IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Rennehan v. Heffernan, 2008 NSSC 39

Date: 20080205
Docket: SH-230635
Registry: Halifax

Between:

Stacey Rennehan

Plaintiff

v.

Christopher Heffernan and Harold Heffernan

Defendants

Judge: The Honourable Justice John M. Davison

Heard: December 17, 2007 in Halifax, Nova Scotia

Written Decision: February 5, 2008

Counsel: W. Dale Dunlop and Julia Smart, for the plaintiff

Fern M. Greening and Joshua Martin, for the defendant

Davison, J:

[1] The plaintiff is a thirty-year old woman who suffered injuries on December 12, 2002 when, as a pedestrian in the parking area of Quinpool Center, she was struck by an automobile operated by the defendant, Christopher Heffernan and owned by the defendant, Harold Heffernan.

[2] The motor vehicle accident occurred around 5:00 p.m. which was a time past dusk. The plaintiff described the weather as wet snow which was more water than snow. The defendant driver also referred to wet snow and attributed as one of the reasons he did not see the plaintiff before the impact was “weather conditions”.

[3] At the outset I would say I was impressed with the manner in which the plaintiff gave her evidence. She made no attempt to exaggerate her injuries and expressed agreement in a frank manner with several matters raised in cross-examination. The defendant, Christopher Heffernan, is 23 years of age and he did not attempt to evade issues raised by counsel for the plaintiff but did not advance a recollection of events leading up to the accident and at the time of the accident with the same degree of recollection as exhibited by the plaintiff. I did not accept his testimony about the weather and I do accept the plaintiff’s version of the relevant

events. I find the weather would not impair the vision of a motorist who was operating a vehicle with reasonable care.

[4] Ms. Rennehan worked in offices in Quinpool Center immediately adjacent to the part of the parking lot where the accident happened. Her motor vehicle was parked close to the door leading to the offices and the vehicle was facing the offices. The plaintiff activated the headlights on her car with a fob through the window of her office and then journeyed down the stairs to the parking area.

[5] The scene of the accident is important when examining the actions of the two parties. After exiting from her office into the parking area the plaintiff encountered an area which had yellow lines cross-hatched on the pavement. The parking area did not have stop signs in the normal fashion but on a number of locations “stop” was painted on the pavement. Before vehicles could enter the cross-hatched section on which the plaintiff was to walk the drivers were required to stop in obedience to signs of “stop” painted to govern vehicles travelling in an east and in a west direction.

[6] The plaintiff was wearing blue jeans, winter boots and a black winter jacket. She was carrying a bouquet of flowers and a shoulder purse. She said her vehicle was parked close to the office door and she would only take 5 to 7 seconds to walk to her vehicle from the office door.

[7] Very close to the scene of the accident there was a light pole which contained lights of a large size and which would serve to illuminate the area. The pole is situate over the “stop” area governing movement of vehicles travelling in a westerly direction. This was the area where the defendant said he stopped his vehicle.

[8] It is to be noted the plaintiff made reference to the doors leading to and from the office building were made of glass. There is no evidence as to whether the lights in the building were or were not in operation at the relevant time.

[9] In addition to the light from the light pole, the lights on the plaintiff’s motor vehicle served to illuminate the area of the accident.

[10] When the plaintiff exited the office building she reached a spot which she referred to as a cement landing. She looked to her right and saw the defendant's motor vehicle at a point one-half way between Super Stores and the cement landing and travelling in a westerly direction. The plaintiff estimated the distance between the vehicle when she observed it and the area of the "stop" marking was twenty to twenty-five meters. Then she looked to the left and saw no vehicles in motion and she continued to walk toward her parked vehicle.

[11] The plaintiff could not say whether the defendant stopped his car at the "stop" location. The defendant said he did stop at that location. The plaintiff said she knew the car was approaching a "stop" area and knew that he would reach it before he would encounter the plaintiff. She proceeded towards her motor vehicle.

[12] The plaintiff said the vehicle struck her right knee and she was thrown on the hood of the car striking the back of her head.

[13] The defendant Heffernan obtained his driver's license six months before the accident. He lived on Lawrence Street which is very close to Quinpool Centre. He often visited the area to eat at Wendy's which was close to the area where the

accident occurred. He dropped a friend at Super Store and was returning home by driving initially in the lane closest to the buildings of the Centre. He was asked how fast he was driving and he said under 20 kilometers per hour “just parking lot speed”. He stopped at the “stop” area before entering the cross-hatched section. At no time did he see the plaintiff before impact. He attributes that to the dark clothing of the plaintiff and the weather conditions. He agreed the light standard was “right beside the area where he had to stop”.

[14] He stopped at the sign and remained for 3 seconds. He agreed during cross-examination that where he stopped he had an unobstructed view of the area where the accident happened.

[15] Ms. Greening, counsel for the defendants, advanced a very able summation but it is my view the defendant was negligent which was the sole the cause of the accident. Mr. Heffernan was familiar with the parking lot. There was lightening in the area from the large pole which overlooked the area and which had several large lights. The lights of the plaintiff’s parked motor vehicle were in operation. Mr. Heffernan was approaching the area which was one of the main exits from the office building. It was the time of day when people were leaving offices. He did

not see the plaintiff who was to be seen. He did not have a proper look out and that was an act of negligence. He said he left the area of the "stop" mark under 20 kilometres "just parking lot speed". When asked why he did not see the plaintiff he said "it could be weather conditions". I accept the evidence of the plaintiff on the weather conditions which was wet snow "more water than snow" and find the weather conditions and the clothing worn by the plaintiff would not impede a motorist driving with reasonable care.

[16] The plaintiff stated there were two painted "stop" signs on each side of the hatched area. I state those signs were to prevent vehicles to proceed with too great a speed through an area where there were numerous pedestrians.

[17] At an area where there was a cement landing which was at the end of the entrance to the building the plaintiff looked to her right and to her left. To her right she saw the defendant's motor vehicle. She walked in a diagonal line to her motor vehicle which was close to her and when in front of her motor vehicle she was struck by the defendant's motor vehicle which after striking her right knee caused her head to hit the hood of the defendant's motor vehicle. She felt pain and believed she was in shock. She said she could not move either leg. She spent a

"fair amount of time" on the ground before the ambulance came and took her to the hospital.

[18] The hospital record stated there was no fracture to the right knee and "no dislocation or effusion present".

[19] The plaintiff was seen by Dr. Stanish, an orthopaedic surgeon, who wrote a letter to the plaintiff's family doctor (Dr. Jean Jim) dated March 4, 2003. He described the plaintiff had a "valqus injury to her right knee". Dr. Stanish stated in the letter that the plaintiff "injured her medical collotoral ligament significantly". She also had a "partial tear of the anterior cruciate ligament". He recommended physio and exercise.

[20] There was an M.R.I. report which stated "No abnormality demonstrated".

[21] In a letter dated March 28, 2003, Dr. Stanish stated she was "markedly improved" but was still not reaching full flexion and extension.

[22] There was a letter to the plaintiff's family doctor written on behalf of Dr. Stanish who stated she was getting back to normal activity but still "having problems with a deep squat and does not feel her knee is quite back to normal".

[23] The plaintiff was taken by ambulance to the hospital and x-rays were performed on the knee to which attendants put ice. She was permitted to go home that night with instructions to contact her family physician. She became mobile with crutches for five days and saw Dr. Jean Jim on December 18th.

[24] The plaintiff returned to work on December 17th, 2002. She had only missed three days from her work. She found driving different for a period of time.

[25] The plaintiff started physiotherapy on December 23rd for her knee and problems with her back and neck. She had physiotherapy appointments twice a week for a period of a year. As indicated she saw Dr. Stanish twice. The task was to rebuild muscle around the knee.

[26] Yoga was used to treat the knee and the neck area and she attended four to six times a week. In July 2003 she started message therapy because of pain in the

knee and neck. Her insurers under Section B of the police paid for message therapy.

[27] On being asked by her counsel how the knee felt today, she said she does not have constant pain but she stated there is a difference in the two knees and the right knee is not the knee she had before the accident. She said walking for long periods causes fatigue in the knee and it can be aggravated with yoga in the form of a tightness and pain. Yoga is directed to the neck and back. She pays $125.00 a month for yoga. The plaintiff stopped physiotherapy in 2003.

[28] On cross-examination she indicated she skis or snow boards on the bunny hill. She said she has driven her car to St. John and Montreal.

[29] The plaintiff has special damages in the amount of $358.00 which she can recover from the defendants. Counsel for the plaintiff makes claim for an amount to cover yoga lessons. As stated, the amount paid for the treatment is $125.00 a month. She certainly started yoga because of problems caused by the motor vehicle accident but the evidence is not clear that she requires yoga at this date because of injuries caused by the accident or whether there is not a general desire

to separately receive the benefits of yoga. I will award recovery of five thousand dollars ($5,000.00) for the yoga treatment.

[30] With respect to non pecuniary general damage, she has made a good recovery but the knee is a vulnerable part of the body and she is still having some difficulty with her right knee. I will award twenty-two thousand dollars ($22,000.00) for general damages.

[31] The plaintiff is entitled to her costs of the action.

J.