

CANADA / JUDGMENT

Hébert v. Lamothe

[1974] SCR 1181**COURT**

Supreme Court of Canada

DECIDED

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Hébert v. Lamothe Collection Supreme Court Judgments Date 1973-12-21 Report

[1974] SCR 1181 Judges Fauteux, Joseph Honoré G rald; Abbott, Douglas Charles; Pigeon, Louis-Philippe; Laskin, Bora; Dickson, Robert George Brian On appeal from Quebec Subjects Motor vehicles Decision Content Supreme Court of Canada H bert v. Lamothe, [1974] S.C.R. 1181 Date: 1973-12-21 Dame Sylvio H bert (Plaintiff) Appellant; and Conrad Lamothe and Dame Napol on Lamothe (Defendants) Respondents; and Sylvio H bert (Plaintiff) Appellant; and Conrad Lamothe (Defendant) Respondent. 1973: May 14; 1973: December 21. Present: Fauteux C.J. and Abbott, Pigeon, Laskin and Dickson JJ. ON APPEAL FROM THE COURT OF QUEEN’S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC Motor vehicle—Negligence—Collision—Motor vehicle driven by minor child—Slippery road—Visibility reduced by fog—Excessive speed—Tractor not equipped with rear lights—Personal injury—Damages—Liability of minor’s father—Joint and several liability of driver and tractor owner—Quebec Highway Code, R.S.Q. 1964, c. 231, s. 29—Highway Victims Indemnity Act, R.S.Q. 1964, c. 232, s. 3. The minor son of appellant Sylvio H bert, accompanied by his mother, was driving his father’s automobile at a speed of from 35-40 m.p.h., at about 6 p.m., on a slippery road covered by fog, without a driving licence and without any experience in highway driving. He had his headlights on at low beam and was following a tractor which occupied the entire right lane of the highway; the tractor was not equipped with red lights in the rear as required by the Quebec Highway Code but, allegedly, with a white light, and was visible only as an undistinguishable object. The younger H bert tried to swing left, and braked, but was unable to avoid a collision. Appellant, Mrs. H bert, was seriously injured in the accident. Two actions, one by appellant Mrs. H bert against the driver of the tractor and his wife, who owned the tractor, for damages resulting from serious injuries, and the other by appellant Sylvio H bert against the driver of the tractor, for loss sustained as a result of the damage to the automobile, were dismissed by the Superior Court, and these judgments [Page 1182] were upheld by the Court of Appeal. Hence the appeals to this Court. Held: The appeals should be allowed in part. The negligence of the younger H bert in driving at an excessive speed in the circumstances was not the sole cause of the accident. Normal prudence requires that the driver of any slow-moving vehicle making use of a main highway when visibility is

reduced, should take adequate safety precautions to ensure that following traffic is made aware of his presence in good time. The presence of a white light at the rear provided no improvement. Indeed a white rear light was misleading and ambiguous at the best of times, and would be all the more dangerous in conditions of fog. On the other hand, the red lights required by the Highway Code are unambiguous. To venture into fog on a main road with an inadequate rear light was extremely imprudent. Responsibility should be divided equally between the two drivers. Respondent Mrs. Lamothe, owner of the tractor, is also liable under s. 3 of the Highway Victims Indemnity Act. The actions having been dismissed, the damage must be assessed by this Court. The medical expenses of \$1,036.45 sustained by appellant Mrs. Hébert were admitted. She should be allowed the sum of \$3,000 on the claims for pain and suffering, possible future medical expenses and esthetic damage, the sum of \$ 1,000 for total temporary incapacity and the sum of \$12,000 for partial permanent incapacity. These amounts total \$17,036.45, of which appellant is entitled to recover 50 per cent from respondents jointly and severally, with interest and costs. With regard to the claim by appellant Sylvio Hébert, the damages to his automobile were set at \$1,793.83, of which he is entitled to recover only 50%, with interest and costs, from respondent Lamothe, in view of his responsibility for the fault of his son. APPEALS from judgments of the Court of Queen's Bench, Appeal Side, province of Quebec[1], affirming judgments of the Superior Court. Appeals allowed in part. [Page 1183] Y. Robichaud, for the plaintiffs, appellants. A. Biron, Q.C., for the defendants, respondents. The judgment of the Court was delivered by ABBOTT J.—This litigation arose out of a rear end collision between an automobile driven by the minor son of the appellant Dame Sylvio Hébert, and a farm tractor driven by the respondent Conrad Lamothe, and owned by Dame Napoléon Lamothe. Two actions were taken arising out of this accident, one by Dame Sylvio Hébert against Conrad Lamothe, the driver, and Dame Napoléon Lamothe, the owner of the vehicle, for damages resulting from the serious injuries which Madame Hébert suffered as a result of the accident. A second action was taken by Sylvio Hébert against Conrad Lamothe for loss sustained as a result of the damage to the automobile. Both actions were joined for proof and hearing at trial and appeals from the judgments in both actions were argued together on the appeals to the Court of Appeal and the subsequent appeals to this Court. Before this Court, leave to appeal was granted in the action taken by Sylvio Hébert against Conrad Lamothe, the amount involved in that action being less than \$10,000. The facts are fully set out in the judgments below and shortly stated they are as follows. At approximately 6:00 p.m. on December 10, 1966, Raymond Hébert, the 17-year old son of the appellants, while driving an automobile, belonging to his father, the appellant Sylvio Hébert, struck from behind a tractor driven by the respondent Conrad Lamothe and owned by the respondent, Dame Napoléon Lamothe. Dame Sylvio Hébert was a passenger in the automobile, sitting on the right side of the front seat. The Héberts were travelling on Route 13, a two-lane, two-direction highway between Drummondville and Wickham, in the Province of Quebec. Banks of fog had settled on the highway, and the road was wet and slippery. Raymond Hébert held no driving licence. He was inexperienced in highway driving and had never driven in fog. He was

travelling at a speed of 35-40 miles per hour in a zone where the posted limit was 60 m.p.h. He had his headlights on at low beam, and those lights afforded a visibility of 30-35 feet. The tractor was travelling at a speed of 7-10 miles per hour on the road ahead. It occupied the entire right lane of the highway, although there was a shoulder measuring five feet five inches in width to the right of the pavement. The tractor was not equipped with reflectors. There was conflicting evidence as to whether the tractor had any lights whatever in the rear. The trial judge accepted testimony to the effect that there was a single white light which was lit and visible. Accepting this finding of fact by the learned trial judge, it is difficult, in my view, to hold with any certainty, that at the time of the accident this light could be seen. A burlap bag covered the seat of the tractor and hung from the seat to a point a few inches above the light fixture. The position of this bag shifted when the driver moved, and might have covered the light at any given time. Witnesses said that they saw no light, and respondent Conrad Lamothe himself admitted that the bag might have shifted and covered the light. Raymond Hébert and Dame Sylvio Hébert testified that they saw no light. There were no red lights on the rear of the tractor, as required by s. 29 of the Quebec Highway Code, S.R.Q. 1964, c. 231. Under the circumstances, the slow-moving tractor was visible to Raymond Hébert only as an undistinguishable object on the road ahead at [Page 1185] a distance of 30-35 feet. Hébert attempted to swing left and braked, but was unable to prevent the ensuing collision. The learned trial judge held that Raymond Hébert was driving at an excessive speed in the circumstances, that his negligence in this respect was the sole cause of the accident and he dismissed both actions. He also held that, in the circumstances, young Hébert was the mandatory of both his father and mother. These two judgments were affirmed by a majority judgment of the Court of Appeal. Rivard and Montgomery JJ. agreed with the trial judge that the sole cause of the accident was the excessive speed at which the automobile was being driven at the time of the accident. Casey J.A. dissented, holding that the respondent had been extremely imprudent in that, despite the rain and fog, he ventured onto a main road with a vehicle whose rear light was inadequate to the point of being almost inexistent. He would have divided responsibility equally between the driver of the automobile and the driver of the tractor. There can be no question but that young Hébert was negligent in travelling at a speed of 35-40 miles per hour in fog on a slippery road and that his fault contributed to the accident but, with respect, I cannot agree that it was the sole cause. Under today's conditions, normal prudence requires that the driver of any slow-moving vehicle making use of a main highway when visibility is reduced, should take adequate safety precautions to ensure that following traffic be made aware of his presence in good time. That principle was considered recently by this Court in *Gagné v. Côté*[2], which involved a rear end collision at night between an automobile and a horse-drawn vehicle. In that case Pigeon J., delivering the judgment of the Court said at p. 28: [Page 1186] [TRANSLATION] For over thirty years now the Quebec courts have held it to be negligent to drive an animal-drawn vehicle without a light or reflector, on a public road at night. That statement was quoted with approval in *Charest v. Ouellet*[3], which was affirmed without written reasons by this Court. That case involved a rear end collision between an automobile and a tractor not

equipped with lights or reflectors. In delivering the reasons for judgment of the majority, Rivard J.A. said at p. 619: [TRANSLATION] Driving on a highway at a much slower speed than that of normal traffic, with a vehicle having no light or phosphorescent signal, constitutes a danger. The traffic laws contained in the Highway Code, on this particular point, do not create liability per se; however, they do state certain minimum rules of caution, which indicate that a person who is in breach of them is guilty of negligence. In my view, the existence of a white light at the rear of the tractor provided little or no improvement over a situation where there was no rear light. Indeed a white rear light is misleading and ambiguous at the best of times and would be all the more dangerous in conditions of fog. On the other hand, the red lights required by the Highway Code are unambiguous. I share the view expressed by Mr. Justice Casey, that to venture into fog on a main road with an inadequate rear light was extremely imprudent. It follows that I would allow both appeals and divide responsibility equally between the two drivers. The respondent Madame Napoléon Lamothe, as owner of the tractor, is also responsible under s. 3 of the Highway Victims Indemnity Act, R.S.Q. c. 232. Both actions having been dismissed, no assessment of damages was made by the trial judge. The material to do so is in the record, and [Page 1187] in the circumstances such assessment should be made by this Court. Dealing first with the action of Dame Sylvio Hébert against Conrad Lamothe and his mother Dame Napoléon Lamothe. Madame Hébert incurred medical expenses totalling \$1,036.45 which are admitted. She claims \$2,000 for pain and suffering, \$785 for possible future surgery and \$1,250 for esthetic damage caused by facial scars for which the possible future surgery referred to might be required. These three claims total \$4,035. Madame Hébert spent fifty-four days in hospital and had her leg in traction below the knee for fifty of those days. She took medication for six months to relieve suffering and, at the time of the trial, still suffered from pain in her left foot and knee. As to the estimated cost of future surgery, respondents argued if this became necessary the cost would now be met by the Medical Care Plan in force in Quebec. As to the claim of \$1,250 for esthetic damage resulting from facial scars, Dr. J.C. Favreau, of the "Clinique Orthopédique de Montréal Inc.", considered the damage to be substantial and that compensation should be between \$1,000 and \$1,500. I would allow \$3,000 in all on the claims for pain and suffering, possible future medical expense and the esthetic damage referred to. Appellant also claims \$2,000 for total temporary incapacity. She was unable to do her household work for six months and unable to help her husband in his shop for fifteen months. In the latter capacity, she received no salary, but was given money from time to time by her husband. I would allow \$1,000 under this head. \$35,000 was claimed for permanent partial incapacity. At the time of the accident, Madame [Page 1188] Hébert was 44 years old and the mother of seven living children, the youngest being five years old. She was in good health. In the opinion of Dr. Favreau, she will suffer a permanent partial incapacity of 15 per cent. Dr. Prud'homme St-Germain, for the defence, estimated such partial permanent incapacity to be 11 per cent. I would allow \$12,000 under this head. These amounts of \$1,036.45, \$3,000, \$1,000 and \$12,000, total \$17,036.45 of which appellant Dame Sylvio Hébert is entitled to recover 50 per cent or \$8,518.22, jointly and severally, from the respondents Conrad Lamothe and

Dame Napoléan Lamothe, with interest and costs. In the second action by Sylvio Hébert against Conrad Lamothe, claim was made for \$2,208.82 for damages to his automobile. That loss was established at \$1,793.82. Additional claims were made for towing and the lease of another car, but the evidence as to these is unsatisfactory and I would not allow them. As found by the trial judge, Sylvio Hébert is responsible for the fault of his minor son Raymond Hébert and can recover only 50 per cent of the said sum of \$1,793.82 from respondent Conrad Lamothe. He is entitled to judgment against him for \$896.91 with interest and costs in an action of that class in the Superior Court and the Court of Appeal. As to the costs in this Court, the appellants and respondents were represented respectively by the same counsel. Appellants are entitled to costs in this Court, but there should be only one counsel fee. Appeals allowed in part with costs. Solicitors for the plaintiffs, appellants: Léveillé & Robichaud, Granby. Solicitors for the defendants, respondents: Biron & Jutras, Drummondville.

[1] [1970] Que. A.C. 855.

[2] [1970] S.C.R. 25.

[3] [1971] Que. A.C. 616.

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