

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Roberts v. MacDonald, 2007 NSSM 17

BETWEEN:

COLIN ROBERTS

Claimant,
Defendant by Counterclaim

- and -

DAVID MacDONALD

Defendant,
Claimant by Counterclaim

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 10, 2007
Decision rendered on April 12, 2007

APPEARANCES

For the Claimant - self-represented
For the Defendant - Alanna P. Brogan, counsel

This case concerns a minor motor vehicle accident which occurred on November 18, 2006 in or near Timberlea, Nova Scotia. Both vehicles sustained moderate damage. The Claimant seeks \$1,758.89 for the cost of repair. The Defendant has Counterclaimed for \$2,572.45 spent on repairing his vehicle.

There are two quite different versions of the accident. However, some of the facts are undisputed.

At approximately 11:00 a.m. on Saturday, November 18, 2006 the Claimant and his girlfriend Julia Carew were driving outbound on St. Margaret's Bay Rd. in a 1999 GMC Jimmy on the way to visit Ms. Carew's parents. The Defendant MacDonald was following behind in his 2004 Saturn Ion on the way to his home in Timberlea. Weather and road conditions were perfect and traffic was relatively light.

As the Claimant was turning right onto Wilbert Deveau Rd. there was an impact between the driver's side front part of the Defendant's vehicle and the rear wheel and quarter panel of the Claimant's vehicle, causing the damage which is the subject of the Claim and Counterclaim. I refrain at this point from saying which vehicle hit the other, because there is a dispute about that.

Both parties are in agreement that there was no visible traffic in the oncoming lane, although there was traffic behind them travelling in the same direction.

The Claimant's Version

The Claimant testified that he had been aware of the Defendant's vehicle behind him for some time, and was uncomfortable because of its closeness. Both the Claimant and Ms. Carew believed the Defendant was distracted, and possibly talking on a cell phone (although it seems likely that they were wrong on that point). Because of how close the Defendant was following, the Claimant stated that he signalled his right hand turn well in advance in order to warn the Defendant. He stated that as he made his right turn he heard a squeal of brakes and felt an impact as the Defendant's vehicle struck his, causing him to fishtail and come to rest perpendicular to his original direction of travel. He described the Defendant's vehicle as jumping the right hand curb at the point of impact.

Both the Claimant and Ms. Carew described what occurred in the immediate aftermath of the accident. They stated that the Defendant exited his vehicle and came over in an extremely apologetic mode. They heard him say that he accepted full responsibility for having caused the accident because he

was distracted. There was some discussion about possibly settling without involving anyone's insurance. They exchanged relevant information.

During this time Ms. Carew became visibly woozy, and although she was apparently not really injured, attending to her was a priority for everyone.

The Defendant's Version

The Defendant testified that he was following the Claimant's vehicle at a distance which he first described as one to two car lengths behind, which he later amended to two to three car lengths. He stated that sometime before the right turn onto Wilbert Deveau, the Claimant strayed over the yellow line toward the centre of the roadway, leading him to believe that the Claimant was planning to execute a left turn into a retirement home driveway. He said that he decided to pass the Claimant on the right, and was taken completely by surprise when the Claimant executed the right turn effectively cutting him off. He said that by then he had noticed the Claimant's right turn signal come on, at which point he geared down and stopped, having swerved to the right and jumped the curb with his right wheels. He said that it was the Claimant's vehicle which struck his vehicle as it made the sudden right turn.

The Defendant denied accepting responsibility for the accident. He says that he was concerned that someone might have been injured and was mumbling to himself something to the effect of "why do things like this always happen to me?" He says he was hesitant about talking about legal responsibility because he wanted to speak to his wife who is an insurance adjuster and much more knowledgeable about these things.

Discussion and Findings

In a situation such as this, it is possible to find one or both of the drivers responsible for the accident. Someone's or both parties' driving fell short of the standard of a reasonable and prudent driver.

Looking first at the driving exhibited by the Claimant, the gist of the complaint made by the Defendant is that he allegedly strayed to the left over the centre line, causing the Defendant to believe that a left turn was contemplated. It was that belief which the Defendant says prompted him to pass to the right. As such, he would principally fault the Claimant for not checking that the way was clear before making the right turn.

Both the Claimant and Ms. Carew, who said she was attentive to the Claimant's driving, denied that he crossed the centre yellow line. I allow for the possibility that the Claimant may have strayed slightly over the centre line. One sees that all the time when driving behind other vehicles. However, even if he did stray slightly into the centre, that would not logically signal that he was planning to turn left. The Defendant conceded that at no time did the Claimant signal a left hand turn.

It is also important to emphasize that St. Margaret's Bay Rd. is a single lane in each direction, with no shoulder but rather a raised curb between the single lane and the residential properties to the right. As such, at the point that the Claimant may have strayed over the yellow line - and even if he had slowed down for a possible left turn - there was no viable second lane to use for a pass on the right. The single lane is not wide enough to allow for that. As such, had the scenario unfolded as the Defendant says, he had no reasonable choice but to slow down and wait for the Claimant to complete his left turn. Passing to the right would have been foolhardy because, on the evidence, he would have had to drive on someone's lawn to execute it.

Moreover, as both parties agreed, there was no oncoming traffic. If the Claimant had been planning to turn left he could have done so without stopping, only slowing. The Defendant would have lost virtually no time by simply slowing down and waiting for the Claimant to turn. Assuming the Claimant had then made an unexpected right turn, the Defendant ought to have been travelling slowly enough and been far enough behind to have avoided any accident.

I am inclined to the view that the Claimant's version of the accident is more consistent with all of the surrounding and undisputed facts. I find that he had no

intention of turning left and gave no indication that he would be doing so. I find that he signalled a right hand turn well enough in advance and would have been able to do so safely but for the fact that the Defendant was travelling too close behind him to stop safely. It matters not whether the Defendant was in a hurry, distracted or simply misread the situation. I simply cannot find any actionable fault on the part of the Claimant. It is accordingly my finding that the negligence of the Defendant was the sole cause of the accident.

Counsel for the Defendant provided me with statutory and case authority supporting her position that passing on the right is permissible. I accept that proposition, but it cannot apply where there is a single lane and no shoulder which could even serve as a make-shift second lane. As already indicated, passing to the right over a concrete curb and people's lawns would hardly be prudent driving. In any event, I am far from satisfied that the Defendant was truly trying to pass to the right. I am more inclined to believe that his swerving to the right was a reflex action once he realized that there was going to be a collision.

I consider this to have been a rear-end accident. The damage to the two vehicles is entirely consistent with the Defendant hitting the Claimant, not the other way around. It is elementary that drivers who strike others from behind have a difficult factual onus to overcome.

I am fortified in my findings by the evidence of the Claimant and Ms. Carew. I found them to be sincere and straightforward and their evidence had the ring of truth. This is not to say that the Defendant was obviously lying. He seemed sincere enough. The main problem was that his version of the events was not in harmony with the facts and inherent probabilities as a whole.

As such, there will be judgment for the Claimant in the amount requested, and the Counterclaim is dismissed.

The Claimant has proved damages in the amount of \$1,758.44. He also claims \$20.89 for the cost of accident scene photos, which I found helpful and allow. He is also entitled to prejudgment interest at the rate of 4% for six months, which I round off at \$35, plus his \$80 filing fee.

Eric K. Slone, Adjudicator