

CANADA / JUDGMENT

Dhillon v. Chhina

2014 BCSC 1193

COURT

Supreme Court of British Columbia

DECIDED

30 June 2014

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2014 BCSC 1193 Dhillon v. Chhina

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhillon v. Chhina,

2014 BCSC 1193

Date: 20140630

Docket: M113389

Registry: Vancouver

Between:

Pargan Singh Dhillon

Plaintiff

And

Amarjeet Singh Chhina and Daniel Khan

Defendants

And:

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

The Plaintiff, Pargan S. Dhillon:

In Person

Counsel for the Defendant and Third Party,

Daniel Khan and Insurance Corporation of

British Columbia:

T. C. Vos

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 26 - 27 and 29, 2014

Place and Date of Judgment:

Vancouver, B.C.

June 30, 2014

Introduction

- [1] The plaintiff claims damages for personal injuries sustained in a motor vehicle accident that happened on July 12, 2009 (the "accident"). The accident occurred on Blundell Road in Richmond, British Columbia when the car in which the plaintiff was travelling collided head on with the car being driven by the defendant Daniel Khan.
- [2] In addition to this action, Mr. Khan commenced his own action for damages in respect to the injuries that he suffered in the accident (Khan v. Dhillon and Chhina, SCBC Action No. M113387, Vancouver Registry).
- [3] Pursuant to an order dated December 9, 2013, the issue of liability for the accident was ordered to be tried separately from the issue of damages in both actions.
- [4] After the December 9, 2013 order was entered on December 30, 2013, Mr. Khan settled his action. Accordingly, this trial proceeded on the issue of liability in this action alone.
- [5] The central issue to be determined is who was driving the vehicle in which the plaintiff was travelling. The plaintiff says that the vehicle was being driven by the defendant, Amarjeet Singh Chhina, whereas the defendant, Mr. Khan, and third party ICBC allege that the plaintiff was the driver.
- [6] The plaintiff represented himself at the trial. His evidence and his submissions were made in Punjabi with the assistance of an interpreter.
- [7] The defendant Mr. Chhina did not file a response to civil claim and has taken no steps to defend this action. He did however appear as a witness at trial.

The Evidence

- [8] The plaintiff was born in 1973 and is currently 41 years old.
- [9] The plaintiff testified that on July 12, 2009, he went to the Guru Nanak Sikh temple in Surrey, travelling to the temple from his home in Richmond by bus and skytrain.
- [10] The plaintiff said that when he went to leave the temple, he met Mr. Chhina in the parking lot and asked him for a ride home to Richmond. The plaintiff knew Mr. Chhina as they used to work together at a kitchen cabinet manufacturing plant. He said that Mr. Chhina agreed to drive him. Mr. Chhina was driving a white Chevrolet Malibu (the "Malibu").
- [11] The plaintiff said that when he got into Mr. Chhina's car, he smelled liquor on Mr. Chhina's breath and that Mr. Chhina admitted that he had been drinking.
- [12] The plaintiff said that Mr. Chhina drove the car erratically. He said that he asked several times to be let out of the car but Mr. Chhina said that he had to go and pick up his parents and then he would let the plaintiff out.
- [13] In cross-examination, the plaintiff agreed that he was worried about travelling with an impaired person, however he said that he had no opportunity to get out of the car, for example when the car stopped at a stop light.
- [14] According to the plaintiff, they were on the way to pick up Mr. Chhina's parents when the accident happened. He said that he was in the front passenger seat and that the car was swaying from side to side on the road.
- [15] He said that Mr. Chhina was driving at an excessive speed and that he lost control of the car and crossed the centre line, hitting the other car head on.
- [16] He agreed that the driver of the other car, Mr. Khan, was driving properly and did nothing to cause the accident.
- [17] According to the plaintiff, on impact, both airbags in the Malibu deployed. He said that he felt immediate pain in his chest and that both he and Mr. Chhina were injured.
- [18] He denied that he was rendered unconscious by the impact but said that his turban was knocked off his head. According to the plaintiff, Mr. Chhina was not wearing a turban at the time of the accident.
- [19] The plaintiff testified that shortly after impact, Mr. Chhina threw the airbag off his face, got out of the car, and ran away.
- [20] When questioned further about Mr. Chhina's injuries, the plaintiff said that he later learned that Mr. Chhina had broken his left ankle for which he was treated at Richmond General Hospital.
- [21] The plaintiff denied that he got out of the car before the ambulance arrived. He said that because of the severe pain in his chest, he simply put his head back and rested.

- [22] The plaintiff said that he spoke to one police officer at the site of the accident. He did not know the officer's name at the time but he later got the officer's card when he recovered his clothes at the hospital. The attending officer was Constable Oddo, then of the Richmond detachment of the RCMP.
- [23] The plaintiff said that he had difficulty speaking with Constable Oddo. He was in pain at the time and his English is poor. Constable Oddo did not speak Punjabi.
- [24] The plaintiff said that Constable Oddo asked him some questions to which he replied "no English". He said he thought that Constable Oddo asked him who was driving and he said that it was not him. He said he also told Constable Oddo "driver go".
- [25] When asked in cross-examination why he did not tell Constable Oddo that Mr. Chhina was the driver, the plaintiff said that he was in shock and that he "lost" Mr. Chhina's name.
- [26] The plaintiff denied that Constable Oddo asked him if he had moved from the driver's seat to the passenger seat of the car and he said again in cross-examination that he was in the passenger seat the whole time.
- [27] The plaintiff said that constable Oddo got the car's insurance and registration documents from the glove compartment of the car. He denied that he handed the documents to Constable Oddo.
- [28] The plaintiff testified that he spoke to Constable Oddo one other time after the accident when he went to the Richmond RCMP station. He said that he took his aunt with him to interpret and that he went to the station after receiving a letter from ICBC indicating that he was the driver of the car.
- [29] According to the plaintiff, it was at that meeting that he told Constable Oddo for the first time that Mr. Chhina was the driver. He said that Constable Oddo told him that if he returned within two days with Mr. Chhina, Constable Oddo would change his report.
- [30] Mr. Khan, the other driver, also testified about the accident. His evidence was consistent with the plaintiff's evidence that the Malibu crossed the centre line and struck his car. According to Mr. Khan, the accident happened very quickly and there was no way for him to avoid the collision. He testified that he did not lose consciousness but that he was "out of it" for a short period after the impact.
- [31] It was Mr. Khan's evidence that he only saw one person in the other car. He testified that after the collision, he saw the driver get out of the car and go around and sit in the passenger seat. He did not see anyone run away from the other car.
- [32] In cross-examination, Mr. Khan agreed that he wears glasses and that his glasses were knocked off by the impact.
- [33] According to Mr. Khan, the driver of the other car was not wearing a turban.

- [34] The attending officer, Constable Oddo, also testified via video conference from Selkirk, Manitoba. At the time of the accident, he was stationed in Richmond, B.C. He is now stationed in Selkirk.
- [35] On July 12, 2009, Constable Oddo began his shift at 6:00 pm and was dispatched to the scene of the accident at 6:05 p.m., arriving at approximately 6:15 p.m.
- [36] Shortly after his arrival, he was told by Mr. Khan that the driver of the other vehicle had moved to the passenger seat. According to Constable Oddo, Mr. Khan made a point of telling him this right away before he had said anything to Mr. Khan.
- [37] Constable Oddo reviewed his notes taken at the time of his attendance at the accident site. His notes record an unnamed bystander telling him the same thing, that the driver of the Malibu moved into the passenger seat before he arrived on scene.
- [38] Also in his notes, Constable Oddo lists the plaintiff as the sole occupant and driver of the car that struck Mr. Khan's vehicle. He agreed that this conclusion was based on discussions he had with Mr. Khan and the bystander.
- [39] Constable Oddo acknowledged that the plaintiff told him at the scene that someone else was driving the car but the plaintiff did not provide a name.
- [40] Constable Oddo denied that he subsequently spoke to the plaintiff at the Richmond RCMP detachment. He said that the day after the accident, he went to Manitoba and did not return to Richmond until July 23, 2009. He said further that had such a meeting occurred, he would have taken notes but he has no record of the meeting taking place.
- [41] In cross-examination, Constable Oddo said that the plaintiff was standing outside the car with his licence and the vehicle registration when Constable Oddo spoke to him. He said that the plaintiff handed the documents to him and that he did not open the car glove compartment in order to retrieve the registration documents.
- [42] Constable Oddo denied that the plaintiff said to him "no English, no English." According to Constable Oddo, the plaintiff spoke to him in English.
- [43] Constable Oddo said that he did not see the plaintiff being lifted from the car by the ambulance attendants. He said again that when he spoke to the plaintiff, the plaintiff was standing outside of the car.
- [44] Mr. Muhammed Al Samarrai also testified. He is the "bystander" referred to in Constable Oddo's notes. He testified by video conference from Dubai where he now lives. At the time of the accident in July 2009, he lived in Richmond, B.C.
- [45] Mr. Al Samarrai testified that he was driving west on Blundell Road between No. 6 and No. 5 Roads when he heard the sound of vehicles colliding. He heard the sound before seeing the collision because there is a bridge over the highway on Blundell and he was on the far side of the bridge below the crest when the accident occurred.

- [46] When he came over the crest of the bridge, he saw that two cars had collided. He said that he arrived at the scene within about 8-10 seconds of hearing the impact. The vehicles were stopped about 200-300 metres from the point on the bridge where he first saw them.
- [47] Mr. Al Samarrai identified one of the cars was an older Honda and the other was a white Malibu.
- [48] While he did not see the actual impact, based on the location of the two cars, it was Mr. Al Samarrai's impression that the Malibu had crossed the centre line and struck the Honda head on.
- [49] Mr. Al Samarrai parked his car and got out to check on the people involved. He said that he saw three people: an older couple in the Honda and an East Indian man standing beside the Malibu. As the older couple seemed to be in some distress, he focussed his attention on them. Mr. Al Samarrai also called 911.
- [50] At some point he approached the man standing beside the Malibu and asked if he was ok. He said they did not really have a conversation as the man did not speak English. Mr. Al Samarrai noticed that the man was holding a turban in his hands.
- [51] Mr. Al Samarrai stayed at the scene until the emergency personnel arrived. Throughout that time, the elderly couple stayed in their Honda. He says that the other man walked around the Malibu and at one point sat down in the passenger seat.
- [52] Mr. Al Samarrai testified that from the time that he first saw the two cars, he did not see anyone walking or running away from the scene and that at all times he only saw the couple in the Honda and the man by the Malibu.
- [53] In cross-examination, Mr. Al Samarrai said that he could not remember what the man by the Malibu looked like. He was not able to say whether or not it was the plaintiff.
- [54] The last witness to testify was the defendant Amarjeet Singh Chhina.
- [55] Prior to the trial, the plaintiff had issued a subpoena to Mr. Chhina and at trial he produced an affidavit from a process server attesting to personal service of Mr. Chhina. When Mr. Chhina did not appear at the trial, I issued a warrant for his apprehension pursuant to Rule 12-5(38).
- [56] On the final day of trial, Mr. Chhina appeared with counsel, Mr. Randhawa, who had previously acted for Mr. Chhina. I was advised by Mr. Randhawa that Mr. Chhina claimed not to have been served with the subpoena, however Mr. Randhawa was made aware of the warrant as a result of a courtesy phone call from counsel for ICBC. Mr. Randhawa then contacted Mr. Chhina who agreed to attend the trial.
- [57] Mr. Chhina confirmed that he knew the plaintiff from when they both worked together at Richmond Kitchen Cabinets.

- [58] Mr. Chhina testified that he was the driver of the Malibu that collided with Mr. Khan's car and that the plaintiff was sitting in the passenger seat. He and the plaintiff were driving from the Sikh temple in Surrey on their way to drop the plaintiff off at home when the accident occurred.
- [59] It was Mr. Chhina's evidence that as his car approached the car being driven by Mr. Khan, the front tire of Mr. Khan's car crossed the centre line causing the accident.
- [60] Mr. Chhina testified that after the impact, when the cars had come to a stop, he was terrified and worried so he left the scene and went to a friend's house nearby.
- [61] According to Mr. Chhina, he fractured his ankle in the accident. He said that he initially did not realize how severe the injury was but when he later went to his family doctor, he learned that the ankle was broken. He subsequently had screws implanted in his ankle at Richmond Hospital. He says that he was on crutches for a period of time as a result.
- [62] Mr. Chhina agreed in response to questions from the plaintiff that the two of them met at Richmond Kitchen Cabinets in April of 2014 and that they discussed the accident. He agreed that the plaintiff asked him to tell the truth about the accident and he said that he would do so in court.
- [63] Mr. Chhina confirmed that at that meeting, he provided the plaintiff with a copy of a letter he received from ICBC stating that he was 100% at fault for the accident and demanding payment of approximately \$186,000 which represents payments made to Mr. Khan in respect of his claim.

The Audio and Video Recordings and Photographs

- [64] The plaintiff sought to admit into evidence three audio recordings of conversations he had with Mr. Chhina, one video recording and some photographs of Mr. Chhina. Two of the audio recordings are of in-person meetings between the plaintiff and Mr. Chhina and the other is of a phone conversation. The recordings are all in Punjabi and there are certified translations of the transcripts. At the trial, I declined to admit the phone recording, the video recording and the photographs on the basis that they had no probative value.
- [65] I did however rule that the recordings and written translations of the two in-person meetings were admissible. The principles governing the admission of such surreptitious recordings were canvassed in detail by Gray J. in *Lam v. Chiu*, 2012 BCSC 440. She reviewed a number of key authorities including, in particular, *A.M.E.R. v. P.J.R.*, 2003 BCSC 1466, where Williamson J. held that there are three criteria for determining the admissibility of these kind of recordings: relevance, identification and trustworthiness. Williamson J. also considered the question of fairness and the effect on the reputation of the administration of justice of allowing surreptitiously obtained recordings into evidence.

- [66] Many of the relevant cases involve recordings made in the context of family law disputes. While the courts have often commented negatively on the practice of making and using secret recordings in such disputes (see for example *K.L.K. v. E.J.G.K.*, 2013 BCSC 2030; *Finch v. Finch*, 2014 BCSC 653), the weight of authority favours admissibility.
- [67] That was the conclusion arrived at by Gray J. in *Lam*. Justice Gray did note the potential unfairness that arises when only one party knows that a conversation is being recorded and she expressed concern about the impact on the administration of justice of admitting such recordings into evidence. However, in that particular case, it was her view that these concerns went largely to the weight to be attributed to the evidence, particularly given that the other party to the recording would have the chance to speak to the recordings during her testimony and therefore the probative value of the recording outweighed its prejudicial effect.
- [68] In the case at bar, I was satisfied on the evidence that the recordings in issue met the test set out by Williamson J. in *A.M.E.R* and that their probative value outweighed any potential prejudicial effect. The plaintiff testified that he recorded the conversations using a small recording device. The translator, who certified the transcripts of the recordings, transferred them onto a CD-ROM and then translated them. According to the plaintiff, the entire conversations were recorded.
- [69] The content of the recordings is relevant and may have probative value in that the intended purpose of the evidence, according to the plaintiff, was to obtain an admission that Mr. Chhina was driving and was not put forward for a hearsay purpose. The question of who was driving is of course the central issue in the case.
- [70] The two recordings were therefore admitted. The weight that I attach to the recordings will be addressed below.
- [71] Having admitted the two recordings into evidence, it is useful to highlight certain key exchanges:

CD # 1 - April 16, 2014

Dhillon: Ok you tell me. Why you don't get me out from this case? Why don't you tell the truth?

Chhina: I have told the truth. Why should I tell? My lawyer will tell.

Dhillon: Your lawyer might have told you that what he said.

Chhina: I told them. I met with an accident. I got scared. I was scared so much that they might beat me to death so I ran away.

Dhillon: Didn't they ask you about your injuries. Did you claim for the injuries?

Chhina: I said I am at fault. I hit the vehicle. It's my fault.

Dhillon: Did you give them in writing that you were the driver? Did you tell them or not?

Chhina: Yes I told.

Dhillon: You could have told them that I was sitting on the passenger seat and you were driving. You know there was an accident and you ran away and I remained sitting there.

Chhina: Yes.

Dhillon: Even now it is up to you. You tell them the truth and get my name drop out. They bother me a lot.

Chhina: All is going through the lawyer. I told them the truth. Don't pressurize me.

Dhillon: Did you tell them that you ran away?

Chhina: Yes I did tell. You don't worry, nothing will happen to you. They are asking money from me, it is ok.

CD #3 - April 24, 2014

Dhillon: Listen me, Amajeet, honestly go to the ICBC and tell "I was the driver". You were the driver; you should have told them you were the driver.

Chhina: I have already told them. Obviously why f in these papers are coming?

Dhillon: Will you admit that you were the driver? Will you speak the truth?

Chhina: I say wherever you want I can swear.

Analysis

[72] Before turning to my analysis of the issues, it is helpful to set out the court's approach to cases of this type, where there are significantly different versions of events advanced by the parties. Justice Dillon, while primarily addressing the assessment of credibility in such cases, said as follows in *Bradshaw v. Stenner*, 2010 BCSC 1398, *aff'd* 2012 BCCA 296:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in

existence at the time (Farnya at para. 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd. (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[Emphasis added.]

[73] The determination of liability for the accident thus turns on which version of events is most consistent with the preponderance of probabilities.

Liability for the accident as between the two vehicles

[74] I will deal first with the issue of which vehicle caused the accident before turning to the central question of who was driving the white Malibu.

[75] With the sole exception of Mr. Chhina's testimony, the evidence overwhelmingly supports a finding that the accident was caused by the white Malibu when it crossed the centre line and struck Mr. Khan's vehicle.

[76] That was the evidence of both Mr. Khan and the plaintiff and is supported by the location of the two vehicles after impact, the side of the east bound lane in which Mr. Khan was travelling. This was confirmed by both Constable Oddo and by Mr. Al Samarrai.

[77] There is no independent evidence supporting Mr. Chhina's version that Mr. Khan's vehicle crossed over the line and struck his car. Further, as I will discuss in more detail below, Mr. Chhina was not a credible witness and I would not accept his evidence over that of the other witnesses.

[78] Based on all of the evidence, I find that the driver of the Malibu is 100% responsible for the accident.

Who was driving the Malibu?

[79] The more difficult question is who was driving the Malibu at the time of the accident: the plaintiff or Mr. Chhina?

[80] Having reviewed the evidence in some detail, I will highlight those factors that favour each of the competing versions.

[81] The following factors favour the plaintiff's version that Mr. Chhina was the driver:

- a) While it is often difficult to assess credibility when testimony is provided through an interpreter, because many of the nuances of the witness's evidence are lost in translation, the plaintiff appeared sincere in his position that he was the passenger, and while ICBC argued that his story was fabricated, that proposition was not put to him squarely in cross-examination. Further, there is no doubt that he went to considerable lengths to prove his position, including recording conversations with Mr. Chhina and by issuing a subpoena to compel Mr. Chhina's testimony;
- b) Mr. Chhina testified that he was the driver, which is consistent with what he said in the recorded conversations with the plaintiff. However, Mr. Chhina's testimony must be treated with considerable caution. He was vague about the details of the accident, other than testifying that it was caused by Mr. Khan's car crossing the line and striking his car, which again is inconsistent with all of the other evidence. He has also been a very reluctant participant in the proceeding, having ignored an appointment to attend for discovery as well as the subpoena issued by the plaintiff (although he denied being served with the subpoena). He also denied discussing the possibility with the plaintiff that one of them should admit liability for the accident and then they could split any insurance money received by the other, even though this was caught on the audio recording;
- c) The Malibu was registered to Mr. Chhina and there was no explanation offered about how the plaintiff could have come into possession of Mr. Chhina's car. Neither the plaintiff nor Mr. Chhina was cross-examined on this point;
- d) Mr. Chhina confirmed that he fractured his ankle in the accident and subsequently required screws to be inserted in his ankle. This is consistent with the plaintiff's evidence, although no independent medical evidence was adduced confirming Mr. Chhina's evidence;

[82] The following factors favour Mr. Khan and ICBC's version that the plaintiff was the driver:

- a) Mr. Khan testified that he only saw one person in the other car and that after the impact, he saw the other driver get out of the car and move around to the passenger seat. His statement about the other driver was given to Constable Oddo unprompted and immediately on Constable Oddo's arrival at the scene. Mr. Khan was a credible witness who gave his evidence in a straightforward manner. However, the weight of his evidence that there was only one occupant of the other car is undermined somewhat by his admission that he was "out of it" right after the impact, a fact confirmed by Mr. Al Samarrai who described the occupants of the Honda as being in distress right after the accident. In addition, Mr. Khan would have had little time to see how many people were in the other vehicle as it came towards him. Mr. Khan testified that the accident happened very quickly and, as is apparent from Mr. Al Samarrai's evidence, the Malibu would have come over a rise in the road shortly before the impact;

- b) Constable Oddo's investigation led him to conclude that the plaintiff was the driver and sole occupant of the Malibu. This conclusion however was based on his discussions with the people at the accident scene and not on any personal observations;
 - c) When questioned at the scene by Constable Oddo, the plaintiff did not identify Mr. Chhina as the driver, although he did, as Constable Oddo acknowledged, say that someone else was driving the car;
 - d) Mr. Al Samarrai testified that he arrived at the accident scene within 8-10 seconds of impact and the only people he saw at the scene were Mr. and Mrs. Khan and the plaintiff. Of particular note, he testified that he did not see anyone leaving the scene or walking towards him on Blundell Road. On Mr. Chhina's evidence, he would have had to pass right by Mr. Al Samarrai's vehicle as he walked towards his friend's house;
 - e) Mr. Chhina's fractured ankle would have made it difficult for him to leave the scene quickly.
- [83] There was a discrepancy in the evidence about whether the plaintiff ever got out of the Malibu. He testified that he stayed in the car until the ambulance attendants lifted him out and put him in the ambulance. However, each of Mr. Khan, Constable Oddo and Mr. Al Samarrai testified to seeing the plaintiff standing outside of the Malibu. Again, Constable Oddo said that the plaintiff was standing outside the car when he gave him his licence and the vehicle registration.
- [84] I accept the evidence of Mr. Khan, Constable Oddo and Mr. Al Samarrai. Constable Oddo and Mr. Al Samarrai in particular were independent witnesses and both had a clear recollection of what they observed at the scene. There was no independent evidence, for example from the ambulance attendants, corroborating the plaintiff's evidence on this point.
- [85] Another discrepancy between the evidence of the plaintiff and that of the other witnesses is whether the airbags in the Malibu deployed. The plaintiff says both the driver side and passenger-side airbags deployed on impact. Mr. Khan and Mr. Al Samarrai said they did not notice the airbags in the Malibu and Constable Oddo was certain that they did not deploy. He made an entry to this effect in his completed accident report.
- [86] Then there is the issue of whether the plaintiff met with Constable Oddo at the Richmond RCMP station, which Constable Oddo denies. It is possible that the plaintiff is mistaken and that he met with a different officer but he was insistent that it was Constable Oddo. Again, I accept Constable Oddo's evidence that he has no recollection of such a meeting and that, had it occurred, there would be a record of it.

- [87] These discrepancies in the evidence are significant in that, while the plaintiff did come off as sincere in his version of events, his evidence must be assessed to the extent that it "harmonizes with independent evidence that has been accepted", again quoting from Dillon J. in Bradshaw (at para. 186). Such an assessment leads to the conclusion that there are elements of the plaintiff's evidence that cannot be accepted.
- [88] While neither version of events is completely free of doubt, the most compelling factors supporting Mr. Khan and ICBC's position are the fact that no one else saw Mr. Chhina at the scene of the accident and no one saw him leave. It is simply not believable that Mr. Chhina could have left the scene without being seen by Mr. Al Samarrai, particularly with an apparently fractured ankle, given the short time between when Mr. Al Samarrai heard the impact and when he arrived at the scene, as well as the very short distance that he had to travel before arriving at the scene.
- [89] The failure of the plaintiff to identify Mr. Chhina as the driver at the scene of the accident also weighs against the plaintiff's story. Even if the shock of the accident caused him to forget Mr. Chhina's name, the plaintiff could easily have identified Mr. Chhina by reference to the vehicle registration documents.
- [90] Taking all of the evidence into account, the preponderance of probabilities favours the conclusion that Mr. Chhina was not in the Malibu at the time of the accident and that the plaintiff was the sole occupant and driver. Put another way, the plaintiff has not met the onus of proving on a balance of probabilities that Mr. Chinna was the driver of the Malibu.
- [91] Mr. Chhina's statements to the contrary, made on the witness stand and in the recorded conversations, are not sufficient to tip the balance in the other direction. As noted above, Mr. Chhina was not a credible witness and I have considerable difficulty accepting the veracity of his statements, particularly when measured against the weight of the evidence favouring the opposing version.
- [92] It follows that I find the plaintiff 100% liable for the accident.
- [93] The plaintiff's claims against Mr. Khan and Mr. Chhina are dismissed.
- [94] The third party ICBC is entitled to a single set of costs at Scale B.
- "Skolrood J."

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