

Claim no. 302134

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Brooks v. Halifax (Regional Municipality), 2008 NSSM 79

BETWEEN:

DEAN A. BROOKS

Claimant

- and -

HALIFAX REGIONAL MUNICIPALITY

Defendant

---

**REASONS FOR DECISION**

---

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 2, 2008

Decision rendered on December 10, 2008

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        Sara Knight, counsel

**BY THE COURT:**

- [1] This is a claim for property damage arising from the collision of the Claimant's vehicle with a Metro Transit bus.
- [2] Some of the facts are not disputed. The time was about 8:00 a.m. on September 24, 2008. The sun was up and the weather was good. The Claimant had crossed the Macdonald Bridge and was proceeding west on North Street in Halifax, heading toward the Victoria General Hospital in the south end. He had crossed Robie Street and planned to turn left on Clifton, which is a common way to get to Robie Street southbound, since there is no left turn on Robie from North Street.
- [3] The Metro Transit bus was a number 52, driven by Dana Corkum, who was heading east toward the bridge, i.e. in the opposite direction to the Claimant.
- [4] According to the Claimant, the bus pulled over at a bus stop not far from the corner of Clifton to pick up passengers. With the bus stopped, he felt that it was safe to enter the intersection to make his left turn. Before he had cleared the intersection, however, the bus had moved away from the stop and struck him on the rear of the passenger side with sufficient impact to spin his Chevy ½-ton around and do enough damage to cause the vehicle to be written off. Fortunately there were no injuries.
- [5] The bus driver's version is a bit different. He testified that he did not stop, but rather slowed down as he approached the stop because he saw potential passengers there. Those passengers were however waiting for a

different bus and waved him off. He never came to a stop, but had slowed down enough to be concerned that traffic behind him might try to pass him on the left. As such he checked in his mirror to make sure that it was safe to pull out from near the curb. He stated that he was probably going 30 to 35 km/hr when he struck the Claimant, who had pulled out to make the turn. From his perspective, the Claimant simply made an unsafe manoeuver.

- [6] There was evidence offered by a neutral party. Robert Sharp was driving his Toyota Highlander and was directly behind the Claimant, and as such he witnessed the whole thing. He testified that the bus signalled right as it pulled toward the bus stop. He stated that the bus was stopped and that the Claimant, who had been signalling a left turn, proceeded when the bus was stopped. Mr. Sharp himself recalled thinking that he might be able to complete his own planned left turn behind the Claimant, if the bus remained stopped long enough.
- [7] He testified that the bus pulled away from a dead stop, without hesitation, and rammed the Claimant's vehicle. He stated that the bus signalled right as it came to the stop, but was not sure if it also signalled left to leave the stop.
- [8] He was very definite that the Claimant's truck was already in the intersection when the bus started moving away from the stop.
- [9] The police attended the scene and investigated. It does not appear that any charges were laid under the *Motor Vehicle Act*, as might have been

expected had the police concluded that there was clear evidence of unsafe driving by either of the drivers.

## **The Law**

- [10] The *Motor Vehicle Act* in section 122 sets out the rules respecting left turns:

### **Right of way or left turn at intersection**

122 (1) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection, and when two vehicles enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield to the driver on the right.

(2) The driver of a vehicle who has stopped as required by law at the entrance to a through highway shall yield to other vehicles within the intersection or approaching so closely on the through highway as to constitute an immediate hazard, but said driver having so yielded may proceed, and other vehicles approaching the intersection on the through highway shall yield to the vehicle so proceeding into or across the through highway.

(3) The driver of a vehicle within an intersection intending to turn to the left shall yield to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver having so yielded and having given a signal when and as required by law may make the left turn, and other vehicles approaching the intersection from the opposite direction shall yield to the driver making the left turn.

(4) The driver of a vehicle on a highway intending to turn to the left, other than within an intersection, shall yield to any vehicle approaching from the opposite direction which is so close to his vehicle as to constitute an immediate hazard, but, said driver having so yielded and having given a signal when and as required by law may make the left turn, and the drivers of other vehicles approaching the turning vehicle from the opposite direction shall yield to the driver making the left turn.

(5) Subject to subsection (3), no driver shall enter an intersection or a marked crosswalk except to make a left or a right turn unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

- [11] It is well known that many accidents happen as a result of left turns, and the law generally places a heavy onus on left turning drivers to make sure that the way is clear before turning. However, as the *Motor Vehicle Act* also makes clear, the driver who is in the intersection first, and who has proceeded when it is safe to do so, has the right of way.
- [12] There is little value in citing reported cases because the facts are unique to each case and there is no case precisely the same as the one here.
- [13] The issue for me to decide is whether there was any lack of care on the part of the bus driver, in which case the Claimant would be entitled to collect some or all of his damages, depending on the degree of fault. It need not be solely one or the other driver who is legally responsible. The *Contributory Negligence Act* requires me to apportion fault if I find that there was a lack of care by more than one party.

### **Findings**

- [14] I found both the Claimant and the bus driver to be basically sincere individuals, though the evidence of each must be seen as tinged with self-interest. The evidence of Mr. Sharp, however, was totally disinterested and carries a lot of weight. He gave his evidence in a totally straightforward manner, was not shaken on cross-examination, and appeared to have no axe to grind whatsoever. As such I accept most of what he stated - not all - because I accept that honest perceptions of the same event can differ somewhat depending on one's perspective. With the benefit of having heard all of the evidence, this is what I conclude.

- [15] The driver of the bus signalled a right turn as he approached the bus stop. He slowed down to a sufficient degree to be able to stop easily had any of the waiting passengers actually wanted to board his bus. Having signalled and slowed to such a degree, he appeared objectively to have stopped and the logical conclusion of both the Claimant and Mr. Sharp was that he had stopped and that it was safe to proceed. Although North Street is only one lane in either direction, he had pulled over far enough to the right to have been concerned that cars behind him might pull around and pass him, making it unsafe to pull left. His attention would first have been drawn to the right where he was looking at the waiting passengers. By his own admission he then checked his mirror before pulling away from what was perhaps not a full stop, but something akin to what some people call a “rolling stop.” The fact that he had not stopped fully likely made it easier for the bus to reach full speed, and he simply failed to see that the Claimant’s truck was already in the intersection.
- [16] From the perspective of the Claimant, there did not appear to be any hazard preventing him from turning. He saw a bus, signalling and pulling over and stopped (or nearly so). While the onus on left-turning drivers to establish that it was safe to have started the turn is a high one, I am satisfied that the Claimant has largely met that onus.
- [17] I am satisfied that the bus driver had slowed sufficiently that he could have stopped had he noticed the Claimant in the intersection. This finding is reinforced by the fact that the bus caught the Claimant’s vehicle toward the rear of the truck, which means that he was most of the way through the intersection before impact.

[18] For whatever reason, the bus driver did not notice the Claimant. It was simply a momentary lapse of attention.

[19] On all of the facts, I am unable to find any fault with the Claimant's driving and place 100% of the fault on the Defendant.

### **Damages**

[20] The Claimant paid \$2,300.00 for the vehicle about six months earlier. It was a ten-year old vehicle, and there was no further evidence of value presented by either party. It is reasonable to conclude that \$2,300.00 represented its value which was entirely lost in the accident.

[21] The Claimant also seeks recoupment of his towing bill in the amount of \$139.60, plus his cost of filing in the amount of \$87.06.

[22] As such the Claimant shall have judgment for \$2,526.66.

**Eric K. Slone, Adjudicator**