

CANADA / JUDGMENT

Postic v. Demarco

2020 BCSC 1950

COURT

Supreme Court of British Columbia

DECIDED

9 December 2020

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

2020 BCSC 1950 Postic v. Demarco

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Postic v. Demarco,

2020 BCSC 1950

Date: 20201209

Docket: M182395

Registry: Vancouver

Between:

Sasa Postic

Plaintiff

And

Giovanni Demarco

Defendant

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

Counsel for the Plaintiff:

J. Witten

Counsel for the Defendant:

T. Hulley

Place and Dates of Trial:

Vancouver, B.C.

November 2-4, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 9, 2020

Table of Contents

Overview.. 3

Issues. 3

The Plaintiff's Evidence. 4

The Defendant's Evidence. 5

The Ising Report and Evidence. 7

Legal Principles. 9

Parties' Positions. 11

Analysis. 12

Was the Plaintiff Negligent?. 12

Was the Plaintiff in a Hurry?. 12

Was the Plaintiff Travelling too Quickly or in a Dangerous Position on the Road?. 13

Was The Defendant Negligent?. 15

Was the Accident Reasonably Foreseeable?. 15

Was the Defendant Negligent in Not Shoulder Checking or by Not Activating his Signal?. 15

Summary. 17

Disposition. 17

Overview

- [1] This is a personal injury claim arising out of a motor vehicle accident that occurred on September 12, 2017, on Stewart Street in Vancouver. The accident took place on the part of Stewart Street that is the property of the Port of Vancouver, immediately east of the Clark Drive overpass.

- [2] The plaintiff, Sasa Postic, was driving his 2000 Kawasaki motorcycle westbound on Stewart Street on his way to work at the Port. He pulled up behind a semitrailer-truck which was stopped behind a line of traffic. The defendant, Giovanni Demarco, was driving a 2004 Nissan Pathfinder which was also stopped in the line of traffic, ahead of Mr. Postic. There is no suggestion that either party had been drinking or was otherwise impaired.
- [3] Mr. Postic entered the oncoming, eastbound lane in an attempt to pass the stationary vehicles. It was legal to pass if it was safe to do so. Just moments later, Mr. Demarco pulled his vehicle across the yellow center line and slightly into the eastbound lane. He was attempting to look past the stopped vehicles and observe the reason for the obstruction.
- [4] The two vehicles collided at 6:18 p.m. The collision was captured on a surveillance camera operated by the Port of Vancouver.
- [5] The only issue before me is the question of liability.
- [6] For the reasons that follow, I find that both parties were partially at fault. Mr. Postic is 30% responsible for the accident and Mr. Demarco is 70% responsible. Liability will be apportioned accordingly.

Issues

- [7] Did the accident occur as a result of Mr. Demarco's negligence, Mr. Postic's negligence, or both?
- [8] If both, how should I apportion liability?

The Plaintiff's Evidence

- [9] Mr. Postic testified regarding the accident. There were some problems with his testimony, as discussed below. Mr. Postic testified that he works for the BC Maritime Employers' Association as a longshore worker. On the day in question, he was travelling to his work as a Rubber Tire Gantry operator at Centerm dock for a shift beginning at 6:30 p.m. He testified that he was very familiar with the road. It was dry and the visibility was good. Mr. Postic testified that he was driving his Kawasaki motorcycle and also stated that his motorcycle had a louder exhaust than the stock exhaust that came with it, because he had had the exhaust changed.
- [10] As Mr. Postic was travelling west on Stewart Street, in the left lane, he came upon a line of vehicles stopped ahead of him. He testified that he had seen similar line-ups at the same spot before. Traffic was usually stopped due to a train crossing ahead or because the trucks would line up in the left lane, waiting to make a right-hand turn into a waiting area to access the Vanterm dock. The Vanterm dock is roughly north and east of the north end of Clark Drive, near the Rogers Sugar Refinery.

- [11] Mr. Postic testified that when he came to the back of the line of stationary vehicles he slowed, then stopped, and put his foot down to see if there was any eastbound traffic. He testified he could see 100 to 150 metres down the oncoming lanes. He did not observe any oncoming vehicles or a train. Because it was clear, he decided it was safe to pass the stopped vehicles. He crossed the centre line and proceeded.
- [12] Mr. Postic testified that he was travelling westbound almost in the center of the eastbound lane, but a little closer to the yellow line on his right. He was travelling at a safe speed. Mr. Postic testified that as he passed the first semitrailer-truck, which he had been behind at the outset, he saw the defendant's vehicle, the Pathfinder. It was completely stopped. Mr. Postic testified that he did not see a signal and he did not see Mr. Demarco shoulder check. There was no indication that Mr. Demarco would enter the eastbound lane. Mr. Postic testified that he was travelling approximately 20km/h, maybe a bit more. He admitted that he did not check his speedometer.
- [13] Mr. Postic testified that when he was almost abreast of the defendant, about a second before impact, Mr. Demarco's Pathfinder moved out in a sudden, aggressive move. Mr. Postic testified that he thought Mr. Demarco was perhaps going to make a U-turn. Mr. Postic braked but he did not have an adequate opportunity to avoid the defendant's vehicle. His front wheel collided with the driver's side door of the Pathfinder. He fell to the ground following impact.
- [14] In cross-examination, Mr. Postic agreed that he had only 11 minutes to get from where he was on Stewart Street to his equipment at Centerm. He denied he was in a hurry to get to work. He testified that although his shift started at 6:30 p.m., he had some leeway in terms of arrival time. He testified that he would park his motorcycle in the foreman's parking lot. The distance from his parking lot to the lunchroom, where he would be picked up by a foreman and taken to the gantry, took about 12-15 seconds. In cross-examination, he agreed that the distance from the parking lot to the lunchroom was approximately 100 meters.
- [15] Mr. Postic testified that he did not consider travelling down the right lane instead of the oncoming lane because it was dangerous and illegal to do so. The plaintiff testified that the tractor-trucks and container trucks use that lane. They were long and have to turn from the left lane, across the right lane, because they need to make a wide turn.

The Defendant's Evidence

- [16] Mr. Demarco testified regarding the accident. Mr. Demarco is also an employee of the BC Maritime Employers' Association.
- [17] Mr. Demarco testified that he was travelling with Valerie DezWart to English Bay to meet friends. First, they were planning to stop at Centerm so he could retrieve a jacket from his locker.

- [18] Mr. Demarco testified that he was travelling west on Stewart Street. He drove up behind a tractor-trailer which was stopped. Mr. Demarco testified that this was not an uncommon occurrence. The stop could have a number of causes, including a crossing train, road construction, or a flag person.
- [19] After a short period of time Mr. Demarco decided to move his vehicle into the oncoming lane to determine what was causing the holdup. Before he moved his vehicle, he checked his side and rear view mirrors, as he routinely does. He saw no vehicles when he mirror-checked. Mr. Demarco testified that he began his movement into the oncoming lane immediately upon mirror-checking.
- [20] In direct examination Mr. Demarco stated it was his common practice to shoulder check. He agreed in cross-examination that he could not recall shoulder checking prior to pulling into the eastbound lane and he may not have shoulder checked. Mr. Demarco did not recall if he activated his left turn signal. In testimony he acknowledged that he probably did not activate his signal prior to crossing the yellow line.
- [21] Mr. Demarco testified that he intended to go only far enough to see what was ahead. He testified that he 'crept over', such that his speed was very low.
- [22] Mr. Demarco testified that immediately after he crossed the yellow line, the motorcycle collided with his driver's door and the front wheel of his vehicle. He testified that he did not see or hear the motorcycle at any time prior to the collision. The first time he saw the motorcycle was when it was lying on the ground after impact.
- [23] Mr. Demarco testified that in his years driving Stewart Street he had never seen an overtaking vehicle in the eastbound lane.
- [24] Ms. DezWart, the passenger in Mr. Demarco's vehicle, testified she was shocked at seeing the plaintiff fly through the air. She found the incident upsetting. She immediately got out of the vehicle and went straight to Mr. Postic to ensure he was okay. He was already up off the ground. She has first-aid training and looked for signs of injury.
- [25] Mr. Demarco and Ms. DezWart both spoke with Mr. Postic following the accident. Both testified that Mr. Postic told them that he had been in a hurry. Mr. Demarco testified that the amount of time needed to drive from the Clark Drive overpass to Centerm varies, depending on the time of day and amount of traffic. He testified that Mr. Postic would not have been able to get to work on time, given where he was and the time of the accident.

The Ising Report and Evidence

- [26] Mr. Kurt Ising was qualified as an expert witness as an accident reconstruction engineer. He prepared an engineering report regarding the accident relying on, inter alia, photos of the vehicles post-collision and video footage of the collision taken by the Port.

- [27] There are a number of comments and findings Mr. Ising made that are relevant to the issues before me:
- (1) Neither Mr. Postic nor Mr. Demarco signalled before entering the oncoming lane.
 - (2) Mr. Ising calculates that Mr. Postic started at a speed of approximately 5km/h and accelerated to approximately 35-45km/h prior to braking.
 - (3) Mr. Postic did brake just prior to impact. The motorcycle's brake light was off in video frame 488 but on in frame 489. Considering the timing of these frames, it took the plaintiff at most 1.115 seconds to brake in response to the Pathfinder. Mr. Postic was unable to stop.
 - (4) The Pathfinder's speed would have been very low, within the margin of error for calculation. In his file notes, Mr. Ising notes a possible speed less than or equal to 5km/h.
 - (5) The Pathfinder's brakes were not engaged at impact. Just after impact, the Pathfinder was pitched forward significantly suggesting that it had just stopped. Mr. Ising opined that the Pathfinder was still moving at impact but stopped immediately after impact.
 - (6) The motorcycle would have been hidden from Mr. Demarco's left mirror view in frame 488 and partially hidden in frame 487. Mr. Ising testified that it is possible Mr. Demarco would have seen the motorcycle had he checked his side mirror. However, for some proportion of the population, the motorcycle would have been out of view, in the driver's "blind spot", just before the Pathfinder pulled forward.
 - (7) On cross-examination, Mr. Ising agreed that collision avoidance could involve both speed and vehicle position of the motorcycle. He agreed that had the motorcycle been travelling at a lower speed, Mr. Postic might have been able to avoid the collision. He also agreed that had the motorcycle been travelling in a different position on the road, not so close to the westbound lineup of vehicles, Mr. Postic may have been able to avoid the collision.
- [28] Mr. Ising's report accepted the findings in a 2001 study performed by Reed, Ebert and Flannagan[1]. Based on the Reed study, the exact mirror angles would depend on the driver's height, seat position, and mirror adjustment. Mr. Ising conceded that he did not know Mr. Demarco's height, seat position, and mirror adjustments and therefore he could not draw conclusions regarding the defendant's sightlines. Consequently, Mr. Ising's sixth point is of little assistance to me.

Legal Principles

- [29] Pursuant to s. 4 of the Negligence Act, R.S.B.C. 1996, c. 333, if a plaintiff contributes negligently to their own injury, a court must determine the relative degrees of fault between the plaintiff and the defendant. The question is whether the plaintiff failed to take reasonable care for their safety and whether that failure was one of the causes of the accident: *Bradley v. Bath*, 2010 BCCA 10 at para. 27.

[30] A driver of a vehicle has the right to assume that another driver will obey the applicable traffic laws. Further, a driver has a duty to meet the standard of care imposed both at common law and pursuant to the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA]: *Stewart v. Dueck*, 2012 BCSC 1729 at paras. 37-41; *Salaam v. Abramovic*, 2010 BCCA 212 at paras. 18-21, 25-29.

[31] The relevant provisions in the MVA are:

Duty when overtaking

157 (1) Except as provided in section 158, the driver of a vehicle overtaking another vehicle

- (a) must cause the vehicle to pass to the left of the other vehicle at a safe distance, and
 - (b) must not cause or permit the vehicle to return to the right side of the highway until safely clear of the overtaken vehicle.
- (2) Except when overtaking and passing on the right is permitted, a driver of an overtaken vehicle,
- (a) on hearing an audible signal given by the driver of the overtaking vehicle, must cause the vehicle to give way to the right in favour of the overtaking vehicle, and
 - (b) must not increase the speed of the vehicle until completely passed by the overtaking vehicle.

Passing on left

159 A driver of a vehicle must not drive to the left side of the roadway in overtaking and passing another vehicle unless the driver can do so in safety.

Clear view on passing

160 A driver of a vehicle must not drive to or on the left side of the roadway, other than on a one way highway, unless the driver has a clear view of the roadway for a safe distance, having regard for all the circumstances.

Turning left other than at intersection

166 A driver of a vehicle must not turn the vehicle to the left from a highway at a place other than an intersection unless

- (a) the driver causes the vehicle to approach the place on the portion of the right hand side of the roadway that is nearest the marked centre line, or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line,
- (b) the vehicle is in the position on the highway required by paragraph (a), and

- (c) the driver has ascertained that the movement can be made in safety, having regard to the nature, condition and use of the highway and the traffic that actually is at the time or might reasonably be expected to be on the highway.

Signals on turning

170 (1) If traffic may be affected by turning a vehicle, a person must not turn it without giving the appropriate signal under sections 171 and 172.

- (2) If a signal of intention to turn right or left is required, a driver must give it continuously for sufficient distance before making the turn to warn traffic.

- (3) If there is an opportunity to give a signal, a driver must not stop or suddenly decrease the speed of a vehicle without first giving the appropriate signal under sections 171 and 172.

[32] A breach of a statutory duty is not dispositive of the question as to whether or not the breaching party is liable in negligence. However, violation of a statutory duty may well be evidence of negligence. A statutory duty affords a specific and useful standard of reasonable conduct: *Galaske v. O'Donnell* (1992), 67 B.C.L.R. (2d) 190 at paras. 3-4, 13 B.C.A.C. 143, rev'd on other grounds [1994] 1 S.C.R. 670; *Ekman v. Cook*, 2013 BCSC 2027 at para. 59.

[33] Both an overtaking and overtaken driver have an obligation to proceed in a reasonable and safe manner. In *Eccleston v. Dresen*, 2009 BCSC 332, Justice Barrow explained that there is no dominant and servient driver in an overtaking situation. Their "respective obligations are to be assessed in relation to the circumstances they faced and within that assessment the question of who had the better opportunity to avoid the collision is relevant": at para. 26.

[34] A relevant consideration is which driver had the better opportunity to see the potential for a collision before it occurred. The driver with the better opportunity to see the potential for a collision has a correspondingly greater opportunity to avoid it: *Samograd v. Collison* (1995), 17 B.C.L.R. (3d) 51 at paras. 60-63, 67 B.C.A.C. 223; *Ekman* at para. 62.

[35] Another aspect of the test for negligence is whether a collision is reasonably foreseeable. The fact that something is possible does not mean that it is reasonably foreseeable. As the Supreme Court of Canada points out, any harm that has occurred was by definition possible. For harm to be reasonably foreseeable, a higher threshold than mere possibility must be met: *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at para. 46.

[36] The principles relating to the assessment of credibility were helpfully reviewed by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, aff'd 2012 BCCA 296. Justice Dillon refers to the well-known test in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354, [1952] W.W.R. 171 (B.C.C.A). The Court of Appeal in *Faryna* held that the evidence of each witness must be tested against its harmony with other evidence, the preponderance of the probabilities, and with its reasonableness.

Parties' Positions

- [37] Mr. Postic argues he was entitled to cross over the single solid line to pass other vehicles. He ensured his safety by slowing down, putting his foot down and leaning to the left. He checked for oncoming vehicles. He therefore met his obligation in s. 160 of the MVA. Mr. Postic states that when he began to pass, he did so at a speed that was reasonable in the circumstances, no more than 35 to 45 km/h. His motorcycle was travelling approximately one third of the width of the lane from the yellow centerline, complying with s. 157(1)(a) of the MVA. He argues it was Mr. Demarco's negligence that caused the accident by failing to activate his left turn signal, failing to adequately check his mirrors, and failing to shoulder check.
- [38] Mr. Demarco argues that the accident occurred at 6:18 p.m. and Mr. Postic was due at work at 6:30 p.m. In order to reach his work, Mr. Postic had to travel from the Clark Drive overpass to Centerm, park his motorcycle, and make his way to the specified lunchroom, which was 100 metres from the parking lot. In the lunchroom Mr. Postic would be picked up by a foreman to be taken to his gantry equipment. Although evidence was not led on this point, Mr. Demarco argues it is a matter of public record that the current 100 metre men's world record is 9.58 seconds, held by Usain Bolt. Mr. Postic could not be expected to move this quickly.
- [39] Mr. Demarco argues the accident occurred because Mr. Postic was in a hurry. Rather than wait at the end of the traffic line for vehicles to clear, or to proceed with caution down the right lane, he entered the oncoming lane in an attempt to pass the stationary vehicles. He did not give himself time to properly assess the situation. He also proceeded too close to the yellow centerline, thereby not keeping a safe distance from the vehicle as he was passing.

Analysis

- [40] I must assess the respective blameworthiness of the parties and determine the extent or degree to which their conduct departs from the standard of reasonable care: *Alberta Wheat Pool v. Northwest Pile*, 2000 BCCA 505 at paras. 45-46. Ultimately, I must determine whether one or both of the parties was responsible for the accident.

Was the Plaintiff Negligent?

Was the Plaintiff in a Hurry?

- [41] Following the collision, Mr. Demarco and Ms. DezWart exited the vehicle to see if they could render assistance to Mr. Postic. Mr. Postic told Mr. Demarco and Ms. DezWart that he was in a hurry. At trial Mr. Postic denied that he was in a hurry. I find this difficult to believe.

- [42] First, I do not accept Mr. Postic's evidence that there are no consequences for being late for work. Mr. Demarco is a long-term employee of the BC Maritime Employers' Association. He testified that workers are expected to arrive for their shifts on time, and that there are consequences for lateness. This is consistent with the rules in most workplaces.
- [43] Second, Mr. Postic did not stop prior to entering the eastbound lane. That he did not stop is supported by the video of the accident and Mr. Ising's report. While watching the video, Mr. Postic conceded that he had been 'maybe still moving a little bit'. I find that Mr. Postic did not come to a full stop. This was likely because he was distracted by his need to get to work.
- [44] Third, Mr. Postic testified that he could see 100-150 meters looking westward, down the oncoming eastbound lanes. He could see to a curve in the road. The video reveals that when Mr. Postic entered the oncoming lane, a truck was visible in the eastbound oncoming lane, west of the overpass, approximately at the intersection for the Vanterm waiting area. The oncoming vehicle was a 'Wide Load' vehicle, as are typically used to warn oncoming vehicles of an approaching truck with an oversize load. A 'Wide Load' sign was on top of the truck, with flashing lights mounted on top of the sign. Following behind the warning vehicle was a semitrailer-truck presumably with an oversize load. As Mr. Postic proceeds down the road to the collision, the approaching vehicle continues moving eastbound in the lane.
- [45] Mr. Postic denied seeing these vehicles at any time before the collision. This was likely because he was in a hurry and did not take the time to properly assess the situation before he entered the oncoming lane.
- [46] I find that Mr. Postic was in a hurry on the day of the accident. If Mr. Postic came to a full stop prior to pulling into the oncoming lane he likely would have seen the wide load truck coming toward him. He may also have seen there was a train stopping the traffic. As it was, Mr. Postic slowed but did not stop to give himself sufficient time to assess the situation.

Was the Plaintiff Travelling too Quickly or in a Dangerous Position on the Road?

- [47] The Ising report calculates that when Mr. Postic crossed the yellow line he was going approximately 5 km/h. He quickly reached a speed of 35-45 km/h prior to braking. This is in contrast to Mr. Postic's evidence that he was travelling approximately 20 km/h. While Mr. Postic's speed was not excessive, it was reached in a very short period of time, in one semitrailer-truck length.
- [48] My conclusions are based on the evidence of Mr. Ising. Mr. Ising admitted in cross-examination that a factor in avoiding the collision was speed. Had Mr. Postic been going slower he would have been visible for a longer period of time and he would have had more response time to stop. As it was, the Pathfinder suffered extensive damage and was ultimately written off by ICBC. Mr. Ising admitted that most of the momentum causing the damage to the Pathfinder came from the motorcycle.

- [49] Further, Mr. Postic was travelling westbound in the one-third section of the eastbound lane closest to the yellow line and close to the stationary vehicles. This is confirmed by the video. By approaching close by the side of the vehicles he was overtaking, Mr. Postic reduced his chances of being seen in a side mirror of the vehicles he was overtaking. The speed at which he was travelling also diminished the time in which he might be visible in a mirror. He was lastly at risk that a driver of a stationary vehicle might swing open their door.
- [50] Mr. Ising acknowledged that the position of the motorcycle may have contributed to the accident. He stated that had Mr. Postic been closer to the dividing line, the dotted line separating the two eastbound lanes, he might have gone past or avoided the Pathfinder.
- [51] I find that the plaintiff contravened his statutory duty under the MVA not to pass on the left unless it was safe to do so: ss. 159-160. Given the oncoming traffic, it was not safe to pass. Mr. Postic was negligent in not taking sufficient time and care to observe the vehicles that were evident on the video.
- [52] In addition, Mr. Postic was moving quickly and he did not keep a safe distance from the vehicles he was passing. He breached s. 157(1) of the MVA by not keeping a safe distance from the stationary vehicles. Mr. Postic also bears some responsibility for not foreseeing that another driver might, like him, decide to pass the stationary vehicles. He breached the common-law duty of care to act reasonably, safely, and responsibly in the circumstances.

Was The Defendant Negligent?

Was the Accident Reasonably Foreseeable?

- [53] Mr. Demarco argues that it was not reasonably foreseeable to Mr. Demarco that a motorcycle would attempt to overtake his vehicle at accelerating speed. Mr. Demarco had not seen anything similar, after decades of working at the docks and driving Stewart Street. As noted by the Supreme Court of Canada in *Rankin's Garage*, the mere possibility of something occurring does not mean that it is reasonably foreseeable.
- [54] I do not accept this argument. As Justice Maisonville stated in *Ratelle v. Barton*, 2017 BCSC 1262:
- [138] There were suggestions in final argument that the plaintiff should have been honking during the time he was overtaking Mr. Martinello and trying to overtake the defendant and that this would have indicated his intention to pass to a motorist ahead. I do not accept this proposition. This does not make sense. A motorcyclist would assume that the driver ahead would be aware of his or her presence if he or she, at a minimum, had properly used the rearview and side mirrors and shoulder checked.

[Emphasis added.]

Was the Defendant Negligent in Not Shoulder Checking or by Not Activating his Signal?

- [55] The Ising report confirms Mr. Demarco's evidence that he was moving very slowly as he pulled into the eastbound lane. There is no evidence to suggest that Mr. Demarco was attempting to make a U-turn. However, Mr. Demarco did not activate his turn signal before pulling across the yellow line, contrary to s. 170 of the MVA. This was negligent in the circumstances.
- [56] Mr. Demarco argues that whether or not he signaled would have made no difference because the plaintiff's view of the Pathfinder was blocked until he was relatively close behind the Pathfinder. I disagree. A failure to see a vehicle does not excuse a driver from the obligation to be aware of vehicles around him: *Brook v. Tod Estate*, 2012 BCSC 1947 at para. 23, *aff'd* 2013 BCCA 503.
- [57] Although Mr. Postic would not have seen the signal until he was almost upon the Pathfinder, he might have had time to properly brake or to swerve to the left to avoid the collision. Mr. Ising reported that Mr. Postic took evasive action by braking quickly, in less than 1.1 seconds, in response to seeing the Pathfinder. Mr. Postic's reaction time was good.
- [58] I agree with Mr. Postic that *Pipe v. Dusome*, 2007 BCSC 1066, and *Crevier v. Thompson*, 2015 BCSC 1552, both relied upon by the defendant, can be distinguished on their facts. In those cases, both drivers were travelling in the same direction and the overtaking driver had noticed the turning driver slowing down, but did not take steps to confirm the turning driver's intention (i.e., that they were going to turn left rather than right) before overtaking them. In contrast, Mr. Demarco was fully stopped in his lane without his left turn signal on. He gave no indication that he was about to turn (such as slowing down). Mr. Postic could not have known Mr. Demarco was about to turn into the lane ahead of him.
- [59] Mr. Demarco also did not shoulder check prior to turning left into the eastbound lane. This is contrary to s. 166(c) of the MVA, in that Mr. Demarco did not ascertain that his turn could be made safely, with regard to the use of the road and the driving conditions. Passing was permitted on this section of Stewart Street. Mr. Demarco did not take reasonable precautions by shoulder checking and signalling prior to pulling into the eastbound lane. I find he was negligent in the circumstances.
- [60] While both parties were negligent, I find that Mr. Demarco's negligence was greater in the circumstances. I agree with Barrow J's conclusion in *Eccleston*:
- [46] I find that the negligence of both drivers was significant. I am of the view that the plaintiff's negligence was greater than that of the defendant in that failing to signal in a timely way, and failing to keep a proper look out when turning left off of a highway at a point where passing is permitted, is significantly negligent.

Summary

- [61] I find both parties were at fault for contributing to the accident. Neither was a dominant driver and both parties had an opportunity to see the potential for a collision before it occurred: Samograd; Eccleston. By not doing so, both parties were negligent.
- [62] Mr. Postic should not have pulled out because the wide-load truck was in the eastbound lane. Assuming it was safe to pull out, which it was not, Mr. Postic was overtaking stopped vehicles and it was foreseeable that other vehicles would have the same idea. He should have proceeded at a lower speed and moved further to the centre lane so that he could have been more easily seen and could have more easily taken evasive maneuvers, if necessary.
- [63] Mr. Demarco would likely have seen the motorcycle had he shoulder checked. Further, he would have provided Mr. Postic with warning had he activated his left signal.
- [64] Mr. Demarco's negligence was greater than Mr. Postic's by failing to shoulder check before pulling into the oncoming lane and failing to signal before turning from a stopped position. He gave Mr. Postic no warning of his intention to turn.

Disposition

- [65] I find that the defendant is 70% liable for the collision and the plaintiff is 30% liable for the collision. Liability is so apportioned.

"D. MacDonald J."

- [1] Reed MP, Ebert SM and Flannagan MJ (2001). Mirror Field of View in Light Trucks, Minivans, and Sport Utility Vehicles, UMTRI-2001-1. The University of Michigan Transportation Research Institute: Ann Arbor, MI.

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/20/19/2020BCSC1950.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/postic-v-demarco-2020>

Prepared on 24 October 2026 · Esheria