
CANADA / JUDGMENT

Rudman v. Hollander

2005 BCSC 1342

COURT

Supreme Court of British Columbia

DECIDED

27 September 2005

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2005 BCSC 1342 Rudman v. Hollander

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rudman v. Hollander,

2005 BCSC 1342

Date: 20050927

Docket: 02 3116

Registry: Victoria

Between:

Barret Rudman

Plaintiff

And:

Charles Max Hollander

Defendant

Before: The Honourable Mr. Justice E.R.A. Edwards

Reasons for Judgment

Counsel for the Plaintiff:

M. W. Prior

Counsel for the Defendant:

M. F. O'Meara

Dates and Place of Trial/Hearing:

September 21 - 22, 2005

Victoria, B.C.

- [1] On June 16, 2001, the plaintiff was injured when he went over the handlebars of his bicycle after braking hard to avoid colliding with the defendant's vehicle.
- [2] The plaintiff alleges his fall was caused by the defendant's negligence in slowing his vehicle abruptly in front of the plaintiff's bicycle while moving to the right, blocking the plaintiff from passing between his vehicle and the curb.
- [3] The circumstances are as follows.
- [4] Around one in the afternoon the plaintiff was proceeding south on Lampson Street in Esquimalt on a route familiar to him. As he went through the intersection of Wychbury he was passed by the defendant's vehicle, also headed south, doing 40 kph.
- [5] The plaintiff agreed that the defendant's vehicle moved into the north bound lane to pass and that had the bicycle and vehicle been side by side in the south bound lane they would have been "very close".
- [6] The defendant testified that shortly after passing through the Wychbury intersection he noted a stop sign at the next intersection with Lyall and lifted his foot from the accelerator.
- [7] Lampson descends gradually from Wychbury to Lyall. As the plaintiff continued south from Wychbury with his bicycle wheels a foot from the curb, he geared up from 11th to 15th gear, increasing speed. At the same time the defendant's vehicle was reducing speed.
- [8] The plaintiff closed to within 3 bicycle lengths (12 feet) of the defendant's vehicle. He estimated his speed was 15 kph when he applied his brakes in a "panic" stop.
- [9] The plaintiff had bought the bicycle six weeks earlier and had never attempted such a stop before. He flew over the handlebars and landed breaking both elbows.
- [10] The evidence was contradictory about how far the vehicle and bicycle were from the stop sign on Lyall when the plaintiff applied his brakes and fell.
- [11] The tenor of the plaintiff's evidence was that the vehicle slowed down farther back from the stop sign and more quickly than he anticipated it would.
- [12] The plaintiff saw neither brake lights nor a turn indicator on the vehicle before his panic stop.
- [13] The defendant testified he intended to proceed straight through the Lyall intersection after stopping and did not apply his brakes until after he heard a noise behind his vehicle which led him to believe he might have been hit from the rear. He then stopped and saw the plaintiff and his bicycle on the ground.

[14] There was no collision.

[15] There is no evidence, such as tire squeal or skid marks, of a rapid slowing or stop by the defendant's vehicle. The plaintiff estimated it was travelling at 5 kph when he applied his brakes for the panic stop.

[16] If the plaintiff's speed estimates are correct, he was closing in on the defendant's vehicle at a speed of 10 kph (15 minus 5) when he applied his brakes 12 feet back of the defendant's vehicle.

[17] The applicable sections of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 ("MVA") provide:

158 (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except

- (a) when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,
- (b) when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive,

...

(2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right

- (a) when the movement cannot be made safely,

162 (1) A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

183 (1) In addition to the duties imposed by this section, a person operating a cycle on a highway has the same rights and duties as a driver of a vehicle.

...

(14) A person must not operate a cycle

- (a) on a highway without due care and attention or without reasonable consideration for other persons using the highway,

[18] The law is quite clear that a cyclist, having the same rights and duties as a motorist, must not follow more closely behind a vehicle than is reasonable and prudent nor pass on the right hand side of a vehicle in the same lane unless that vehicle is turning left or signalling a turn to the left.

- [19] There is no evidence the defendant applied his brakes to slow abruptly as the plaintiff's bicycle closed the distance between them. Coasting down hill with no "foot on the gas" would produce a gradual not an abrupt deceleration of the defendant's vehicle.
- [20] If the defendant began to slow for the stop sign before the plaintiff anticipated it was likely, the plaintiff ought not to have been following so closely and at a closing speed which prevented him from slowing his bicycle safely in response to the deceleration of the defendant's vehicle, no matter where it occurred in relation to the stop sign.
- [21] Any cyclist or motorist must be alert to the possibility that a vehicle immediately ahead may slow suddenly and unexpectedly to avoid a bump or a darting animal, to read an address or for no apparent reason.
- [22] The plaintiff ought not to have assumed that, in the event of an unanticipated deceleration of the defendant's vehicle, he could pass on the right. There was only one lane. It was not "unobstructed". The plaintiff knew that the bicycle and vehicle would be "very close" if passing side by side in the same lane.
- [23] The plaintiff, like a following motorist, was prohibited by s. 158(1) of the MVA from passing on the right if he was unable to stop to avoid colliding with the defendant's vehicle.
- [24] I find the plaintiff was negligent in following the defendant's vehicle more closely than was reasonable and prudent bearing in mind the speed with which he was approaching that vehicle and the fact there was no unobstructed lane to the right in which to pass. I find the plaintiff rode his bicycle without due care and attention to the defendant's vehicle, particularly to its rate of deceleration.
- [25] I am unable to infer the defendant was negligent for failing to recall passing the plaintiff. He had safely passed the plaintiff and returned to the south bound lane. He was entitled to assume following traffic, including bicycles, would keep back a safe distance.
- [26] It follows the plaintiff was 100% responsible for the accident. The action is accordingly dismissed with costs.
- [27] If I am wrong on the issue of liability I would assess non-pecuniary damages at \$20,000.

"E.R.A. Edwards, J."

The Honourable Mr. Justice E.R.A. Edwards

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Prepared on 29 October 2026 · Esheria