

CANADA / JUDGMENT

White v. Sidhu

2022 BCSC 2212

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2212 White v. Sidhu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

White v. Sidhu,

2022 BCSC 2212

Date: 20221219

Docket: M201849

Registry: Vancouver

Between:

William Brendan White

Plaintiff

And

Amarjit Kaur Sidhu

Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

B.M. Cooper

Counsel for the Defendant:

C. Douma

Place and Dates of Trial:

Vancouver, B.C.

October 25-26, 2022

Place and Date of Judgment:

Vancouver, B.C.

December 19, 2022

Introduction

- [1] On May 16, 2018, the plaintiff, William Brendan White, was driving his pick-up truck when it was involved in an accident with the defendant, Amarjit Kaur Sidhu (the "Accident"). Mr. White was making a left hand turn from 184th Street in Surrey, onto 40th Avenue when the two vehicles collided.
- [2] This is a trial with respect to liability. The only issue in this trial is whether one, or both, of Mr. White and Ms. Sidhu are negligent in respect of the Accident. If both are found to be negligent then the Court is called upon to apportion liability.

Liability for the Accident**Parties' Positions**

- [3] Mr. White says he was travelling northbound on 184th Street and activated his left turn signal with the intention of turning left onto 40th Avenue. He claims that he slowed to about 20 kilometres per hour and Ms. Sidhu's vehicle did not stop at the stop line at 40th Avenue. It was as a result of Ms. Sidhu's failure to stop that her vehicle collided with Mr. White's pick-up truck.
- [4] Mr. White submits that Ms. Sidhu is wholly responsible for the Accident. In the alternative, Mr. White submits that if he is found contributorily negligent, it should be for no more than 25 percent.
- [5] Ms. Sidhu says that she stopped just passed the designated stop line at 40th Avenue. She claims she remained stopped and Mr. White turned left too sharply from 184th Street, striking her vehicle.
- [6] Ms. Sidhu submits that Mr. White is wholly responsible for the Accident.

Undisputed Facts

- [7] The following facts are not controversial:
- a) The Accident was reported to police at 6:50 a.m. on May 16, 2018;

- b) Mr. White was driving a dark-coloured, full-size Dodge Ram pick-up truck (the "Dodge") and had no passengers.
- c) Ms. Sidhu was driving a beige/gold-coloured Honda Accord, a four-door Sedan (the "Honda") and had three passengers with her.
- d) The Accident occurred at the intersection of 184th Street and 40th Avenue in Surrey. 184th Street runs north-south, with one lane going in each direction. 40th Avenue runs east-west, with one lane going in each direction. Mr. White was proceeding northbound along 184th Street and Ms. Sidhu was travelling eastbound on 40th Avenue.
- e) Mr. White was a 52-year old former professional truck driver and spent fifteen years driving tractor trailers for work. He has a Class 1 licence. He was familiar with the route being taken.
- f) Ms. Sidhu was also familiar with the area as it was the route she took to her place of employment on 184th Street.
- g) There is a stop sign for eastbound drivers on 40th Avenue. There is also a marked stop line on the roadway.
- h) Ms. Sidhu was planning on turning right onto 184th Street to travel southbound.
- i) Mr. White was planning on turning left on 40th Avenue to travel westbound.
- j) The vehicles could have safely made the turns without interfering with each other.
- k) The damage to the Dodge was to the left front wheel and caused the "radius arm" to break. The damage to the Honda was to the left front corner, and included a broken headlight and damage to the bumper.

Other Evidence

- [8] The only evidence was that of the two drivers.

Mr. White

- [9] According to Mr. White, he was proceeding northbound on 184th Street. He was intending to turn left onto 40th Avenue. He estimates his speed approaching the intersection was about 60 kilometres per hour. He put on his signal light to turn left. He explained that he took the turn slowly because if he took turns too fast in the Dodge, it would roll over on account of its height. He had modified it on purchase to be a little higher. He says he slowed down to 20 kilometres per hour through the turn. He denies that he was cutting the corner.
- [10] Mr. White did not see Ms. Sidhu's vehicle before she crossed the stop sign, and could not confirm if she had stopped or not. His evidence was that he first saw her as the Honda was hitting his vehicle. He describes the Accident as happening in a "split second". Mr. White recalls that Ms. Sidhu's vehicle was moving at the time of the Accident.

- [11] He says he had no time to react and upon impact, Ms. Sidhu's vehicle rolled backwards 20 feet or so. He testified that the Honda was ten to 20 feet passed the stop sign at the time of impact. Mr. White indicated on a Google map image that the Honda was approaching the centre line of 184th Street when the impact occurred.
- [12] Mr. White also indicated on a Google map image where he commenced his left-hand turn. The marking he made indicates that he started his turn before he had reached the westbound lane of 40th Avenue.
- [13] Mr. White described the impact as a "heavy hit" with enough force to bend the radius arm, which is a piece of metal under the vehicle intended to control the wheel motion. Mr. White agreed that Ms. Sidhu was going to make a right-hand turn from 40th Avenue onto 184th Street.

Ms. Sidhu

- [14] Ms. Sidhu says she came to a complete stop a little ahead of the stop sign at the intersection of 40th Avenue and 184th Street. She was unsure how far passed the stop sign she was stopped. She says she was stopped and had not yet started making her right turn.
- [15] She scanned to the left and right and on her right she saw the Dodge at quite a distance away. She says it appeared to be travelling fast. She did not have any concerns that this vehicle would impact her right turn. She did not pay any attention to any signal lights on the Dodge.
- [16] Ms. Sidhu says she then looked to the left and saw an approaching vehicle heading southbound on 184th Street. She yielded to this southbound vehicle and waited for it to pass. When she looked back to her right to begin her turn, her vehicle was struck. She did not see the Dodge just before the Accident. She recalls that on impact her vehicle moved backwards but she could not recall how far.

Legal Framework

- [17] This action involves the interplay between various sections of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA]. Sections 144, 174, 175, and 186 of the MVA provide as follows:

Careless driving prohibited

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.
- (2) A person who contravenes subsection (1) (a) or (b) is liable on conviction to a fine of not less than \$100 and, subject to this minimum fine, section 4 of the Offence Act applies.

Yielding right of way on left turn

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

Entering through highway

175 (1) If a vehicle that is about to enter a through highway has stopped in compliance with section 186,

- (a) the driver of the vehicle must yield the right of way to traffic that has entered the intersection on the through highway or is approaching so closely on it that it constitutes an immediate hazard, and
 - (b) having yielded, the driver may proceed with caution.
- (2) If a vehicle is entering a through highway in compliance with subsection (1), traffic approaching the intersection on the highway must yield the right of way to the entering vehicle while it is proceeding into or across the highway.

Stopping at intersections

186 Except when a peace officer directs otherwise, if there is a stop sign at an intersection, a driver of a vehicle must stop

- (a) at the marked stop line, if any,
- (b) before entering the marked crosswalk on the near side of the intersection, or
- (c) when there is neither a marked crosswalk nor a stop line, before entering the intersection, at the point nearest the intersecting highway from which the driver has a view of approaching traffic on the intersecting highway.

[18] Section 165 of the MVA governs left turns at intersections and provides as follows:

Turning at intersections

165 (1) If the driver of a vehicle intends to turn it to the right at an intersection, the driver must cause it to approach the intersection and then make the turn as close as practicable to the right hand curb or edge of the roadway.

- (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

- (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,

[19] The Accident involved a left turn by Mr. White onto a through highway, as contemplated by s. 175 of the MVA. There was no oncoming traffic in the southbound lane of traffic on 184th Street to which Mr. White was required to yield. Accordingly, I conclude that s. 174 is not directly applicable here.

[20] The Court in *Coulter (Guardian ad litem of) v. Leduc*, 2005 BCCA 199 reviewed the law as it applies to drivers making turns from stop signs:

[36] *Keen v. Stene* (1964), 44 D.L.R. (2d) 350 also addresses the issue of the duty owed by one with the right-of-way. In that case, Sheppard J.A. writing for the majority stated as follows:

The duty on the through traffic having the right-of-way has been defined in *Walker v. Brownlee and Harmon*, [1952] 2 D.L.R. 450, by Cartwright, J., at p. 461, as follows:

if he seeks to cast any portion of the blame upon B, the driver having the right-of-way, A must establish that after B became aware, or by the exercise of reasonable care should have become aware, of A's disregard of the law B had in fact a sufficient opportunity to avoid the accident of which a reasonably careful and skillful driver would have availed himself; and I do not think that in such circumstances any doubts should be resolved in favour of A, whose unlawful conduct was fons et origo mali.

Hence the duty upon the through traffic only arises under the following circumstances:

1. The entry past the stop sign has been made and made in "disregard of the law".
2. This through traffic became aware or should have become aware of the defendant's disregard of the law, that is, aware of the entry in disregard of the law.
3. The through traffic had a sufficient opportunity to avoid the accident, etc.

Assuming that the plaintiff should have seen the defendant when stopped, that would impose no duty as the plaintiff was entitled to assume that the defendant would yield the right-of-way.

[21] Apart from these rules of the road, all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. This includes keeping a proper lookout and taking reasonable precautions in response to apparent potential hazards: *Stewart v. Dueck*, 2012 BCSC 1729 at para. 38.

[22] In *Salaam v. Abromovic*, 2010 BCCA 212, after having referenced s. 144 of the MVA, Groberman J.A. concluded at para. 21:

[21] In the end, a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not

eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way. While s. 175 of the Motor Vehicle Act and other rules of the road are important in determining whether the standard of care was met, they are not the exclusive measures of that standard.

[23] The court must consider not only whether the conduct of either party constituted a breach of the MVA, but also whether the conduct was otherwise indicative of a failure to meet the appropriate standard of care: *Small v. Kanhai*, 2022 BCSC 1784 at para. 62.

[24] I have assessed the liability issues with these principles in mind.

Analysis

[25] Before addressing my conclusions on liability, I wish to address the submissions of the plaintiff that Ms. Sidhu answered her questions in some type of "labouring manner" and that she was not credible in some of her evidence, particularly regarding the speed the Dodge was going. I disagree. My assessment is that both parties were trying to tell the truth and recollect what had happened over four years ago. Ms. Sidhu was candid in admitting that her estimate of speed was a guess and based on her past experience of other vehicles travelling along 184th Street. I find that they were both credible witnesses.

[26] I agree with the defence submissions that if Ms. Sidhu was going straight or turning left onto 184th Street, then Mr. White would have been the dominant driver. However, this is not the case here.

[27] In my view, neither of these drivers could be called the dominant driver. They were both servient drivers and owed a duty to keep a proper lookout for each other. Neither driver had to yield to the other. Rather, this is a case in which both vehicles should have been able to complete their intended maneuvers without interfering with the other.

[28] It is clear, and admitted by Ms. Sidhu, that she did not stop in accordance with s. 186 of the MVA. She conceded that she stopped passed the designated stop line, though it is contested and unknown exactly how far past the designated stop line she proceeded.

[29] I accept that she was not intruding into the southbound lane of 184th Street as suggested by Mr. White, because if she was, then she would have been a hazard to the oncoming southbound vehicle she observed. That vehicle was able to pass in front of her without incident.

- [30] Ms. Sidhu agrees that her vehicle was pushed backwards as a result of the impact. The resting place of her vehicle was documented in photographs entered as exhibits at trial. The photographs confirm that where the Honda came to rest was slightly past the designated stop line. I accept that there was a significant roll-back considering the size of the Dodge and the damage to both vehicles. As Mr. White testified, the radius arm (a piece of metal) was broken.
- [31] As such, I find that Ms. Sidhu was in breach of her duty to stop at the designated stop line and not beyond it, engaging ss. 186 and 175(1)(b) of the MVA. If Ms. Sidhu had stopped at the designated stop line, I am of the view that the Dodge would not have collided with the Honda.
- [32] In my mind, this Accident also engages s. 165 of the MVA. I have also concluded that Mr. White is in breach of his duty to make his left turn so that his vehicle leaves the intersection to the right of the marked centre line of 40th Avenue. Mr. White indicated where he commenced his turn, and it is clear that he did so in a fashion in breach of s. 165(2)(c) of the MVA. In essence, Mr. White cut the corner too sharply, resulting in him hitting the left front corner of the Honda.
- [33] I specifically reject Mr. White's evidence that the Honda had proceeded as far into the intersection as he testified. His evidence of where the Honda was, being fully into the southbound lane of 184th Street, makes no sense. Ms. Sidhu was not attempting to cross 184th Street, nor was she attempting to turn left; she was planning on turning right. There is no rational reason why Ms. Sidhu would drive to the point that Mr. White says she did.
- [34] I conclude that both drivers were failing to give a proper lookout for the other. Mr. White claims he did not see the Honda when it was there to be seen. Ms. Sidhu did see the Dodge from a distance but claims she did not see the Dodge again until it hit her. She also did not see the Dodge's signal light, which I find was on, which supports a lack of proper attention on her part.
- [35] This collision would never have happened but for the negligence of both drivers.

Allocation of Liability

Legal Principles

- [36] The relevant provisions of the Negligence Act, R.S.B.C. 1996, c. 333 are:

Apportionment of liability for damages

1 (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

Liability and right of contribution

4 (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.

(2) Except as provided in section 5 if 2 or more persons are found at fault

[37] The test for apportionment of liability is relative blameworthiness, or put another way, the weight or degree of each party's fault: *Cempel v. Harrison Hot Springs Hotel Ltd.* (1997), 43 B.C.L.R. (3d) 219, 1997 CanLII 2374 (C.A.) at 220. The "fault is to be determined by assessing the nature and extent of the departure from the standard of care of each of the parties": *Aberdeen v. Township of Langley, Zanatta, Cassels*, 2007 BCSC 993 at para. 62, varied on other grounds, 2008 BCCA 420 [Aberdeen CA].

[38] The court is to consider the following factors in assessing relative degrees of fault:

1. The nature of the duty owed by the tortfeasor to the injured person.
2. The number of acts of fault or negligence committed by a person at fault.
3. The timing of the various negligent acts. For example, the party who first commits a negligent act will usually be more at fault than the party whose negligence comes as a result of the initial fault.
4. The nature of the conduct held to amount to fault. For example, indifference to the results of the conduct may be more blameworthy.
5. The extent to which the conduct breaches statutory requirements.
6. The gravity of the risk created.
7. The extent of the opportunity to avoid or prevent the accident or the damage.
8. Whether the conduct was deliberate, unusual, or unexpected.
9. The knowledge one person had or should have had of the conduct of another person at fault.

Graham v. Carson, 2015 BCCA 310 at para. 11.

[67] As noted in *Coffey v. Sabbaghan*, 2020 BCCA 335:

[42] Fault in this sense equates to blameworthiness. It has been described as "a gauge of the amount by which each proximate and effective causative agent fell short of the standard of care that was required of that person in all the circumstances": *Cempel v. Harrison Hot Springs Hotel Ltd.* (1997), 43 B.C.L.R. (3d) 219 (C.A.).

[39] As explained by Finch J.A. in *Alberta Wheat Pool v. Northwest Pile*, 2000 BCCA 505:

[46] Fault or blameworthiness evaluates the parties' conduct in the circumstances, and the extent or degree to which it may be said to depart from the standard of reasonable care. Fault may vary from extremely careless conduct, by which the party shows a reckless indifference or disregard for the safety of person or property, whether his own or others, down to a momentary or minor lapse of care in conduct which, nevertheless, carries with it the risk of foreseeable harm.

Analysis

[40] If Ms. Sidhu had stopped her vehicle where she should have, being at the designated stop line, she would have been in a position of safety and would not have been struck by the Dodge. If Mr. White had been more attentive and not commenced his left-hand turn early, the Dodge would not have come into contact with the Honda. It was through the combined negligence of each driver that this Accident occurred.

[41] I am not able to find that one of the drivers is more blameworthy than the other. They each bear equal responsibility. I conclude that liability for the Accident is appropriately apportioned 50 percent against Mr. White and 50 percent against Ms. Sidhu.

[42] If either party wishes to make submissions on costs, they must indicate this in a letter to the registry within 30 days from the pronouncement of these Reasons.

"Forth J."

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