

CANADA / JUDGMENT

Radjenovic v. Bains

2013 BCSC 654

COURT

Supreme Court of British Columbia

DECIDED

15 April 2013

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2013 BCSC 654 Radjenovic v. Bains IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Radjenovic v. Bains, 2013 BCSC 654 Date: 20130415 Docket: M100008 Registry: Vancouver Between: Sandra Radjenovic Plaintiff And Parbhjot Bains, Vancouver Taxi Ltd., Uros Budimac, Slavica Budimac, Maynard Eugene Embree, and Susan Lee Embree Defendants And Insurance Corporation of British Columbia Third Party

- and - Docket: M105293 Registry: Vancouver Between: Uros Budimac Plaintiff And Parbhjot Bains and Vancouver Taxi Ltd. Defendants Before: The Honourable Mr. Justice Melnick Reasons for Judgment Counsel for the Plaintiff in M100008: Stephen Yung Counsel for the Defendants in M100008, Uros Budimac and Slavica Budimac, and Plaintiff in M105293, Uros Budimac : Derek M. Mah Counsel for the Defendants in both actions, Parbhjot Bains, Vancouver Taxi Ltd., and the Third Party, ICBC: Michael D. Murphy Place and Date of Trial: Vancouver, B.C. April 8 & 9, 2013 Place and Date of Judgment: Vancouver, B.C. April 15, 2013

[1] These actions arise out of a motor vehicle accident that occurred on October 31, 2008 on West 11th Avenue in Vancouver. One vehicle, exiting from a parking stall, was struck by another which was proceeding in the same direction. The only issue is liability. Did the driver of the one vehicle pull out into the travelled portion of the roadway when it was unsafe to do so, or was the driver of the approaching vehicle driving too fast and without due care and attention so that he failed to see the exiting vehicle? I. BACKGROUND

[2] Uros Budimac ("Mr. Budimac") and his fiancé (now wife) Sandra Radjenovic decided to drive from North Vancouver to go to Vij's, a restaurant on West 11th Avenue in Vancouver. Mr. Budimac drove an orange 2007 Mitsubishi Eclipse registered in the name of Slavica Budimac. He parallel parked on the south side of West 11th Avenue, just past an alley on the east side of Vij's. Mr. Budimac and Ms. Radjenovic decided that the length of time they would have to wait to be seated at Vij's was too long so they left, intending to go elsewhere. The time was just after 7:00 p.m. It was dark, but streetlights were on. It had been raining earlier.

- [3] According to Mr. Budimac, he put on his seatbelt, activated the left-hand signal light, checked his rear view mirror and noticed a vehicle waiting behind him in the entrance to the alley, apparently prepared to move into his parking spot. He alleges he did a shoulder check, determined that it was clear to exit, and began to do so slowly. He proceeded part way out of his parking place when, upon doing another shoulder check, he saw headlights approaching in the eastbound lane from the direction of Granville Street at what appeared to him to be a fast speed. He came to a complete stop. His vehicle was then struck on the left front side and pushed forward and sideways into a minivan that was parked ahead of the space from which he was exiting.
- [4] Parbhjot Bains was on duty that evening driving a 2007 Toyota Sienna van owned by Vancouver Taxi Ltd. He had just dropped off a customer at Fir Street and West 10th Avenue when he received a call to pick up a customer on Oak Street. He decided to drive to Oak Street via West 11th Avenue. He said he stopped before crossing Granville Street, then proceeded past Vij's, proceeding east on West 11th. He maintains that he was going about 40 kph, the speed limit being 50 kph. Mr. Bains said that as soon as he crossed the alley behind Vij's, a car suddenly pulled out so quickly that he could not take evasive action.
- [5] Just prior to the accident, Iolanda Millar was driving west on West 11th Avenue, heading in the direction of Granville Street. She was driving her Honda Civic at 20 to 30 kph, she said. She said that she recalled a taxi van coming around the corner, turning right on West 11th from Granville Street. As the taxi was about to go by her, she said, lights came on in a parked car and it started to pull out. She recalled the driver of the taxi pausing briefly, then continuing around the bumper of the protruding car when suddenly the car came out really fast and hit the side of the taxi very hard. At the time the car pulled out, she said, the taxi was "two thirds up beside" the car, measured from the back of the car. The lighting conditions at the time were between dusk and dark, she recalled. She had her headlights on. She believed the car that pulled out was a four door sedan.
- [6] Marek Buksowicz and his wife arrived on West 11th Avenue just as Mr. Budimac and Ms. Radjenovic were leaving. Mr. Buksowicz pulled his vehicle in behind that of Mr. Budimac, out of the east bound driving lane, effectively blocking the alley, to wait for Mr. Budimac to leave so he could take his parking spot. Mr. Buksowicz said that the orange car ahead of his vehicle pulled out into the east bound lane and shortly afterward was hit by a taxi. He recalled that the car left in what he described as an "orderly controlled manner"; not excessively slow or fast; it was normal. His impression of the taxi was that it was going fast. He said that the car was one-half to two-thirds of the way out of the parking spot, at an angle of 30 to 40 degrees, when it was hit. When he saw the taxi, about half of its width was in the west bound lane. The collision was a couple of seconds after the orange car pulled out, he said. Both vehicles came to a stop fairly quickly, he noted.
- [7] Robin Brown, a professional engineer, gave opinion evidence in the area of motor vehicle accident reconstruction. He was retained by the defendants last year and authored a report dated November 16, 2012. He examined the accident site on October 31, 2012 as well as

photographs of the vehicles damaged in the collision. He relied upon assumed events provided by then counsel for the defence. He was able to provide aerial photographs of the area taken in 2008. It was his opinion that the right front corner of the taxi struck the front half of the left door and fender of the Mitsubishi. This caused the Mitsubishi to rotate clockwise. It was his opinion that the right front corner of the Mitsubishi must have been just left of the left rear corner of the minivan parked ahead of it, and moving forward, to produce the damage he observed to the vehicles. He concluded that the taxi had been steered to the left to travel around the Mitsubishi as there had not been continuous contact down the taxi's right side. He said that the taxi and the Mitsubishi which it struck both moved to the left after the Mitsubishi had been pushed into the minivan. He estimated that the taxi had likely been travelling at a speed in the range of 40 to 50 kph on initial impact. In cross-examination, he agreed that the evidence he observed was consistent with the taxi's speed being as high as 60 kph on contact, but not more.

[8] A photograph taken by Mr. Budimac, from behind the accident scene looking east, showed the position of the vehicles at rest being such that the Mitsubishi was virtually opposite and parallel to the minivan with a space between those two vehicles sufficient for a person to comfortably walk between them. The taxi was at an angle pointing east south east, facing in a direction from the westbound lane toward the eastbound lane. The rear of the taxi was at rest at the front portion of the driver's door of the Mitsubishi. II. DISCUSSION

[9] Cases such as this are dependent on their particular facts.

[10] The applicable sections of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 in this situation are:
144(1) A person must not drive a motor vehicle on a highway

(a) without due care and attention,

(b) without reasonable consideration for other persons using the highway, or

(c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions. ... 169
A person must not move a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety and he or she first gives the appropriate signal under section 171 or 172. ... 171(1) Subject to subsection (2), if a signal is required a driver must give it by means of

(a) his or her hand and arm,

(b) a signal lamp of a type approved by the director, or

(c) a mechanical device of a type approved by the director. ...

- [11] I place no reliance on the evidence of Ms. Millar. I find her version of the events inconsistent with the physical evidence of where each of the three vehicles involved was damaged. Between her and Mr. Buksowicz, the latter had the best opportunity to view the impact and the movement of the Mitsubishi in the seconds leading up to the collision. He did not have an opportunity to see the approach of the taxi, but did see it move past him with his peripheral vision. His evidence best accords with the evidence of the expert, Mr. Brown.
- [12] I accept the evidence of Mr. Budimac that he signalled mechanically to turn left and mirror and shoulder checked before he began to slowly exit his parking spot. I accept that the taxi driven by Mr. Bains was not evident to him because it probably still had not approached the area of West 11th east of Granville to be evident to anyone considering moving out of a parking position just east of the alleyway behind Vij's. Mr. Budimac commenced leaving his parking spot because, as he did so, there was no apparent reason to be concerned about oncoming traffic.
- [13] I conclude that Mr. Bains was driving faster than the 30 to 40 kph he estimated at trial. He was probably driving in the range of 50 kph, a speed that was legal for that street, but imprudent for the nature of the surroundings, the time of day and light conditions. He was going too fast to come to a stop behind the Mitsubishi once he saw it and tried unsuccessfully to drive around it.
- [14] This was a case of Mr. Bains failing to yield to a vehicle that had lawfully assumed a dominant position in the eastbound lane notwithstanding that it had not yet pulled out fully into that lane. When Mr. Bains came upon the scene, Mr. Budimac had, exercising appropriate caution, already moved his vehicle substantially into the eastbound lane. He did not, I conclude, suddenly and without warning, pull into the path of Mr. Bains' taxi. Mr. Bains is at fault for the accident, not Mr. Budimac. III. CONCLUSION
- [15] I find Mr. Bains 100% at fault for the damages flowing from the accident.
- [16] Thus, in the action brought by Ms. Radjenovic, I find Mr. Bains and Vancouver Taxi Ltd. liable to compensate her for the damages which, I am advised, have been agreed. That action is dismissed as against Mr. Budimac and Slavica Budimac. Ms. Radjenovic, Mr. Budimac, and Slavica Budimac are entitled to their costs on Scale "B" to be taxed.
- [17] In the action brought by Mr. Budimac, I find Mr. Bains and Vancouver Taxi Ltd. liable to compensate Mr. Budimac for all his damages that have been agreed. He is entitled to his costs on Scale B to be taxed. "Melnick J."

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