

Claim No: 296088

Date: 20080912

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Stubbert v. Stock Transportation, 2008 NSSM 64

BETWEEN:

Name Vernon Stubbert, Sr. Claimant

Name Stock Transportation, Brian Bauld, and Karen Cockaday Defendant

REVISED DECISION: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 23, 2008

DECISION

BACKGROUND

- (1) This proceeding was heard on July 22, 2008.
- (2) The Claimant, Vernon Stubbert, claims the sum of \$2,100.00 from the Defendants, Stock Transportation, Brian Bauld, and Karen Cockaday.
- (3) The claim arises from a motor vehicle accident which occurred on the morning of January 21, 2008.
- (4) Liability is denied by the Defendants.

PLEADINGS

- (5) Vernon Stubbert filed a Notice of Claim against three Defendants, Stock Transportation, Brian Bauld, and Karen Cockaday. At the outset of the hearing, the Claimant stated that he

was seeking Judgment against the Defendant, Stock Transportation, only. In any event, the evidence does not support a claim against the Defendants in their personal capacity. Accordingly, the claims against the Defendants, Brian Bauld and Karen Cockaday, are hereby dismissed.

- (6) Also, although Vernon Stubbart is the Claimant, it is actually his son, Vernon Stubbart, Jr., who owns the vehicle in question. Both parties agreed, however, that if the Claimant is successful, then any judgment rendered shall be for the benefit of Vernon Stubbart, Jr. who is the registered owner of the vehicle which was involved in the accident.
- (7) The reason for the claim is stated as “bus driver hit car and left scene”. The amount claimed is \$2,100.00. The Defence filed on behalf of Stock Transportation is as follows:

“That your driver went left of the centre line to pass the bus, the bus was already occupying both the left and right lanes in order to lawfully make a right turn in this congested intersection.”

FINDINGS

- (8) Vernon Stubbart, Sr. was the driver of a motor vehicle owned by his son, Vernon Stubbart, Jr., on the morning of January 21, 2008. He left his home in Lawrencetown driving in the direction of downtown Dartmouth. He came to the corner of Portland Street and Pleasant Street, commonly known as “Five Corners”. He turned right onto Pleasant Street from Portland Street and headed towards Prince Albert Road.
- (9) At the corner of Prince Albert Road and Pleasant Street is an intersection where there is a three way stop. There are two lanes of traffic proceeding along Pleasant Street towards Prince Albert Road and one lane of traffic in the opposite direction. There are two lanes of traffic traveling in either direction along Prince Albert Road.
- (10) As he approached the intersection, the Claimant was able to observe a bus that was stopped at the intersection of Pleasant Street and Prince Albert Road. His evidence is that the bus was in the right hand turning lane. He directed his vehicle into the left turning lane.
- (11) Shortly after doing so, the right front passenger side of his vehicle was struck by the left driver’s side of the bus as the bus was executing the right hand turn onto Prince Albert Road.

- (12) The Claimant's wife, Catherine Stubbart, was a passenger in the Claimant's vehicle. As a passenger, she was not paying particular attention to the flow of traffic. She does, however, recall seeing the bus in the right hand turning lane and also recalls the Stubbart vehicle pulling up in the left lane beside it.
- (13) Following the collision, the bus continued along its way.
- (14) The driver of the vehicle directly behind the bus allowed the Claimant's vehicle to turn in front of them. The Claimant's vehicle followed the bus along Prince Albert Road and through various streets in the City of Dartmouth until the bus pulled up in front of Dartmouth High School. The Claimant exited his vehicle but was unable to get the bus driver's attention. The bus left again, and the Claimant followed the bus through various other streets until on a side street near Victoria Road in Dartmouth, he was finally able to get the bus driver's attention.
- (15) From the discussions which occurred following this and from the evidence of the driver of the bus, Karen Cockaday, I conclude that she was completely unaware that there had been a collision between the vehicles.
- (16) Ms. Cockaday had been employed by the Defendant as a bus driver for the past two and one-half years. She successfully completed a training program as a condition of her employment. She testified that although she could not specifically recall what had occurred on the day in question, it was part of her routine every day to take that particular corner just after 8:00 o'clock in the morning. Her normal practice was that, since the roadways are narrow in that area, when preparing to turn, she straddles both lanes of traffic. Although there is a three way stop at the intersection, she waits until all of the traffic has cleared.
- (17) The first indication she had that day that there had been a collision was when she was confronted by the Claimant on the side street near Victoria Road, and he asked her whether she realized that the bus had scraped along the side of his vehicle. She stated that she was not aware of this. She stated that she thought it was odd that if this had in fact occurred, none of the students in the bus had noticed it. She did observe scratches on the vehicle that the Claimant was driving that day but did not recall seeing bumps in the fender. She confirmed that the black marks on the vehicle that the Claimant was driving were consistent with marks that could have been made by the bumper from the bus.

- (18) Ms. Cockaday stated that when the bus turned onto Prince Albert Road, there was a “tail swing” which involved the back of the bus actually going over the yellow line which separates that traffic flow in either direction on Prince Albert Road. She also indicated that there was a blind spot when executing the turn, however, the blind spot would not come into play until the bus had actually reached at least a forty-five (45) degree angle during the turn.
- (19) There are differences between the evidence of the Claimant, Vernon Stubbart, and his wife, Catherine Stubbart, on the one hand and the evidence of Karen Cockaday on the other hand, in particular, concerning the issue of whether the bus was straddled across the two lanes on Prince Albert Road just prior to the accident. Vernon Stubbart testified that he pulled into the left lane heading for Queen Street intending to make a left turn. He stated that he pulled up in the left lane and brought the vehicle to a full stop. The bus was already at the stop sign when he approached. He knew that the bus was turning as he saw the right turning signal light. He estimated that his vehicle was stopped for approximately ten seconds before commencing the turn onto Prince Albert Road. He was just starting to move ahead with his foot on the gas when the collision occurred. He was, more or less, at the stop sign at that time.
- (20) Catherine Stubbart testified that the Claimant’s vehicle pulled up in the left lane to turn onto Prince Albert Road. She stated that the bus started to go and “took the side off” the Claimant’s vehicle. When she first saw the bus, it was stopped in the right turning lane. She doesn’t recall when she first saw the bus as she was not driving. Her best recollection was that the Claimant’s vehicle had just started to proceed onto Prince Albert Road when the collision occurred.
- (21) Ms. Cockaday concluded from the fact that it was, in her words, “impossible to make the turn” without straddling the two lanes, that she must have done so. She stated the consequence of doing otherwise was to likely end up on the sidewalk when making the turn.
- (22) In reconciling the differences between the aforesaid evidence, I have considered a number of factors, including the demeanor of the witnesses and the consistency of their testimony, however, the most significant consideration in my view is the fact that the Claimant and his wife clearly recall what occurred leading up to the accident whereas Ms. Cockaday was unable to specifically recall what occurred and actually had no memory of the accident. She testified as to her usual practice only.
- (23) I accept the recollection of the incident as described by the Claimant, Vernon Stubbart, and his wife, Catherine Stubbart, in the absence of any specific evidence or recollection by Ms. Cockaday of what actually occurred on the day in question.

- (24) I find, therefore, that the Claimant was in the proper turning lane before commencing to execute the left turn onto Prince Albert Road, at which point in time, the impact of the two vehicles occurred.

LAW

- (25) The burden of proof is upon the Claimant to prove that the driver of the Defendant's vehicle was negligent.
- (26) I have considered the applicable provisions of the Motor Vehicle Act, R.S.N.S. 1989, c. 293 and the Contributory Negligence Act, R.S. 1989, c. 95.
- (27) I have accepted the Claimant's evidence that he was in the proper turning lane. The driver of the bus had an obligation not to commence her turn before she was reasonably certain that the turn could be executed without the bus crossing into the other lane or, alternatively, if there was a possibility that the vehicle could cross into the other lane, and I find that she was aware of that possibility, then it was incumbent upon the driver before commencing the turn to ensure that there was no traffic in the lane turning left from Pleasant Street to Prince Albert Road.
- (28) In this case, the driver of the Defendant vehicle commenced the right hand turn in circumstances where she knew that the rear of the bus would likely traverse the yellow line and she did not exercise reasonable care to ensure that there were no vehicles in the left turning lane. This is evident from the fact that she had no actual recollection of the accident and in fact was not even aware that the collision had occurred.
- (29) I refer to the following definitions in the Motor Vehicle Act:

“2(d) "bus" means a motor vehicle operated by or on behalf of a person carrying on upon a highway the business of a public carrier of passengers for compensation and includes any motor vehicle when used for such purpose that the Department shall determine;

(ad) "motor vehicle" means a vehicle, as herein defined, which is propelled or driven otherwise than by muscular power;

(ca) "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting a motorized wheelchair and devices moved by human power or used exclusively upon stationary rails or tracks”.

(30) I also refer to Section 118(1)(a) of the Motor Vehicle Act which states as follows:

“118 (1) Wherever practicable the driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) approach for a right turn shall be made in the lane for traffic nearest to the right-hand side of the highway and the right turn shall be made as closely as practicable to the right-hand curb or edge of the highway;”

(31) I also refer to Section 119(1) and (2) of the Motor Vehicle Act as follows:

“119 (1) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn if the vehicle is required to be equipped with a horn under this Act, and, whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this Section plainly visible to the driver of such other vehicle of the intention to make such movement.

(2) The signal required by this Section shall be given either by means of the hand and arm in the manner specified in subsection (3) or by a mechanical or electrical signalling device, but when a vehicle is so constructed or loaded

(a) as to prevent the hand and arm signal from being visible both to the front and rear of the vehicle; or

(b) that any portion of the body or load of the vehicle extends more than 600 millimetres to the left of the centre of the steering wheel of the vehicle,

the signal shall be given by a mechanical or electrical signalling device.”

- (32) I find in this case that Ms. Cockaday did not, before commencing the turn, take adequate measures to ensure that the turn could be made in safety and she should have observed the Defendant’s vehicle in the left hand turning lane. I note again that the blind spot referred to by Ms. Cockaday in her evidence does not come into play until the vehicle has reached at least a forty-five (45) degree angle during the turn according to her own evidence.
- (33) I do not accept the Defendant’s position that the bus had the right-of-way in these circumstances, nor does the evidence support the Defendant’s position that the bus was straddling the two lanes such that Mr. Stubbert would have been required to cross the yellow line to execute the left turn onto Prince Albert Road. Mr. Stubbert and his wife gave their evidence in a straightforward and clear manner, and I accept their evidence on this point.
- (34) Based on the evidence and the applicable statutory provisions and principles of negligence, I am unable to find any fault on behalf of the Claimant which would invoke the provisions of the Contributory Negligence Act.

DAMAGES

- (35) The Claimant has provided an estimate of damages from Maaco Collision Repair and Auto Painting in the amount of \$2,066.33. No further estimates were provided by either party. While there was some suggestion in questioning of the Claimant and in argument that the damages were not consistent with what Ms. Cockaday saw on the day in question, I am satisfied that the damages contained on the estimate provided by the Claimant are consistent with the damage shown on the photographs and, further, that the damages shown on the photographs are consistent with a bus scraping along the side of the vehicle driven by the Claimant. I find that the Claimant has proven the damages in this case.

SUMMARY

- (36) The claims against the Defendants, Brian Bauld and Karen Cockaday, in their personal capacity are dismissed.

- (37) The Claimant, Vernon Stubbart, Sr., on behalf of Vernon Stubbart, Jr. shall recover the sum of \$2,066.33 from the Defendant, Stock Transportation, plus costs of \$87.06, for a total of \$2,153.39.

Dated at Dartmouth, Nova Scotia,
on September 12, 2008.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)

