Claim No. SCCH 279378

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Kelly v. Appleton, 2007 NSSM 40

BETWEEN:

CHRISTOPHER M. KELLY

Claimant

- and -

LISA LIANNE SMYTH APPLETON

Defendant

DECISION AND ORDER

Adjudicator: David T.R. Parker

Decision: August 13 2007

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on August 21, 2007. This decision replaces the previously distributed decision.

Counsel: Claimant was self-represented.
Defendant was represented by Roger T. Shepard

Cases referred to: ***Hayman v. Tobin [1990] N.S.J. No. 57***
Young v. Williams 193 NFLD & P.E.I.R. 333
Wong v. Ayoub [2005] N.S.J. No. 607
Vance v. Ervine et al 21 W.A.C. 164

Acts: ***Motor Vehicle Act*, R.S.N.S. 1989 c. 293 ss 100**
***Contributory Negligence Act,* R.S.N.S, 1989 c. 95**

Parker:-This matter involves two vehicles driving along Glendale Avenue when the Claimant's vehicle was about to pass the Defendant's vehicle on the right hand side the vehicles collided. According to the Defendant the Defendant's vehicle was approaching a red light where Glendale intersected with Beaverbank and there were eight vehicles in front of the Defendant's vehicle. The Defendant had intended to turn to the right a little further up towards the intersection and when the Defendant pulled over to start to the right the cars collided.

The Claimant's view of events was that the Defendant did not have a right turn signal on as he approached the Defendant vehicle. The claim said the Defendant was in the left had lane and he was in the right lane and had his right hand signal light on. Photographs taken today show there are two distinct lanes but at the date of the accident this does not appear to be the case. The road was wide enough for two lanes it would appear but Glendale Avenue at the time of the accident did not clearly provide for two lanes of traffic.

Analysis

The Defendant in her testimony when asked about what else she could have done said she could have done another shoulder check and she said she could have waited until she got to the intersection before she turned right. If this had happened no doubt the collision would not have occurred.

It would appear what the Defendant was about to do was what the Claimant was doing, pulling over to the right side to make a right hand turn up by the stop light. The right lane was clearly not marked off as a right lane as I indicated before and as evidenced in Exhibit D-6 taken two weeks after the incident. While there may be room to pass on the right those cars that were in the left hand lane, the Claimant should have proceeded very cautiously. He did have his right signal light on but as he approached the Defendant's vehicle he did not sound his horn. The driver of the vehicle approaching from the rear of other vehicles and driving on he right hand side of other vehicles in a right lane that is not clearly marked must be very cautious.

In this case I accept Counsel's pleading of the *Contributory Negligence Act*, R.S.N.S. 1989, c. 95 and would hold the Claimant 30 percent responsible for the accident and the Defendant 70 percent responsible. I realize those apportions of liability are somewhat arbitrary however I base this apportionment of liability on the Defendant's testimony and the fact that she was proceeding to do what the Defendant had done, that is move to the right and not ensuring she could have done so safely.

The damage amount becomes more problematic. The Claimant provides an estimate of $672.40 for parts and $1,169.55 for labour plus $207.50 for towing and HST of $286.93 for a total of $2,336.37. In the Claimant's testimony he said that he could have a friend do the repairs for $1,500.00 and he had to assist his friend. Apparently the Claimant's vehicle was in a previous accident and that would be worth $300.00 to $400.00 off the

repair estimates if done by a friend and himself and his own estimate at trial was it would probably be up to $1,000.00 to get repairs completed by a professional. All this brings into question the reliability of the estimate provided by Coachworks Limited. To hold this pastiche together becomes again a bit of an art. I would conclude going with the submitted estimate or the Claimant doing the work on his own less the previous damage component would end up with similar amounts of $1,300.00 of which the Defendant shall be responsible for 70 percent or $910.00. The Claimant is also requesting costs of service in the amount of $270.66 which is excessive. He would have obtained an order for substituted service or had a process server complete service, I shall allow $100.00. There has been no counterclaim.

IT IS THEREFORE ORDERED that the Defendant pay the Claimant the following sums:

$910.00
100.00 Service
80.00 Court costs

_____
$1,090.00

Dated at Halifax, this 13 day of August, 2007.

_____

David T.R. Parker
Small Claims Court Adjudicator