
CANADA / JUDGMENT

Tabori v. Renaud

2016 BCSC 1242

COURT

Supreme Court of British Columbia

DECIDED

6 July 2016

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

2016 BCSC 1242 Tabori v. Renaud

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tabori v. Renaud,

2016 BCSC 1242

Date: 20160706

Docket: M126870

Registry: New Westminster

Between:

George Paul Tabori

Plaintiff

And

Daniel Anthony Renaud and Virginia Renaud

Defendants

Before: The Honourable Madam Justice Devlin

Reasons for Judgment

Counsel for the Plaintiff:

D.J. Brown

S. Stanley

Counsel for the Defendants:

L.G. Harris, Q.C.

Place and Date of Hearing:

New Westminster, B.C.

April 19 - 22 and June 3, 2016

Place and Date of Judgment:

New Westminster, B.C.

July 06, 2016

Introduction

- [1] The plaintiff's action arises from a motor vehicle accident between the plaintiff's motorcycle and the defendants' vehicle that occurred on November 16, 2008 in Mission, BC. The collision occurred as the plaintiff's motorcycle attempted to pass the defendant's vehicle which was making a left turn. The trial was with respect to liability only.
- [2] The position of the plaintiff, George Paul Tabori, is that both he and the defendant, Daniel Anthony Renaud, are liable for the accident. Being the co-owner of the car, Mr. Renaud's wife, Mrs. Renaud is also a defendant to this action. Mr. Tabori concedes that he was partly responsible for the accident for failing to anticipate that Mr. Renaud's vehicle might turn left prior to attempting to pass it on the left. However, he submits Mr. Renaud also contributed to the accident by making an unsafe left turn and doing so without activating his left turn signal or checking his driver side mirror.
- [3] Mr. Renaud takes the position that Mr. Tabori is solely liable for the accident as a result of his failure to ensure he could pass in safety.
- [4] Both parties alleged breaches of a number of sections of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA].

The Motor Vehicle Accident

- [5] The collision occurred November 16, 2008, approximately 3:10pm near the intersection of Ferndale Avenue and Barr Street in Mission, BC. It was a clear day, with normal lighting conditions and good visibility. The roads were dry. The plaintiff was operating his 1998 Kawasaki Vulcan motorcycle while the defendant was driving a 1968 Volkswagen Beetle. Mr. Renaud's wife and daughter were passengers in his vehicle. All vehicles were heading eastbound on Ferndale Avenue towards the T-intersection of Ferndale Avenue and Barr Street.

- [6] Mr. Renaud was driving home with his family after attending church services and doing some errands. Mr. Renaud was familiar with the area as the intersection of Ferndale Avenue and Barr Street is a short distance from his family home. Mr. Renaud first noticed two motorcycles as he turned eastbound onto Ferndale off of south Dewdney Trunk Road. At that point, the motorcycles were well back in the distance.
- [7] Mr. Tabori and his friend, Sean Zhao, were riding their respective motorcycles on Ferndale Avenue eastbound. Mr. Tabori was a novice driver who possessed a learner's motorcycle licence. They were behind Mr. Renaud's vehicle, with Mr. Tabori in the left channel and Mr. Zhao slightly behind him in the right channel of the lane.
- [8] Ferndale Avenue runs in an east-west direction and the lanes were divided by a faint single solid yellow line. Eastbound travel along Ferndale Avenue has a downward grade on its approach toward Barr Street. Barr Street and Ferndale Avenue meet in a T- intersection with Barr Street proceeding north off of Ferndale Avenue. The posted speed limit on Ferndale Avenue before Barr Street was 50km/hr. After the Barr Street intersection, the posted speed limit on Ferndale Avenue is 40km/hr.
- [9] As both vehicles approached Barr Street, Mr. Renaud commenced a left hand turn onto Barr Street at the same time Mr. Tabori attempted to pass him on the left-hand side. As a result, Mr. Tabori's motorcycle struck the left side of the rear bumper of Mr. Renaud's VW Beetle. The motorcycle then struck the driver's side fender and then the driver's side of the car. The motorcycle then slid across the roadway and Mr. Tabori, who fell off the motorcycle, proceeded to slide along the road, down the embankment and into the ditch.
- [10] Upon initial impact Mr. Renaud slammed on his brakes bringing the VW Beetle to a stop in the west bound lane of Ferndale Avenue, facing in a northeast direction.
- [11] Emergency responders attended the accident and Mr. Tabori was air lifted to hospital. Mr. Renaud's daughter was slightly injured and she and Mrs. Renaud were taken to hospital by ambulance. Mr. Renaud remained at the scene. Both Mr. Renaud and Mr. Zhao spoke to the police at the scene.

Evidence Called at Trial

- [12] The witnesses called by the plaintiff were Mr. Dong (Sean) Zhao who was riding his own motorcycle behind Mr. Renaud and witnessed the accident and Mr. Michael Araszewski, an expert in accident reconstruction. The parties agree that no adverse inference should be drawn by the fact that Mr. Tabori did not testify at trial.
- [13] The witnesses called by the defendant were the defendant, Mr. Nizar Shajani, a toxicologist who testified about the effect of alcohol in one's system, Mr. Tim Leggett, an expert in accident reconstruction and Constable Allan Beerda who attended the accident scene.

- [14] The Court has reviewed and carefully considered the testimony of the witnesses and the exhibits, including the reports of the two accident reconstruction experts and the photographs in relation to the damaged vehicles and the intersection where the collision occurred. I am not going to exhaustively review the detailed evidence of each witness called at trial but I will set out the evidence of Mr. Zhao and Mr. Renaud and my findings as to their credibility as I consider their evidence particularly important for my analysis.
- [15] Since the plaintiff concedes that he had a blood-alcohol limit in excess of the legal limit at the time of the accident, his impairment is not in dispute. The evidence of Mr. Shajani essentially established that impairment affects one's perception/reaction response.

Evidence of Mr. Zhao

- [16] On the day of the accident, Mr. Zhao had arranged to go on a motorcycle ride with Mr. Tabori. Mr. Zhao had met Mr. Tabori through his work as a UPS delivery driver and they discovered that they shared an interest in motorcycles. Prior to this occasion, Mr. Zhao had gone on one other ride with Mr. Tabori and considered him to be a careful rider.
- [17] Mr. Zhao's day began with meeting Mr. Tabori at his residence where they were joined by Mr. Tabori's friend Rick. They had a meal at Mr. Tabori's house and then set out around 10am for their ride. Since Mr. Zhao was not familiar with the area, he followed behind Mr. Tabori with Rick in the lead. At some point, they stopped so that Mr. Tabori and Rick could take a washroom break. Mr. Zhao testified he remained outside while Mr. Tabori and Rick went inside the restaurant. Mr. Zhao testified he did not notice any smell of alcohol when the two men returned to their motorcycles. They continued with their ride until around 1pm, when Rick was involved in an accident in Mission, which resulted in him being airlifted to hospital. Mr. Zhao did not see the accident as he was a distance behind Rick. Both Mr. Zhao and Mr. Tabori waited at the scene for about an hour and spoke to police investigators. After Rick was taken away from the scene, Mr. Zhao testified they were both upset so they decided to continue their ride and try to find a place to stop and have something to eat. Mr. Zhao continued to ride behind Mr. Tabori.
- [18] About 45 minutes later, as they were driving east along Ferndale Avenue the accident between Mr. Tabori and Mr. Renaud occurred. Mr. Tabori was riding in front of Mr. Zhao and they were keeping a steady distance between each other with Mr. Tabori in the left channel and with Mr. Zhao about 30 metres behind in the right channel of the eastbound lane. Mr. Zhao estimated their speed at 45km/hr even though they were in a 50km/hr zone.
- [19] Mr. Zhao testified he noticed the VW Beetle in front of them significantly slowed and the vehicle's brake lights flashed. Mr. Zhao described the VW Beetle driving as if it did not know what it was going to do. At this point, Mr. Zhao saw Mr. Tabori move to his left into the westbound lane and assumed he was going to pass on the left. Mr. Zhao testified he did not see a left turn signal on the VW Beetle and stated it suddenly "cut the corner" turning left and collided with Mr. Tabori.

- [20] Mr. Zhao described Mr. Tabori "wobbling" on his motorcycle trying to stay upright before he fell off and slid along the roadway into the ditch. Mr. Zhao testified he brought his motorcycle to a stop at the northeast corner of the intersection and went into the ditch to check on Mr. Tabori. Since he did not have any emergency training, Mr. Zhao let others deal with Mr. Tabori. Mr. Zhao did not recall dealing with the driver of the VW Beetle.
- [21] Mr. Zhao testified that he spoke to the police investigators who attended the accident scene, who happened to be the same investigators who attended the earlier accident involving Rick. In cross examination it was suggested to Mr. Zhao that he told Constable Beerda that he did not witness the collision as he was too far behind Mr. Renaud. Mr. Zhao adamantly disagreed and where his evidence differs from that of Constable Beerda, I prefer the evidence of Mr. Zhao. Constable Beerda testified that he did not make notes of the conversation with Mr. Zhao at the time and created a report sometime after the event. I have no doubt that Mr. Zhao was in a position on Ferndale Avenue to witness the collision although, as will be discussed later in this judgment, I do have some concerns about the credibility and reliability of his evidence.
- [22] Two photographs taken by Mr. Zhao at the scene were tendered as exhibits. One photograph was of Mr. Tabori in the ditch, lying on his side with someone's leg supporting him. The other photograph was of the damaged Tabori motorcycle. Mr. Zhao testified he did not know who was in the photograph supporting Mr. Tabori although Mr. Renaud testified that he was the person in the photograph. Much was made during cross examination of Mr. Zhao as to whether he actually went into the ditch and why he did not do more to assist his friend. In my view, given the situation immediately following the accident, it is not surprising that Mr. Zhao was not able to identify Mr. Renaud at the scene. Nor is it surprising that Mr. Renaud does not recall seeing Mr. Zhao in the ditch trying to assist Mr. Tabori. Obviously, at the time the focus of both Mr. Zhao and Mr. Renaud would have been on the well-being of the unconscious Mr. Tabori.
- [23] During cross-examination, Mr. Zhao maintained his position that the Renaud vehicle "cut the corner" despite the fact that in diagrams of the accident scene attached to two separate statements he gave to ICBC adjusters, Mr. Zhao indicated that Mr. Renaud's vehicle was in the proper position to turn and did not "cut the corner", unlike his testimony at trial. Mr. Zhao explained he realized sometime later that the diagrams were not accurate. I appreciate that the diagrams drawn by the ICBC adjusters were not to scale but I am not satisfied from his evidence that they were inaccurate. I am simply not convinced that Mr. Zhao actually saw Mr. Renaud "cut the corner".
- [24] From my observations of Mr. Zhao, I was left with the impression that he was reluctant to say anything that might be perceived as critical of Mr. Tabori. As a result, I have some concerns about the credibility and reliability of his evidence. While he may not have noticed Mr. Renaud's left turn signal, I am not persuaded that his evidence detracts from Mr. Renaud's evidence that he had signalled his turn. I am also perplexed with Mr. Zhao's description that the VW Beetle did not appear to know what it was intending to do as it

slowed down given that the only option at the T intersection was for Mr. Renaud to make a left turn onto Barr Street or continue straight ahead on Ferndale Avenue. It would have been reasonable for one, in the position of Mr. Tabori and Mr. Zhao to assume that a car which slows down as it approaches a T-intersection most likely intends to turn left. I also have difficulty accepting Mr. Zhao's evidence that he and Mr. Tabori maintained a constant speed of 45km/hr when the speed limit was 50km/hr and they were proceeding down a hill. Mr. Zhao's estimate of their speed conflicts with that of accident reconstruction experts who estimated, at the lowest, Mr. Tabori was travelling 50km/hr. Finally, I am not persuaded that Mr. Zhao actually saw Mr. Renaud "cut the corner" despite the fact that he repeated that phrase numerous time in his testimony. I am troubled that Mr. Zhao's description of the turn maneuver when speaking with the ICBC investigators was significantly different from his testimony in court. I do not think this is a case of faulty memory due to the passage of time. Rather, it is an effort by Mr. Zhao to present his evidence in a manner that would benefit Mr. Tabori. Therefore, where Mr. Zhao's evidence conflicts with that of Mr. Renaud, I prefer the evidence of Mr. Renaud.

Evidence of Daniel Renaud

- [25] Mr. Renaud testified that on the day of the accident he was returning home from a morning out with his wife and daughter. He was travelling on a route that was familiar to him. Prior to leaving home that morning, Mr. Renaud conducted a safety check of his newly restored VW Beetle vehicle, which included checking that all lights, including the brake and signal lights, were operational. Mr. Renaud explained that he conducts safety checks on his vehicle every time he drives and is familiar with the hazards on the road through his employment as a Senior Health and Safety Advisor with a telecommunications service provider. Mr. Renaud is also a car and motorcycle enthusiast. He is the President of the Fraser Valley Automobile Society and a member of the Gold Wing Road Riders motorcycle club. He also possesses a St. John's Ambulance certificate.
- [26] Mr. Renaud testified that he first saw two motorcycles in the distance travelling eastbound on Dewdney Trunk Road. As he progressed onto Ferndale Avenue the motorcycles were a safe distance away. As he proceeded down the hill on Ferndale Avenue he slowed his vehicle as he approached the intersection with Barr Street intending to turn left at the T-intersection. He turned on his left turn signal to commence his turn and noticed in his rear view mirror at least one motorcycle was coming over the crest of the hill. Mr. Renaud acknowledged in cross-examination that he did not apply his left turn signal till he was on the flat portion of Ferndale Avenue rather than while coming downhill. There was no doubt in Mr. Renaud's mind that he did activate his left turn signal and I accept his evidence on that point and on the point that he slowed down as he approached the intersection.

- [27] As he commenced his left turn Mr. Renaud saw the face of Mr. Tabori in his left-side mirror. At that moment he uttered "what the hell" or "what the hell is he doing". Mr. Renaud felt a "violent shudder in the car" as Mr. Tabori collided with the vehicle and he firmly applied the car brakes. There had been no horn sounded by Mr. Tabori to alert Mr. Renaud that he was attempting to pass his vehicle.
- [28] The sequence of events took a matter of seconds if not fractions of a second and I am satisfied that Mr. Renaud had no time to avoid the impact. Mr. Renaud described seeing Mr. Tabori flying through the air with his arms and legs spinning. Once he confirmed that his wife and daughter were safe he turned off the car and got out to check on the motorcyclists. Mr. Renaud noticed another motorcycle "fly by" and turn around just past the intersection. Mr. Renaud located Mr. Tabori unconscious in the ditch. He relied on his first aid training to turn Mr. Tabori on his side so that he could breathe. He noticed a strong smell of alcohol coming from Mr. Tabori. Mr. Renaud testified he called out to the other motorcycle rider to come and assist him but he appeared non-responsive. Fortunately, one of Mr. Renaud's neighbours appeared on the scene and provided some assistance till the ambulance attendants arrived and removed Mr. Tabori from the ditch. Mr. Renaud remained at the scene till the investigators finished their examination.
- [29] Mr. Renaud was extensively cross-examined and challenged on many aspects of his testimony. Mr. Renaud conceded on cross-examination that he activated his left turn signal closer to the commencement of his turn on the flat portion of Ferndale Avenue rather than halfway down the hill as he had previously testified. However, he adamantly denied that he failed to activate his signal and that he "cut the corner" by turning left well before he had arrived at the intersection. There is no evidence to suggest that the turn signal was not working properly at the time.
- [30] Mr. Renaud also acknowledged that he did not check his driver side mirror until he commenced his turn but he was adamant that based on the distance of the motorcycle from his car when he checked his rear view mirror until the moment he commenced his turn, it was safe to make the left turn.
- [31] Mr. Renaud was also challenged on precisely how many motorcycles he saw behind him, what the exact distance was and what speed he was travelling as he commenced to make his turn. While there are some discrepancies in his evidence when compared to his examination for discovery testimony and statements to ICBC investigators they do not alter the substance of his evidence and I do not consider them of any consequence in my overall assessment of Mr. Renaud's testimony.
- [32] The plaintiff urges me to view Mr. Renaud's evidence cautiously because he says Mr. Renaud carefully calculated his testimony to present a story most favourable to him. In support of this submission, the plaintiff referred to various aspects of the Renaud testimony where he says he was impeached. For instance, he referred to a variation in the estimated speed and distance between the vehicles, his utterance when he saw Mr. Tabori in his mirror, the

denial that Mr. Zhao was down in the ditch despite the photograph, the vehicle location at the moment he activated his left turn signal and the number of motorcycles he saw behind him. In sum, the plaintiff characterized Mr. Renaud's testimony as deceitful.

- [33] I do not agree. I reject the characterization of Mr. Renaud's evidence urged upon me by the plaintiff. Rather, I found Mr. Renaud to be a reliable and credible witness who is clearly haunted by the collision which occurred almost 8 years ago. I found him to be an honest and careful witness who acknowledged the inconsistencies in his testimony and admitted to certain things that were potentially contrary to his own interest. I found Mr. Renaud someone who was particularly fastidious about safety as demonstrated by his routine of conducting a safety check each time he used his vehicle. I have no basis to doubt the veracity of his testimony. I had an opportunity to observe Mr. Renaud throughout an aggressive cross-examination and I found him to be a candid witness who was doing his best to explain what took place on the day in question. I find no support for the Plaintiff's submission that Mr. Renaud carefully calculated his evidence in order to deceive the court. Accordingly, I accept Mr. Renaud's evidence that he had slowed his vehicle as he approached the intersection with Barr Street, checked his rear view mirror to ascertain the location of the motorcycle and activated his left turn signal in order to commence a left turn. In summary, I find that Mr. Renaud had taken the necessary steps to ensure he could safely turn left.

Expert Evidence

- [34] Both parties called mechanical engineers qualified to provide expert evidence with respect to accident reconstruction. Mr. Araszewski was called by the Plaintiff and prepared two reports and they were filed as exhibits at trial. The first report was dated December 9, 2014 with a second report dated March 16, 2015, created in response to the report of the defendant's expert. The defendant called Mr. Leggett and his expert report dated January 19, 2015, was also filed as an exhibit at trial.
- [35] The experts agree that the Tabori motorcycle made initial contact with the left rear corner of the Renaud vehicle but they disagree as to the exact position of the Renaud vehicle at the point of impact. With respect to the speed of Mr. Tabori's motorcycle immediately before impact, they agree on a range between 50km/hr (Leggett lower range) and 56 km/hr (Araszewski upper range) per hour. Both experts approached their analysis of the accident scene on the key assumption that Mr. Renaud did not signal his turn. However, they agree that if Mr. Renaud had activated his left turn signal, it would have provided Mr. Tabori with more time to react and engage an avoidance maneuver. Since I have found as a fact that Mr. Renaud did activate his left turn signal the detail in the experts report pertaining to the estimated perception-reaction time is of no assistance. I also accepted Mr. Renaud's evidence that he slowed his vehicle as he approached the intersection with Barr Street, which according to Mr. Araszewski would also have given Mr. Tabori increased perception-reaction time.

- [36] With respect to the position of the Renaud vehicle, Mr. Araszewski opined that the vehicle driven by Mr. Renaud likely started the left turn before reaching the intersection thus "cutting the corner". Mr. Araszewski considered the collision a "sideswipe" collision rather than a direct, perpendicular collision. Unlike, Mr. Leggett, Mr. Araszewski did not consider the rust coloured spot on the pavement to have any relevance to his assessment.
- [37] Mr. Leggett opined that the rust coloured deposit on the road shown in some of the police investigators photographs from the scene is immediately beside the rear driver's side corner of the VW Beetle at rest. Mr. Leggett opined this rust deposit on the road was made when the motorcycle tore the running board away from the side of Mr. Renaud's vehicle. Mr. Leggett explained that positioning the point of impact near the rust spot would have meant that the point of impact would have corresponded approximately with the onset of the tire marks on the roadway supporting the conclusion that Mr. Renaud did not cut the corner.
- [38] While their opinions as to the location of the Renaud vehicle slightly differ, they both agree that there are several possibilities. The difficulty I have with these reports is that it is difficult for me to determine which is more accurate; there was no significant distinction between the reports on this point to lead me one way or another. The rust stain could or could not be an indicator on the location of the Renaud vehicle at the point of impact, thus it may or may not support the conclusion that Mr. Renaud cut the corner. The experts' evidence on the positioning of the car ultimately carries little probative value. Bearing in mind that the plaintiff carries the evidential burden, I am not convinced upon all the evidence on the positioning of Mr. Renaud's car that Mr. Renaud cut the corner. I rely on Mr. Renaud's evidence that he did not, rather than on any evidence of the experts.
- [39] As stated earlier, according to the evidence of the toxicologist Mr. Shajani, Mr. Tabori's blood alcohol content established that he was impaired and this impairment would render Mr. Tabori incapable of safe operation and proper control of a motor vehicle. Due to his impairment from alcohol, Mr. Tabori's reaction time would be affected as would his risk assessment. Mr. Shajani also explained that the strength of an alcohol odor is not correlated to the level of alcohol impairment.

Applicable Law

- [40] I now turn to the relevant legal framework. The statutory obligations of the drivers of these two vehicles are set out in the MVA, particularly:

Section 155 prescribes the legal significance of various kinds of dividing lines that appear on highways. Section 155(1)(c) provides that if a highway is marked with:

one single line, broken or solid, the driver of a vehicle must drive the vehicle to the right of the line, except only when passing an overtaken vehicle.

Section 157 (1) sets out the proper procedure for overtaking another vehicle:

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.

Section 159 describes the duty, for purposes of the MVA, on a driver passing another vehicle on the left. It provides:

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.

Section 165 describes the requirement of a driver turning left to look out for both oncoming traffic and traffic from behind:

Turning at intersections

165 (2) When the driver of a vehicle intends to turn it to the left at an intersection where traffic is permitted to move in both directions on each highway entering the intersection, the driver must

- (a) cause the vehicle to approach the intersection in the portion of the right 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) keep the vehicle to the right of the marked centre line or centre line of the roadway, as the case may be, at the place the highway enters the intersection,
- (c) after entering the intersection, turn the vehicle to the left so that it leaves the intersection to the right of the marked centre line of the roadway being entered, or if there is no marked centre line then to the right of the centre line of the roadway being entered, and,
- (d) when practicable, turn the vehicle in the portion of the intersection to the left of the centre of the intersection.

[41] Though counsel rely on the MVA provisions; they acknowledge that while the statutory provisions provide guidelines for assessing fault in motor vehicle accident cases, they do not, alone, provide a complete legal framework. Counsel referred me to various authorities that have judicially considered these statutory requirements for drivers in accidents that occurred in similar circumstances. Since each case must be determined on its own facts, I will refer only to those cases that are factually similar to the facts presented in this case.

[42] The leading British Columbia authority on the relative duties of drivers when passing is *Samograd v. Collision*, 1995 CarswellBC 1106 (C.A.), aff'g 1993 CarswellBC 2649 (S.C.). In that case, the appellant on his motorcycle was passing the respondent on a highway. The appellant did not see that the respondent's left turn signal light was on. The respondent looked in his rear-view mirror but did not look in his side mirror before commencing to turn left. The trial judge apportioned liability 40:60 against the plaintiff. The Court of Appeal

upheld that finding but, in the process, stated that the law does not impose a greater obligation on the passing vehicle or on the left-turning vehicle. Both drivers' obligations are to be assessed in relation to the circumstances they face. A relevant consideration is which of them had the better opportunity to see the potential for a collision before it occurred and therefore had a correspondingly greater opportunity to avoid it. It may be that the passing driver has a greater obligation or it may be that the driver being passed does. Neither result, however, is preordained.

- [43] In the circumstances of this case, I find that it was Mr. Tabori that was in better opportunity to see the potential for a collision. As previously alluded to, in the circumstances of this case, Mr. Tabori was following a car that slowed down as it approached a T intersection, so that in and of itself should have alerted Mr. Tabori to slow down and keep a proper lookout for what move Mr. Renaud would make next. Slowing at a T intersection most reasonably means the driver is not going straight through, surely they are not turning right as there is nowhere to go, it is reasonable to expect that they will turn left. Once Mr. Renaud activated his left turn signal, then Mr. Tabori could only pass on the left if it was safe to do so. There is not much else Mr. Renaud could have done to have avoided the collision, he checked his rear view mirror when he activated his signal and satisfied himself that the motorcycle was a good distance behind, then when he commenced his turn, he saw Mr. Tabori's face in his driver side mirror, but of course, it was too late at that point to take any meaningful preventative action.
- [44] The next two cases also involve similar collisions with vehicles making failed passes, but again as discussed in Samograd the party that had the better opportunity to see the potential for a collision before it occurred differs depending on the circumstances of the case.
- [45] *Pipe v. Dusome*, 2007 BCSC 1066, involved a collision between the plaintiff's motorcycle and the defendant's truck. As in this case, the plaintiff was travelling on his motorcycle behind the defendant's truck. The defendant had seen the motorcycle approaching as he prepared to turn left, but unbeknownst to him, his left turn signal was not working. The defendant also failed to check his left side mirror before he turned. The plaintiff attempted to pass on the left and the collision occurred. Dhillon J. found the primary cause of the accident was the failure of the left turn signal on the defendant's vehicle. Liability was attributed 80% to the defendant for not ensuring he could complete his left turn safely and 20% to the plaintiff for failing to ensure he could pass safely. Since I have found that Mr. Renaud did activate his turn signal he is in a much different situation than that of the defendant in *Pipe*.
- [46] *Ali v. Fineblit*, 2015 BCSC 1494, involved a collision between the plaintiff's motorcycle and the defendant's car. The plaintiff's motorcycle was turning left and struck the defendant's vehicle. The plaintiff had taken the necessary steps to ensure he could safely turn left including activating his left turn signal and confirming the whereabouts of the vehicle behind him. The defendant thought the motorcycle was turning right so she attempted to pass him on the left. In finding the defendant 100% liable, Gerow J. stated "drivers are entitled to expect others drivers to obey the rules of the road. They are not required to

anticipate another driver's negligent behaviour". The following comment by Gerow J. referring to *Eccleston v. Dresen*, 2009 BCSC 332, has application in this case:

When a driver is going to pass another vehicle they must be reasonably certain it is safe to do so. If there is uncertainty, the obligation of the passing motorist is to wait until it is reasonably safe to do so.

[47] The findings in *Ali* are directly applicable to the case at bar. Like Mr. Ali, Mr. Renaud had exercised the requisite standard of care one would expect in these circumstances. There should have been little uncertainty in Mr. Tabori's mind as to Mr. Renaud's expected course of action at the intersection given his slowing down and signalling to the left, but even if there was uncertainty in his mind, for example, failing to see the left turn signal, he should have erred on the side of caution and simply waited before passing in order to ensure it was safe to do so.

Findings as to Liability

[48] I find that Mr. Renaud slowed his vehicle as he approached the T-intersection, intending to turn left onto Barr Street. He checked his rear view mirror, saw the motorcycle behind him at a safe distance, turned on his left signal and commenced the turn. He then noticed Mr. Tabori's face in his driver side mirror. He had no time to react. This is not a case where one failed to see what was there to be seen. I am satisfied that Mr. Renaud took all the necessary steps in the circumstances to ensure it was safe to proceed with the left turn.

[49] I find that Mr. Tabori did not ensure that his passing could be completed in safety contrary to section 159 of the MVA. The left turn signal of the vehicle in front of him was activated and the vehicle had slowed down. Regardless of whether he saw the left turn signal or not, the vehicle had slowed down as it approached the T-intersection where it was reasonable to assume the vehicle was intending to turn left. Mr. Tabori failed to sound his horn to alert Mr. Renaud that he was passing on the left. Mr. Tabori was impaired and that impairment affected his reaction time and his ability to assess the immediate risk. He took an ill-advised risk. All of these factors lead me to conclude that Mr. Tabori failed to exercise the requisite standard of care.

CONCLUSION

[50] For these reasons, I find the Plaintiff 100% liable for the accident. The plaintiff's action against the defendants is dismissed, with costs.

"Devlin J."

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/16/12/2016BCSC1242.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tabori-v-renaud-2016>

Prepared on 26 October 2026 · Esheria