch.

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25 CONCLUSIONS:

26 The truck driver swore that from his high driver's seat he looked down and
27 saw the pickup driver talking to his passengers with his head turned toward them and
28 I accept this evidence.
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3 The pickup's lights were not on and I hold that the driver would have been
4 prudent to have them on, and that it was conventional along this road for all vehicles
5 to drive with lights on even during daylight.
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7 I hold that this is a case for divided liability. As against the logging truck
8 driver he should have had a crystal radio installed and should have used it. The
9 chance of this accident happening would have been substantially diminished if he had
10 been able to respond to the pickup driver's first call and if he had called his own
11 position at each kilometer board. I do not find that he was bound by law to have such
12 a radio, but that he was bound by common sense, particularly having been urged by
13 his foreman to get one, and his failure to have and use a radio made him blameworthy
14 to the extent of 50%.

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16 As for the pickup driver he was aware of the prospect of an approaching,
17 loaded truck and he was inattentive to its approach when it did come. He should have
18 had his lights on. I find he was occupying more of the road than he admits and caused
19 the truck driver to take avoiding manoeuvres which resulted in the upset. He is
20 equally to blame.
21

22 Liability is divided equally. Court order interest will apply and costs will
23 follow the event.
24

Lloyd G. K. [Signature]

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26
27 Vancouver, B.C.
28 June 10, 1988.
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