
CANADA / JUDGMENT

Baril v. R.

[1975] 1 SCR 56

COURT

Supreme Court of Canada

DECIDED

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Baril v. R.

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Date

1973-12-21

Report

[1975] 1 SCR 56

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Judson, Wilfred; Ritchie, Roland Almon; Pigeon, Louis-Philippe

On appeal from

Canada

Subjects

Torts

Decision Content

Supreme Court of Canada

Baril v. R., [1975] 1 S.C.R. 56

Date: 1973-12-21

Gérard Baril Appellant;

and

Her Majesty the Queen Respondent.

1972: October 30, 31; 1973: December 21.

Present: Fauteux C.J. and Abbott, Judson, Ritchie and Pigeon JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Damages—Liability—Self-employed trucker—Crown bridge giving way—Damage to bridge and truck—Canal Regulations, P.C. 1960-64, May 12, 1960, SOR/60-212, s. 59.

Appellant was a self-employed trucker transporting a heavy load of rough stone for a company. The latter had received an order from the federal authorities for 15,000 tons to be delivered on the site where a section of the Chambly canal towpath was being repaired. The towpath could only be reached by crossing one of the many drawbridges built by the federal authorities. As instructed by the quarry foreman, appellant proceeded to one of these bridges. He made several trips, after being given permission to cross by the employee in charge of receiving the stone and the bridgemaster. Subsequently, on the day of the accident, the bridgemaster, before allowing appellant to cross, tried to contact the superintendent, but was unable to do so. The truck went through, the receiving employee signed the receipt, and appellant went for another trip. The total load on the vehicle was 28 tons, whereas a sign at the entrance to the bridge fixed the maximum allowable at 7 tons. The floor of the bridge gave way under the rear wheels of the truck, the latter sank onto the steel structure and caught fire, and appellant sustained serious injury. The Exchequer Court dismissed appellant's petition of right against the Crown for damages resulting from the loss of his truck and for personal injuries. Conversely, the Court maintained the action instituted by the Crown, and ordered appellant, jointly and severally with the company employing him, to pay for the damage caused to the bridge. Hence the appeal to this Court.

Held (Pigeon J. dissenting): The appeal should be dismissed.

Per Fauteux C.J. and Abbott, Judson and Ritchie JJ.: There is nothing to be added to the reasons and conclusions of the trial judge, with which the Court agrees.

Per Pigeon J., dissenting: Under the Crown Liability Act the Crown is liable as an ordinary individual would be. Since the work in question was ordered by the canal authorities, the latter had a duty to the truckers, and could not shelter behind the Canal Regulations so as to avoid taking proper precautions to ensure that the haulage work was done safely.

Appellant acted normally for a person in his capacity, and the only cause of the accident of which he was the victim was the negligence of the public employees in charge of repairing the towpath, who did not take steps to ensure the safety of truckers instructed to deliver stone there, when it was obvious that such delivery could not be made without taking special measures in view of the condition of the premises and the type of bridge to be used. In order to cross the bridge used with a heavy load, it was necessary to drive "along the centre line of the bridge", which an ordinary trucker could not have suspected without being told.

The Superintending Engineer responsible for implementing the regulations might well feel he was not called on to instruct truckers on the precautions to be taken with heavy loads unless the latter came to him to apply for the necessary permission to cross the bridge. In the case at bar, however, the truckers were acting in the performance of work done by the canal authorities themselves. This was work done by day labour for which the canal authorities had all the responsibilities of a general contractor. These responsibilities included taking steps to ensure the safety of workmen and artisans.

APPEAL from judgments of the Exchequer Court of Canada. Appeal dismissed, Pigeon J. dissenting.

Jacques Cartier, for the appellant.

Paul Coderre, Q.C., for the respondent.

The judgment of Fauteux C.J. and Abbott, Judson and Ritchie JJ. was delivered by

ABBOTT J.—This appeal is from two judgments of the Exchequer Court of Canada in two proceedings taken in that Court arising out of the collapse, on July 18, 1966, of a bridge across the Chambly Canal owned by and under the control of the Crown. This accident occurred when the appellant was crossing the bridge in his heavily loaded truck.

By petition of right, appellant claimed \$12,938 for damages resulting from the loss of his truck and for personal injuries. In a second action, the Crown claimed from Baril and from P. Baillargeon Limitée, jointly and severally, the sum of \$10,000 for damages caused to the bridge. These two proceedings were joined for proof and hearing and, on February 15, 1968, Mr. Justice Camil Noël, as he then was, dismissed the appellant's petition with costs and maintained the Crown's action to the extent of \$5,762.75 with interest and costs.

In his two judgments the learned trial judge carefully reviewed the facts, the supporting evidence and the relevant legal principles. I am in agreement with his reasons and conclusions and there is nothing I wish to add.

I would dismiss the appeal with costs.

PIGEON J. (dissenting)—Appellant is appealing from two judgments of the Exchequer Court; the first judgment dismissed his claim against the federal government, and the second condemned him to pay the sum of \$5,762.75, jointly and severally with P. Baillargeon Limitée, for damages caused to a bridge the floor of which gave way under the rear wheels of his truck.

Appellant is a self-employed trucker. When the accident occurred he was transporting a heavy load of rough stone for P. Baillargeon Limitée. The latter, at the invitation of the Department of Transport, had bid for the supply of rough stone, and had received an order dated April 18, 1966, for 15,000 tons to be delivered on the site for use in repairing a section of the Chambly canal towpath. The bid and the order specified that the transport was to be by six-wheel trucks.

For the part that concerns us, delivery began on a Friday morning, July 15, 1966. Appellant's truck being a ten-wheeler, he was sent elsewhere with his first load. At ten o'clock the quarry foreman told him he had permission to use ten-wheelers and sent him, with a load of about sixteen tons on a truck weighing somewhat over eight tons, making a total weight of about twenty-four tons, towards the site where work was in progress. The towpath is on the bank between the canal and the Richelieu River, whereas the main road or provincial highway runs along the canal on the shore. The towpath can thus only be reached by crossing one of the many draw bridges built by the federal government. Between Chambly basin and St-Jean, where the P. Baillargeon Limitée quarry is located, there are eleven of these bridges, numbered consecutively starting from Chambly. For the work to proceed effectively it was necessary that all the trucks drive to the towpath by a specified bridge, dump their loads on the path, and continue without turning to the next bridge, returning by the main road.

On July 15, the place where the stone was to be dumped was only about seven hundred feet north of bridge No. 9. Baril therefore headed for this bridge with his first load, as he had been instructed by the quarry foreman. Another self-employed trucker, one Gérald Lorrain (or Laurin), had stopped ahead of him in front of the bridge. He did likewise, got out of his truck and crossed the bridge on foot to the other side, where he found one Roger Colette, in charge of receiving the stone, and Pierre Bessette, the bridgemaster. Here is how appellant describes what then ensued.

[TRANSLATION] And there, there was Mr. Laurin with me who was talking with Mr. Bessette, and there, when we arrived there, when I arrived there, he said—I said: “Is this where we cross, Mr. Colette?” He said: “Yes, this is where they cross”. Mr. Bessette, he said: “If you have orders to cross here.”

Mr. Colette, he said: “Yes, those are the orders we have”, he said, “all right, cross”. So we did.

BY THE COURT:

Q. So you asked, you asked Mr. Colette? A. We said, I said to Mr. Colette, I said: “Is this where we cross, Mr. Colette?” “Yes”, he said, “the orders are for here”, and Bessette answered up: “This is where you have orders to cross”, he said, “cross”.

Appellant made four other trips that day with loads from 18 to 20 tons, making a total weight of 26, 27 or even 28 tons. The delivery slips signed by Roger Colette, showing these indications, are in the record, as are those of other truckers where we find an even higher total weight of 57,400 lbs.

July 16 and 17 being Saturday and Sunday, there was no haulage. On Monday the 18th, appellant made a first trip with a total weight of 52,100 lbs., and another trucker took as much as 58,200. Claude Bessette was the bridge operator on duty. When appellant arrived with his first load, behind another trucker, Bessette made some difficulty before lifting the chain across the towpath. He told them that crossing a bridge with loads like that, a bridge with such a low capacity, was senseless. The other trucker replied: [TRANSLATION] “We have permission to cross, and we are crossing. We are working for the Chambly canal and we have permission to

cross, we are crossing”. He said the reply of the bridgmaster was as follows: [TRANSLATION] “I will go and find out, then if you have the right to go through, you can go ahead. If you haven’t the right, I will stop you”. He tried to contact the superintendent, one Décarie, but was unable to do so. The trucks went through, Colette received the loads, placed his signature on the receipts, and appellant went for a second trip. This time the total load on the vehicle was 56,000 lbs. The floor of the bridge gave way under the rear wheels of the truck, the truck sank onto the steel structure and caught fire. Appellant managed to get out, but not without sustaining serious burns.

The government’s defence consisted essentially of relying on the Canal Regulations (P.C. 1960-64, May 12, 1960 SOR/60-212), s. 59 of which reads as follows: Heavy Vehicles on Bridges

59. (1) Subject to subsection (2) no person shall, except by permission of the Chief or the Superintending Engineer, take across any canal bridge a vehicle that
- (a) has wheels, threads or other devices that would deface or mar the bridge floor,
 - (b) weighs with its load, if any, more than twenty tons, or
 - (c) has a load whose weight on any single axle or tandem axles exceeds sixteen tons.
- (2) In any case where a sign is exhibited on or adjoining a bridge fixing the limiting weight at a figure other than the twenty tons and the sixteen tons referred to in subsection (1), subsection (1) shall be construed in respect of the said bridge by substituting the limits as indicated on the sign in lieu of the limits set out in subsection (1).

At the entrance to the bridge in question there was a sign that read: “MAXIMUM LOAD 7 TONS”.

On this point the trial judge says:

[TRANSLATION] ...the Canal Regulations (P.C. 1960-64) provide in s. 59(1) that vehicles exceeding the load shown on the signs may only cross canal bridges with permission from the Chief or the Superintending Engineer, and in the present case the Chief and the Superintending Engineer were a Mr. Farmer in Ottawa and the witness Morin at Chambly. Now, neither of them received any request for permission from Baril or from the Baillargeon company, and they gave no such permission.

According to Morin, anyone wishing to cross a canal bridge with an overload must first make an application to him indicating the weight of the truck and its specifications, such as wheelbase, number of wheels and load distribution. He stated that this information was used to determine whether the bridge can support the load, assuming that the trucker follows the directions given to him concerning speed and concerning the part of the bridge floor where the vehicle is to cross, he said, along the centre line of the bridge.

In fact, the structure of the bridge floor has places which are not of equal strength. It is stronger in the centre than on the sides because... there the longitudinal girders are doubled. Trucks with overloads thus have to travel over the centre part, and when Baril tried to steer his truck away from the centre towards the side he broke through the bridge.

From Morin's testimony, it appears that only truckers who submitted an application to him for overload crossing were told of this procedure. At no time were the truckers for the suppliers of materials told of this procedure, since Morin relied, as he says in his testimony, on the statute and regulations which deal with the permission to be obtained and which, he says, everyone is required to know ...

With regard to the authorization allegedly given by Colette, respondent's employee in charge of work on the jetty, Morin simply said that if an unauthorized employee had given such permission, he would simply have been dismissed.

I now turn to what I take to be the gist of the reasons for which the trial judge dismissed appellant's claim.

[TRANSLATION] There only remains the possibility of basing this claim on respondent's failure, as owner of the bridge, to inform the truckers, among whom Baril, of the procedure to be followed in the case of a truck exceeding the permitted load, a procedure which still, I should add, even if adopted, at best only provided truckers with the safest method of crossing with an overload, and did not free them at all from liability for damages they might cause even by using this method.

The Chambly canal authorities could no doubt have paid closer attention to the manner in which this heavy material was to reach its destination, and if necessary informed truckers of the special procedure to be followed in cases of overload. They would undoubtedly have advised them of this procedure if the supplier of material or the truckers had applied for it as provided in the regulations.

Unfortunately for petitioner, his failure to observe the canal regulations and request from the Canals Chief, or the Superintending Engineer, permission to cross the bridge with loads exceeding those prescribed by the signs, seems to me to constitute a bar with respect to this ground.

On the other hand, it seems to me equally unacceptable that the employee of the supplier of the material took it on himself to direct truckers hauling his material, as he did, to proceed by way of bridge No. 9 with loads of from 16 to 19 tons, solely on the authorization of a subordinate employee, such as Colette (especially as he knew, or ought to have known, of the limitation included in his contract with respondent, to use only six-wheel trucks) which, moreover, was accompanied by a recommendation "not to overload". This was definitely a serious breach of duty vis-à-vis the truckers who were hauling loads of material that day in performance of that firm's contract with respondent.

We are not concerned here, however, with the liability of the Baillargeon Limitée company but with that of the Crown.

These remarks by the trial judge indicate that if the Chambly canal, with its bridges and tow-path, had been operated as a private business, he would not hesitate to hold it fully responsible for the damage incurred by a trucker coming there to deliver heavy material and using the route

indicated by its employee in charge of receiving these materials and informed of the exact weight of each delivery. All the blame correctly ascribed by the judge to the company which assigned the haulage to appellant should apply with even greater force to a business which shows disregard for the safety of self-employed workmen coming to its premises to do work on its behalf. If he dismisses the claim, this is because he permits the government to shelter behind the regulations regarding traffic on bridges. He thus exonerates of any blame the engineer Edgar Morin who, instead of seeing to the proper organization of the traffic of trucks delivering the stone for the repairing of the towpath, took the attitude that the truckers were responsible for choosing their route, that each of them was obligated to come to him for permission and for being told how to cross the bridges so as not to risk breaking them with heavy loads.

If a private business had behaved towards truckers assigned to deliver stone to it as the Chambly canal authorities did towards appellant and his co-workers, one would not hesitate for a moment in holding it liable. The reasoning would be that having ordered a large quantity of heavy material, which could only be delivered by using their bridges and roads, it was the responsibility of the canal authorities to indicate a safe route to the truckers, and give them specific directions. If, through negligence on the part of their supervisory staff, this was all left to insufficiently qualified subordinates, there was clearly fault vis-à-vis individuals who were obviously not in a position to know unaided the precautions they should take, and who could not reasonably be expected to think of inquiring from persons other than those on the premises, who unquestionably had some authority, since receipt of the goods was acknowledged by their signatures.

In my view this is, therefore, clearly a situation where, if the ordinary rules of liability are applied, appellant must succeed. But such is now the principle of the Crown Liability Act, viz., that the Crown is liable as an ordinary individual would be. Here liability may be related to two possible factors: the fault of an employee in the performance of his duties, or the breach of duty attaching to ownership. In my view the question that arises is simply whether this position is altered by the fact that the employees in question were not employed by a private business, but were public servants, and that the property in question was not private property but property forming part of the public domain. The only reason for setting up such a distinction would be the regulations previously mentioned. Was the effect of those regulations to remove the case from application of the ordinary rules of law, so as to shift onto the trucker responsibility for the accident which in reality, in my opinion, was solely due to carelessness by the Chambly canal authorities: the trial judge correctly pointed out that "The Chambly canal authorities could no doubt have paid closer attention to the manner in which this material was to reach its destination, and if necessary informed truckers of the special procedure to be followed in cases of overload".

The position would be quite different if the trucker had been simply a user of the bridge and the towpath. The engineer, Morin, would then surely not be to blame. I feel, however, that in the circumstances, since the work in question was ordered by the canal authorities, the latter had a duty to the truckers, and could not shelter behind the regulations so as to avoid taking proper

precautions to ensure that the haulage work was done safely. With due respect to the trial judge, I feel he erred in regarding the trucker as primarily responsible for any damage caused to the bridge by the weight of an excessive load. To so conclude, one must place the canal authorities not in the position of an ordinary property owner, but rather in a privileged position. No one could argue that a bridge owner, who has goods delivered to him over the bridge by truck, does not bear the risk of the possible damage when the bridge is used in accordance with his instructions.

In the case at bar, can it be said that appellant did not cross the bridge in accordance with the instructions he received? I think not. Before going over the first time, he made inquiries with the persons present on the spot, after he had been told to proceed by that route and had received a load for haulage by that route. As to the warning given by the bridge operator that Monday morning, it was not followed by any comment after the load was receipted with indication of its exact weight. In my view, the events of that morning were rather such as to convince appellant that everything was perfectly in order. Indeed, the bridge operator told him he would find out whether to let them pass with such loads. He then did nothing, nor did anyone else.

The question is not to determine whether appellant broke the regulations. What must be decided is whether he committed a fault, and whether the government employees did commit a fault in the performance of their duties or in respect of a duty attaching to ownership of the canal. In my view appellant acted normally for a person in his capacity, and the only cause of the accident of which he was the victim was the negligence of the public employees in charge of repairing the towpath, who did not take steps to ensure the safety of truckers instructed to deliver stone there, when it was obvious that such delivery could not be made without taking special measures in view of the condition of the premises and the type of bridges to be used.

As a result of the method adopted for doing the job, the trucks laden with stone were obliged to travel over a bridge, south of the location where the stone was to be unloaded on the towpath. As on this occasion this location was a few hundred feet north of bridge No. 9, this bridge had to be used. Bridge No. 10 indeed had a bigger capacity, but the road between the two bridges was not practicable, and could not be considered for use in this type of haulage. Thus, all the trucks transporting stone for repairing the towpath, including the Department's own trucks, crossed over by bridge No. 9. Morin, the engineer, could not have been unaware of this, just as he must have known that rough stone is not carried nowadays in small loads of a few tons. Furthermore, he was a person who knew that in order to cross bridge No. 9 with a heavy load, it was necessary to drive "along the centre line of the bridge". Clearly, an ordinary trucker could not have suspected this without being told.

As Superintending Engineer responsible for implementing the regulations, Morin might well feel he was not called on to instruct truckers on the precautions to be taken with heavy loads unless the latter came to him to apply for the necessary permission. In my view, however, this was not so when, as in the present case, the truckers in question were acting in the performance of work done for the canal authorities themselves. It should be noted that this was work done by day labour for which the canal authorities had all the responsibilities of a general contractor. These

responsibilities included taking steps to ensure the safety of workmen. I do not accept that these responsibilities are less for a public authority than for a private business. In the circumstances, the duty of the Chambly canal authorities to “pay closer attention to the manner in which this heavy material was to reach its destination, and if necessary inform truckers of the special procedure to be followed in cases of overload” was not simply a humanitarian one. This was a strict obligation which they had by virtue of their supervisory capacity, to ensure the safety of their workmen and artisans.

A distinction has to be made between the legal position of the Superintending Engineer in relation to observance of the Regulations by the public, and his position as principal supervisor of work performed by workmen and artisans. The fact that the same person has two areas of responsibility does not mean we should not apply to each of them the rules pertaining to it, was done in *Jolette-Bonenfant v. Solbec Copper Mines*[1]. The fact that a public department also exercises regulatory powers does not mean that it is released from the obligations concerning safety imposed on other undertakings.

For these reasons, I would allow the appeal, reverse the judgment rendered in first instance and allow appellant’s petition with costs in both courts. As the amount of the claim has not been determined, it seems proper to order that failing agreement between the parties the case shall be remitted to the Trial Division of the Federal Court for this to be done. As to the judgment rendered on the information filed by the Deputy Attorney-General of Canada, the foregoing reasons imply that it is to be dismissed. I would therefore reverse the judgment which allowed it and dismiss it with costs.

Appeal dismissed with costs, PIGEON J. dissenting.

Solicitors for the appellant: Cartier & Favreau, St-Jean.

Solicitor for the respondent: Paul Coderre, Ottawa.

[1] [1969] S.C.R. 892

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