

CANADA / JUDGMENT

Minosky v. Brar

2011 BCSC 721

COURT

Supreme Court of British Columbia

DECIDED

3 June 2011

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2011 BCSC 721 Minosky v. Brar IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Minosky v. Brar, 2011 BCSC 721 Date: 20110603 Docket: M103066 Registry: Vancouver Between: William Minosky Plaintiff And Kamaljit Brar Defendant

- and - Docket: M100915 Registry: Vancouver Between: Kamaljit Brar Plaintiff And William Minosky Defendant Before: The Honourable Madam Justice B.J. Brown Reasons for Judgment Counsel for William Minosky: M. Campbell P. Unruh Counsel for Kamaljit Brar: S.S. Parhar J. Suen Place and Date of Trial: Vancouver, B.C. February 23 - 25, 2011 Place and Date of Judgment: Vancouver, B.C. June 3, 2011

- [1] These two related actions came on for hearing before me to determine liability only.
- [2] Each of these actions arises from a motor vehicle accident which took place at 121st Street and 64th Avenue in Surrey.
- [3] The accident took place on a Saturday afternoon, April 25, 2009. It was a clear, dry day. 121st Street is one block east of Scott Road, or 120th Street. At 121st Street, there are four eastbound lanes on 64th Avenue: two through lanes and two turn lanes, one at the south side of 64th to turn right onto 121st Street, the other at the north side of the eastbound lanes to turn left onto 121st Street. For westbound traffic, there are three lanes to the east of the intersection, two through lanes and one left turn lane to turn south onto 121st Street. The collision took place in the intersection of 121st Street and 64th Avenue. MR. MINOSKY'S EVIDENCE Mr. Minosky said that on the afternoon of April 25th, he was looking for an address and had been driving in the vicinity, searching for the address. He was driving north on 121st Street. At the intersection with 64th Avenue, there is a stop sign for northbound traffic. He stopped at the stop sign and waited for traffic to clear. As he left the stop sign, he first noticed the Brar vehicle. He was approximately two feet beyond the stop sign, in motion. The Brar vehicle was at or near the Scott Road intersection. He continued to drive forward at a normal speed. As he continued into the intersection, he saw a westbound vehicle approaching from his right, so he brought his vehicle to a stop, approximately four feet south of the edge of the through lanes for the westbound traffic. He saw Ms. Brar's vehicle again, now approximately half-way between his vehicle and Scott Road. In his view, Ms. Brar had ample opportunity to avoid a collision with his vehicle and he was not

concerned about her vehicle. He waited for the westbound car to pass. His vehicle was stopped facing straight north. Immediately after the westbound vehicle passed, he was struck by the Brar vehicle. The Brar vehicle collided with the front driver's corner of his vehicle. After the collision, his vehicle remained facing straight north and Ms. Brar's vehicle was facing north-east. MS. BRAR'S EVIDENCE

- [4] Ms. Brar said that she left work at about 2:30 p.m. - 3:00 p.m. on April 25th. She is an insurance specialist with VanCity and the branch closed at 3:00 p.m. She drove south on Scott Road, and turned left onto 64th Avenue from Scott Road. She was in the center most through lane, or the fast lane. She said that she had slowed when she turned left from Scott Road and had not yet reached full speed when she saw Mr. Minosky's vehicle in motion in the area of the stop sign. She said that she was some two to five car lengths away when she realized that Mr. Minosky was not going to stop. She immediately applied her brakes and honked. She thought that she had brought her vehicle to a stop and that Mr. Minosky's vehicle struck hers. She said that her vehicle was facing northeast after the collision and Mr. Minosky's vehicle was facing northwest. She said that she had been travelling 50 - 55 kilometres per hour when she first applied her brakes.
- [5] Ms. Brar also relies on the accident reconstruction opinion of Jonathan Lawrence. After considering the versions of events of each of Ms. Brar and Mr. Minosky as well as the damage to the vehicles, Mr. Lawrence concluded:
1. Mr. Minosky started to pull forwards from the stop line about 4.6 to 5.7 seconds before the collision. At this instant the Acura was probably between 51 and 78 meters away.
 2. In order for Ms. Brar to have had an opportunity to stop short of the path of the Chrysler she would have had to detect it as an unambiguous hazard before it entered the straight through lanes eastbound 64th Avenue.
 3. Two independent methods for calculating distance suggest that the Acura was between 45 to 69 meters away when Mr. Minosky first saw it. This distance is likely insufficient for the Chrysler to safely clear the eastbound lanes had the Acura been approaching at 50 or 60 km/h.
 4. Had Mr. Minosky detected the Acura as an unambiguous hazard when he first saw it he could have stopped short of entering the eastbound straight through lanes. DISCUSSION
- [6] Each of Ms. Brar and Mr. Minosky have a superficially plausible explanation as to how the motor vehicle accident happened. However, Mr. Minosky's version is not consistent with the physical evidence. The damage to Mr. Minosky's vehicle is primarily to the centre and toward the passenger side of the front of his vehicle. Mr. Lawrence considered the damage to the vehicles and concluded: "The damage to the cars indicated that the right front corner of the [Brar] Acura collided with the right front corner of the [Minosky] Chrysler." If Mr. Minosky were stopped, facing north, four feet south of the westbound travel lane as he said he was, it would be impossible for Ms. Brar to cause the damage to his vehicle, were she

travelling in the centre most eastbound, or fast lane. Even if she were turning left, as Mr. Minosky assumes she was, and Mr. Minosky's vehicle were facing straight north, the damage would not be to the centre and passenger side of his hood as it is. I do not accept Mr. Minosky's evidence of how the accident occurred.

- [7] I accept Ms. Brar's evidence that she was travelling in the centre most through lane eastbound. Ms. Brar lives on 64th Avenue. She drives 64th Avenue several times a week. She said that she has never turned left onto 121st Street, that there is no reason for her to do so. Ms. Brar's description of how the collision occurred is entirely believable and is consistent with the physical evidence.
- [8] I conclude that the Brar vehicle was much closer than Mr. Minosky believed it to be when he left the intersection. It was an immediate hazard. Ms. Brar was not speeding and was attending to traffic. She had no opportunity to stop and avoid the collision.
- [9] Mr. Minosky argues that, based on Ms. Brar's estimates of speed and distance, Ms. Brar would have had ample opportunity to avoid Mr. Minosky's vehicle if she saw him moving out from the stop sign. Mr. Minosky argues that Ms. Brar said that she was some two to five car lengths from Mr. Minosky when she concluded that he wasn't going to stop. Had this been so, she would have travelled by Mr. Minosky before he had an opportunity to enter her lane of travel.
- [10] This argument places too much weight on Ms. Brar's estimates of distance. When she first concluded that Mr. Minosky was not going to stop, it would have been an emergency situation. She said she slammed on her brakes and honked, but was not able to avoid the collision. In these circumstances, I do not expect that a person would be able to measure with precision the distance between her vehicle and the vehicle with which she was about to collide. I give little weight to Ms. Brar's estimates of distance. Many people are poor judges of distance. However, I do accept her evidence of how the collision happened.
- [11] Section 175 of the Motor Vehicle Act places the burden on Mr. Minosky to yield to traffic that is approaching so closely that it constitutes an immediate hazard. Mr. Minosky has not satisfied me that he yielded as required. Rather, I have concluded that when he entered the intersection, the Brar vehicle was an immediate hazard. I find that Mr. Minosky is 100% at fault. "B.J. Brown J." The Honourable Madam Justice B.J. Brown

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