

CANADA / JUDGMENT

Voyageur Provincial Inc. v. Guidolin

[1977] 2 SCR 1112

COURT

Supreme Court of Canada

DECIDED

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Voyageur Provincial Inc. v. Guidolin Collection Supreme Court Judgments Date 1976-12-07 Report

[1977] 2 SCR 1112 Judges Judson, Wilfred; Ritchie, Roland Almon; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe On appeal from Quebec Subjects Motor vehicles Decision Content Supreme Court of Canada Voyageur Provincial Inc. v. Guidolin, [1977] 2 S.C.R. 1112 Date: 1976-12-07 Voyageur Provincial Inc. (Defendant) Appellant; and Dame Teresa Palombi Guidolin and Angelo Guidolin (Plaintiffs) and René Lachance (Defendant) Respondents. 1976: November 4; 1976: December 7. Present: Judson, Ritchie, Dickson, Beetz and de Grandpré JJ. ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC Motor vehicles—Car stopped in left lane—Bus turning over on its side after leaving the paved portion of the highway—Intervention by the Court of Appeal on a question of fact—No error of principle by the appellate court—Highway Code, R.S.Q. 1964 c. 231, s. 50(1)—Civil Code, art. 1053. Appellant's bus was travelling in the left lane of the Trans Canada Highway in a west-east direction, preparing to pass the vehicles in the right lane. At a certain point the bus left the paved portion of the highway, travelled along the median, and finally turned over on its side. Respondent and one of her daughters were injured and the other was killed. Appellant argued at the trial that the manoeuvre which was the basis of the action was forced upon the driver by the fault of respondent Lachance, who stopped his car in the left lane and even made some movement of backing up. This plea was accepted by the trial judge, who found Lachance solely responsible for the accident. In its appeal, appellant asks this Court to reverse the decision of the Court of Appeal, which found appellant liable, and reinstate the judgment at first instance. Held: The appeal should be dismissed. The Court of Appeal committed no error of principle by intervening on a question of fact. It undertook the examination of the record with a proper understanding of its duty. The driver of the bus died before the trial, and his testimony may be found only in the record of an examination on discovery. Moreover, the Court of Appeal accepted all the facts in evidence, but drew different conclusions from those of the trial judge. [Page 1113] On the basis of the testimony of one of the principal witnesses (who stated that immediately prior to swerving to the right in order to avoid colliding with the car driven by respondent Lachance, he saw the bus in his rearview mirror leave the right lane at a distance of between 300 and 500 feet) the Court of Appeal rightly found that the driver was

wrong to leave the right lane when he did, particularly since his raised seat gave him a better view of the road and its hazards than that of the driver of an ordinary car. The bus driver testified that he entered the left lane about fifteen hundred feet before the place where the accident occurred. The Court of Appeal properly noted that he failed to react immediately: at that time either respondent Lachance had already stopped or else he was reducing speed, since he had time to begin backing up. As a further element of liability may be added the fact that the bus driver succeeded in stopping his vehicle only after travelling 327 feet on the median, and even then the bus was to the west of the car driven by respondent Lachance. At the time he left the paved portion of the highway the bus driver either had enough space to stop if he was going at the legal speed of fifty-five miles per hour, or he was going too fast and did not have control of his vehicle. *Lessard v. Paquin et al.*, [1975] 1 S.C.R. 665, distinguished. APPEAL from a judgment of the Court of Appeal of Quebec reversing the judgment of the Superior Court. Appeal dismissed. W.A. Grant, Q.C., for the appellant. Alain Grégoire, for the respondents Guidolin. The judgment of the Court was delivered by DE GRANDPRÉ J.—In its appeal, appellant asks this Court to restore the judgment at first instance which exonerated it of all liability for a traffic accident. On the Sunday of July 2, 1967, about three o'clock in the afternoon, respondent and two of her daughters were travelling from Montreal to Quebec City, on the Trans Canada Highway, in one of appellant's buses. It was raining lightly, and the surface of the road was damp. At the place where the accident occurred, the Trans Canada is straight and has four lanes, two on each side of a [Page 1114] wide grass median. Near Ste-Madeleine, about twenty miles east of Montreal, the bus left the paved portion of the highway, travelled along the median, and finally turned over on its side. Respondent and one of her daughters were injured and the other was killed. More than twenty other persons were also injured more or less seriously, and this Court is asked to determine liability in this case as representative of the other cases. Immediately before leaving the paved surface, the bus was travelling in the left lane, in a west-east direction, preparing to pass a line of vehicles travelling at about fifty miles per hour in the right lane. Appellant submits that the manoeuvre by its driver which was the basis of the action was forced upon him by the fault of respondent Lachance, who stopped his car in the left lane and even made some movement of backing up. This plea was accepted by the trial judge, who found Lachance solely responsible for the accident and condemned him to pay the compensation agreed between the two parties; these two points are no longer in issue. The only question is the liability of appellant, which was found by the Court of Appeal. I do not believe it necessary to examine again in detail all the facts disclosed by the evidence. A large part of the testimony related to the identity of the driver who had stopped his car in the left lane. Lachance stated that he had himself stopped because some unknown person had done so before him. Moreover, all the other relevant parts of the evidence will be mentioned during the discussion of the arguments which the parties submitted to this Court. Appellant's first argument is that the Court of Appeal committed an error of principle by intervening on a question of fact. It points out that the trial judge has the advantage, in considering the evidence, of having seen and heard the witnesses. The reply to this

argument is found in part in the reasons of Montgomery J., speaking for the Court of Appeal: The question that we have to decide is whether the bus company successfully rebutted the presumption of fact and law that it was responsible for this accident. In order to do so, it was obliged to show that its driver committed no fault, however slight. The findings of the [Page 1115] trial judge are favourable to it on this point, and, this being primarily a question of fact, our court hesitates to intervene. The Court of Appeal, therefore, undertook the examination of the record with a proper understanding of its duty. Two other aspects should be noted:

- (a) the driver of the bus, Aubin, died before the trial, and his testimony may be found only in the record of an examination on discovery;
- (b) moreover, the Court of Appeal accepted all the facts in evidence, but drew different conclusions from those of the trial judge. This is a case in which an appeal court has committed no error of principle by intervening on a question of fact: *Lessard v. Paquin et al.* [1] However, appellant goes on, there is a more serious matter. The Court of Appeal misread the evidence, and imposed on the bus driver a standard of conduct more stringent than that of the reasonable man of art. 1053 C.C. In appellant's submission, Montgomery J. was in error in writing: It therefore seems that the bus-driver made an error in judgment in entering the left-hand lane at this moment. From his own testimony, it appears that when he first noticed Lachance's vehicle he paid no particular attention to it, thinking that it was about to turn to the left and so leave his way clear. It is this argument of appellant which obliges me to say a few words on the evidence. As the Quebec courts noted, the principal testimony, apart from that of Aubin, was given by Mr. and Mrs. Gervais and Mrs. Tremblay. These three persons, accompanied by Mr. Tremblay who did not testify, were in a car also travelling toward Quebec City, in front of the bus, in the left lane. This car avoided hitting the Lachance car by swerving to the right. It must be noted that before swerving, Gervais did not put on his brakes, and he passed to the right of Lachance at a speed of at least fifty miles per hour. Where was the bus immediately before Gervais' manoeuvre? He stated that the bus then left the right lane, that he saw it [Page 1116] in his rear-view mirror, at a distance which is difficult to estimate, but which was from three hundred to five hundred feet. On the basis of these figures, the finding of the Court of Appeal that the driver was wrong to leave the right line at the time he did seems to me to be unassailable. This is even more apparent from Aubin's own testimony that his raised seat gave him a much better view of the road and its hazards than that of the driver of an ordinary car. We must also refer to Aubin's testimony that he entered the left lane about fifteen hundred feet before the place where the accident occurred. At that time, either Lachance had already stopped, or he was reducing speed, since he was able to reverse, for however short a distance, before the accident. In either case, Aubin should have reacted immediately, which he did not do, as the Court of Appeal properly noted. It is possible to add another element of liability to those found by the Court of Appeal. The reports made by the Provincial Police officers determined that the bus covered at least 327 feet on the median before stopping. Moreover, the evidence revealed that when it stopped, the bus was still to the west of the Lachance car, the exact distance not

having been determined. The fact remains that at the time he left the pavement, Aubin either had enough space to stop if he was going at the legal speed of fifty-five miles per hour, considering the damp condition of the surface (Highway Code, s. 50(1)), or he was going too fast and did not have control of his vehicle. One final word: appellant relied heavily on the decision of this Court in *Lessard v. Paquin*, cited above, and submitted that the facts of the case at bar are at least as favourable to it as those on which *Lessard* relied before this Court. I shall simply say that I do not share this opinion, as the facts in *Lessard* seem to me to be essentially different from those submitted to us in the case at bar. I would dismiss the appeal with costs. Appeal dismissed with costs. [Page 1117] Solicitors for the appellant: Ogilvy, Cope, Porteous, Montgomery, Renault, Clarke & Kirkpatrick, Montreal. Solicitors for the respondents Guidolin: Ver-mette, Ryan, Dunton & Ciaccia, Montreal. Solicitors for the respondent Lachance: Nantel, Mercure & Poliquin, Montreal.

[1] [1975] 1 S.C.R. 665.

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