

CANADA / JUDGMENT

Lawson v. B.C. Transit

2002 BCSC 1438

COURT

Supreme Court of British Columbia

DECIDED

10 October 2002

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Source record

2002BCSC1438

Citation: Lawson v. B.C. Transit et al.

Date: 20021010
2002 BCSC 1438Docket: B993804
Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIABETWEEN: IMOGENE LAWSON
PLAINTIFFAND: BRITISH COLUMBIA TRANSIT, DALE DICKIE
GREATER VANCOUVER TRANSPORTATION AUTHORITY
COAST MOUNTAIN BUS COMPANY LTD. AND BEN AU
DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE HUMPHRIES

Counsel for the Plaintiff:

A.M. Ross

Counsel for the Defendants:

M.D. Murphy

Date and Place of Trial:

September 3-6, 2002

Vancouver, BC

- [1] Mrs. Lawson sues the defendants for damages she says she suffered in two incidents on transit buses. Mr. Dickie and Mr. Au are bus drivers. There is no issue that each was employed by one of the corporate defendants ("the transit company") at the relevant time. Each bus was an articulated bus with wheelchair accessible service; rather than steps, each bus was equipped with a wide front door and a platform capable of being lowered to access the front of the bus.

JANUARY 10, 1999

- [2] The first incident occurred on January 10, 1999. Mrs. Lawson, who is 74, approached the bus as it was stopped at the bus stop. As she stepped onto the bus, a passenger alighting from the bus collided with her and Mrs. Lawson was thrown back onto the sidewalk. The bus driver helped her up, an ambulance was called and she was taken to hospital. X-rays were taken and she was discharged.
- [3] Mr. Dickie, the driver, testified that although he was aware of Mrs. Lawson approaching the door for about 5 seconds, he had only a glimpse of the exiting passenger as she hurried past him, and had no time to restrain her or yell a warning to Mrs. Lawson. Upon getting out of the vehicle to help Mrs. Lawson, who was yelling for help, he angrily told the other woman to go away, which she did.
- [4] Mrs. Lawson argues that there was a duty upon the driver, in the brief time available to him, to take reasonable care for her safety, which would have included putting out a restraining arm, or warning her of the exiting passenger. The plaintiff says Mr. Dickie had several seconds to watch the other woman making her way to the door of the bus; he could have seen the woman approaching the exit through his rear view mirror and taken appropriate action. As well, she says the transit company was negligent in not ensuring that passengers exit by rear doors only and in not ensuring that drivers enforce such a policy.
- [5] Counsel agree on the law. It is conveniently set out in various quotes and passages in *Wang v. Horrod* (1998), 48 B.C.L.R. (3d) 199 (B.C.C.A.), where a bus moved forward out of an intersection, causing the elderly plaintiff, who had stood up to remove her coat, to fall and strike her head:

The duty of the respondent to the appellant, its passenger, was to carry her safely as far as reasonable care and forethought could attain that end.

...

Although the carrier of passengers is not an insurer, yet if an accident occurs and the passenger is injured, there is a heavy burden on the defendant carrier to establish that he had used all due, proper and reasonable care and skill to avoid or prevent injury to the passenger. The care required is of a very high degree.

...

That public carriers owe a duty of care to their passengers based on the reasonable foreseeability test is uncontroversial.

...

The standard of care, unlike the duty of care and remoteness of damages, does not refer to what is reasonably foreseeable. Instead it is based on what the reasonably prudent person would do in the circumstances.

In this case, the standard of care imposed on the bus driver is the conduct or behaviour that would be expected of the reasonably prudent bus driver in these circumstances. The test is an objective one and takes into consideration both the experience of the average bus driver and anything the driver knew or should have known. The question is whether a reasonably prudent bus driver, aware that he has elderly and infirm passengers on his bus, would check his mirror immediately before starting forward after having stopped at a red light?

The basis for determining that question is whether there is a real risk of harm that could reasonably be avoided. The "real risk" test involves balancing the seriousness of the potential risk and the likelihood of its occurrence on one side with the ease and consequences of avoiding the risk on the other side.

- [6] Did Mr. Dickie breach a duty? In my view he did not. To hold him responsible for such an accident, in circumstances where an exiting passenger unexpectedly hurries by and collides with another passenger, would make him into an insurer.
- [7] The mirror allows the driver to see all the seats on the bus except the ones right behind him. There is no evidence as to where the woman was sitting, only that she appeared suddenly. I am unable to find that she was visible to Mr. Dickie for several seconds in the mirror. Although it was foreseeable that passengers would jostle each other in passing, each was there to be seen by the other. In these circumstances, I am not convinced there was any reasonable action that Mr. Dickie could have taken that would have prevented the collision in any event. Both he and Mrs. Lawson said the passenger came up to the door very quickly. Mrs. Lawson said she had no time to do anything. Mr. Dickie, some distance away, could not have been expected to prevent the collision.
- [8] I do not draw any adverse inference from Mr. Dickie telling the other woman to leave; he was angry at the situation and was trying to help Mrs. Lawson, whom I accept was not taking the situation quietly. He did not foresee serious consequences from the collision and fall. I cannot find, as plaintiff's counsel would have me do, that he sent the woman away because he feared her evidence would be harmful to him.

- [9] It is clear that these buses, which are equipped with ramp and lifting devices at the front doors, are specially designed to facilitate entry as well as exit at the front of the bus for mobility impaired persons. There is no duty to put up a sign requiring passengers to exit via the rear doors where doing so would run contrary to the design and purpose of these buses. Mrs. Lawson said she generally sat at the front and exited by the front doors herself.
- [10] I find no negligence on the part of the transit company in failing to take steps to ensure that passengers left this bus by the rear doors, or in failing to ensure that their drivers enforced such a policy.
- [11] The incident was unfortunate, but it was not a result of any breach by the driver or the transit company.

JANUARY 5, 2000

- [12] The second incident occurred a year later on January 5, 2000. Mrs. Lawson boarded a similar bus at the same stop. She was pushing a cart containing empty bottles which she was taking to a mall to return. She said she put her cart on the bus, held her bus pass up to the driver, and the bus pulled away, causing her to land on her stomach on the floor with her arms outstretched. She says her knee landed on something with sharp teeth or ridges. The driver asked if she wanted an ambulance. As she was concerned about the ongoing dispute she already had with the transit company, she said no, got up herself and continued on her way to the mall to return the bottles. She then returned home, where she treated herself by soaking her knee and arm in hot water and salt.
- [13] Mr. Au, the driver on this route, testified that he watched Mrs. Lawson get on the bus. He testified that he identified her from previous runs as someone who never paid or showed a pass, and who had some difficulty moving. He said he watched her until she was seated and then started off, moving out and changing lanes. A car had stopped behind him, flashing its lights to signal to him that he had room. He was looking to the left as he manoeuvred in traffic, so he was not looking at Mrs. Lawson after she sat down. He heard someone say "ouch" and looked back to see Mrs. Lawson standing by the rail. He asked what the matter was and she said she hurt her knee. He left his seat to go to her and asked if she wanted an ambulance; she said no. He led her back to her seat and drove on. He never saw her fall; he never saw her on the floor.
- [14] The versions of Mr. Au and Mrs. Lawson directly contradict each other. Each counsel urge me to find their respective witness credible, although counsel for the plaintiff says even if Mr. Au is believed, he is still liable for failing to take reasonable care to ensure Mrs. Lawson's safety. In my view, if Mrs. Lawson were securely seated and fell off the seat, Mr. Au would not be liable for injuries sustained in the fall in the absence of any unusual movement of the bus. It is therefore necessary to determine which version is probably true - was Mrs. Lawson seated or was she on her way to her seat when the bus pulled out into traffic?

- [15] Mrs. Lawson was a very difficult witness; she was hard to understand and emotionally volatile. Her answers were rambling, often not responsive, and filled with her personal interpretations and perspectives. She demonstrated the January 5, 2000 incident many times, with graphic and histrionic descriptions, and provided a complicated drawing describing the manoeuvres of her fall.
- [16] Mr. Au had some difficulty with English, and was understandably extremely nervous on the witness stand. He said he did not consider the incident to be serious and gave it no further consideration until he was asked to fill out an accident report. He took many days to fill out the report after being requested to do so, and after consulting his union representative. He admitted he was concerned about its effect on his driving record and employment.
- [17] It was not seriously contested that Mrs. Lawson fell in some manner, and that she landed at least partially on her knee. It is difficult to imagine how this could have occurred had she been securely seated. Mr. Au was not looking at Mrs. Lawson during the incident and can not really say what happened, other than he waited for her to be seated. However, I think it more probable than not that Mrs. Lawson was not seated and that Mr. Au's attention was drawn to the left as he tried to merge into traffic, having been signalled to do so by a waiting vehicle. When the bus started to move, Mrs. Lawson fell.

DUTY/BREACH

- [18] As set out in *Wang v. Harrod*, supra, once an accident has occurred, the defendant must meet the heavy burden of establishing that he used all proper and reasonable care and skill to avoid or prevent injury to the passenger. The standard of care imposed is the conduct expected of a reasonably prudent bus driver in the circumstances. The court must consider the experience of an average bus driver, as well as anything that the particular driver knew or should have known about the passenger. The standard of care required is higher when the driver knew or ought to have known that the passenger was handicapped or elderly.
- [19] In this case, Mr. Au realized that Mrs. Lawson was elderly and had difficulty moving. His evidence was that Mrs. Lawson looked as though she had a problem walking and that she was using her shopping cart much like someone would use a cane. A reasonably prudent bus driver with such knowledge would either look in his rear view mirror or turn in his seat to ensure that she was seated before moving. As Mr. Au did not do this, I find him and the transit company liable for this incident.

DAMAGES

- [20] The plaintiff is entitled to damages only in respect of the second accident. Mrs. Lawson had a number of health issues that pre-existed both accidents. According to Mrs. Lawson and her doctor, the first accident exacerbated some of these health problems and also was the cause of further injuries. It is necessary to determine which damages are attributable to the second accident.

- [21] Mrs. Lawson conveys the overall impression that her life, which was once active and full, has been completely disrupted by these two accidents. I had the impression that she honestly believes this, despite other evidence tending to show she had serious problems before the accidents and has managed to function fairly well after.
- [22] For instance, before the accidents, she used to attend adult classes at King Edward College to advance her education. There was some suggestion from Mrs. Lawson that she could no longer go as a result of the accidents, but after being shown the records, she acknowledged she had continued to attend at least until December 1999. She admitted she had stopped going when she was asked to leave the school because she could not stop talking about Jesus or calling out his name. She also testified that she could no longer travel; however she spent almost three months in Toronto this year visiting her children.
- [23] Mrs. Lawson is devoted to spreading the gospel; her daily vocation is to go to certain areas of the city and preach on the street, handing out tracts. She says that before these incidents occurred she would collect \$12-\$50 a day which she would give to charitable causes, use to buy more tracts, or save so she could travel to other countries to spread the gospel. She would occasionally take her accordion to play on the street.
- [24] She used to take the bus regularly, but walks all the time now, in an effort to get her weight down. One of her main concerns is her inability to play the accordion, due to her right shoulder pain. She no longer goes to church because her preferred service is lively with clapping and tambourines and much movement. She says she does not want to sit on the bench and watch. She now uses a cane and this seems to be a significant factor in her decision not to go to church - she says she does not want anyone seeing her with a cane and asking her about her business.
- [25] Despite many complaints during her testimony as to the constant severe pain in her shoulder, Mrs. Lawson was very animated in the witness stand, re-enacting her falls and injuries with great energy and expression. Her movements, as long as they were directed at the re-enactments, appeared to be unrestricted.
- [26] On discovery, Mrs. Lawson denied having any problems before the accidents. Insofar as she offered any explanation for this discrepancy, it was based on being able to function better before the accident than she can now.
- [27] A dispute arose during submissions as to whether Mrs. Lawson's answers on discovery had been acknowledged by her so as to enable defence to use them as prior inconsistent statements. Plaintiff's counsel contended that Mrs. Lawson had not acknowledged making the statements on discovery, so if defendant's counsel wished to use them, he had to read them in as part of his own case. I have reviewed the relevant portion of the transcript and have sent a copy to counsel. I am satisfied that defendant's counsel followed the proper procedures in putting the questions to Mrs. Lawson. It is true she refused to answer them in any meaningful fashion, but she was given ample opportunity to explain herself. As a precaution, during submissions, I allowed defence to reopen his case and read in the

questions and also allowed the plaintiff to take the stand in a "voir dire" to explain the discrepancies once again. Although I am now of the view that that was not necessary, I can say the new answers would have made no difference anyway as Mrs. Lawson provided no new information in them. I accept that there was an inconsistency in her answers in relation to her having pain before and after the accident, and I find that she did suffer from pain in her back and right shoulder as well as ongoing knee pain before the accident.

- [28] As noted above, the plaintiff is entitled to damages only in respect of the second accident. Considering all of her evidence, she does not seem to separate the two in her mind, nor was she clear on how the effects of the two differed or how her life has changed as a result of each of the accidents.
- [29] Mrs. Lawson went to see her treating physician, Dr. Nedd, 10 days after the first accident. She received regular physiotherapy treatments thereafter. She used a walker for 3 - 4 months, and then switched to a cane. As a result of this accident, Mrs. Lawson claims she suffers severe low back pain. She could not say if this was exacerbated by the second accident, which resulted primarily in knee and right shoulder pain.
- [30] Following the second accident, Mrs. Lawson did not immediately complain of right shoulder pain. She did mention back pain and left knee pain to Dr. Nedd on her visit on January 10, 2000. About three weeks later she mentioned severe pain in her right shoulder and that complaint continued. Her back pain had continued to fluctuate in severity from long before the first accident, and she continued to complain of it after the second.
- [31] Dr. Nedd's clinical records show that Mrs. Lawson has suffered for years with severe back pain, knee pain and right shoulder pain. The records indicate that Mrs. Lawson suffered from severe shoulder pain following an incident with the police in 1994. Entries in October 1996 through to November 1997 reflect severe pain in her right shoulder, decreased range of motion, and prescription drugs for pain. The records also indicate that she had some pain in her right knee and back at that time. In January 1998, the right shoulder pain was described as persistent. Dr. Nedd characterized this as chronic pain which acted up from time to time, sometimes becoming severe and intermittently requiring strong medications.
- [32] Dr. Nedd says, however, that Mrs. Lawson has deteriorated significantly since the accidents. He agrees she suffers from degenerative disc disease and osteo-arthritis, but says the accidents have changed her lifestyle. He says she will need extensive unspecified therapy for many years, including massage, physiotherapy, and drugs, but he would not expect her to be back to the same level she was before. He would simply attempt to manage her pain so she could function adequately.
- [33] Dr. Nedd maintained throughout cross-examination that the pain before the accidents, though at times severe and requiring significant medication, was intermittent and allowed Mrs. Lawson to function at a higher level than she does now. It is his impression that her coping skills are now exhausted.

- [34] Nevertheless, some improvement was noted by July of 2001. She was able to travel to Toronto this year for almost three months to visit her children. Whether she still stands on the street corner preaching was not made clear to me, but Dr. Nedd testified that he would be very surprised if she could do so for any period of time.
- [35] Mrs. Lawson must be returned to the position that she would have been in, with all its attendant risks and shortcomings, and not a better position. Mrs. Lawson's osteo-arthritis is a degenerative condition that leads to general loss of function and increasing amounts of pain. She has a history of longstanding problems in her back, shoulders and knees, with regular bouts of severe pain. She also suffers exacerbated back pain from the January 1999 accident for which the defendants were not found liable.
- [36] In *Athey v. Leonati*, [1996] 3 S.C.R. 458, 140 D.L.R. (4th) 235, Major J. confirmed that damages may be reduced because of a pre-existing condition; that is, a defendant is liable for the injuries caused, but need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced in any event. In this case, Mrs. Lawson is not entitled to damages for the pain she already suffered or would have invariably suffered in the future, only for the amount made worse by the second accident.
- [37] In short, Mrs. Lawson is elderly and suffers from painful medical conditions unrelated to the accident. Nevertheless I accept that the fall she sustained on January 5, 2000 worsened her shoulder pain and caused additional pain to her knee and further reduced her overall ability to cope with her existing health problems. I am unable to determine if there was any separate effect on her back as a result of the second accident.
- [38] As a result of her shoulder pain she cannot play her accordion. As a result of her knee, she cannot kneel to pray, which is important to her. Her overall level of functioning has been reduced, but some improvement has been noted.
- [39] Counsel helpfully provided a number of cases setting out various ranges of damages in support of their respective positions, the plaintiff seeking \$35,000-45,000, the defendant \$5,000-10,000. Given the findings on liability, however, the cases were of limited applicability. I assess non-pecuniary damages at \$15,000.

WAGE LOSS

- [40] Mrs. Lawson is 74, but she contends she could have worked approximately 3 more years standing on the street corner collecting donations. She testified that she collected \$12-50 day in a tin. She has no records and cannot substantiate this. She did not declare any of this money on her tax returns. She would not answer questions as to where she kept the money.

- [41] I accept that Mrs. Lawson's street activities have been curtailed by the exacerbated pain in her shoulder and knee, and that she can no longer play her accordion, but I am not satisfied, on the basis of her rather vague and unsubstantiated evidence, that she had regular source of income from her street preaching that would translate into a claim for past or future wage loss or loss of capacity. In my view, these restrictions should be considered as loss of amenities and enjoyment of life, that is, as part of general damages.

FUTURE TREATMENT

- [42] Dr. Nedd recommended 10 years of various therapies. Dr. Hawk was not in favour of passive therapies, preferring exercise. Most of the evidence of the doctors as to future treatment was aimed at back pain. However, I have not found the defendants liable for the first accident, which is the one which apparently increased Mrs. Lawson's back pain.
- [43] Exacerbation of shoulder and knee pain is attributable to the second accident. Mrs. Lawson seems to be concerned primarily with the shoulder pain. Dr. Nedd has been unable to find any cause for knee pain, and from Mrs. Lawson's testimony, she seemed quite focussed on the immediate pain she felt upon landing on something which she described as having "teeth," rather than ongoing knee problems. However, she does say she can no longer kneel comfortably to pray, and describes her knee as "nervous."
- [44] The shoulder pain was already intermittently quite severe before the accident due to her osteo-arthritis. There has been some improvement since, and she has undergone extensive physiotherapy. It is Dr. Nedd's view that the exacerbation of pain has exhausted Mrs. Lawson's coping skills. That exacerbation should be treated, and Dr. Hawk agreed that Dr. Nedd is an expert in pain management. I accept that passive therapy of some sort will assist her, but she is entitled to be compensated only for treatment for the exacerbation in pain, not for the pre-existing pain. This is an inexact exercise at best. I assess future care costs at \$2,800 based on two physiotherapy treatments per month for three years, at the agreed rate of \$40/hour.

SPECIAL DAMAGES

- [45] The plaintiff should have special damages for the cost of taxis and medications she has incurred since the second accident, as set out in Tab 17 of Ex. 1. Given the amount of medications prescribed before the accident for her shoulder pain, it is likely she would have continued to need medications periodically. I set the portion attributable to the accident at 50%. I will leave it to counsel to add up the relevant amounts.

SUMMARY

- [46] The defendant is liable for the January 5, 2000 accident only. Non-pecuniary damages: \$15,000; Wage loss/loss of capacity - none; future care costs: \$2800.00; special damages to be calculated by counsel.

COSTS

[47] Unless there is a reason to speak to costs, given that she succeeded on one out of the two claims and the trial time, evidence and experts reports fairly evenly divided between the two, the plaintiff will have half her costs at Scale 3.

"M.A. Humphries, J."

The Honourable Madam Justice M.A. Humphries

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/02/14/2002bcsc1438.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lawson-v-b-c-transit-2002>

Prepared on 29 October 2026 · Esheria