

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

Cite as: Nowe v. He, 2008 NSSM 92

**Claim No. 286953**

Between:

**ASHLEY DAWN NOWE**

**CLAIMANT**

- and -

**FEI HE**

**DEFENDANT**

**-and-**

**Claim No. 288806**

Between:

**CHIEN CHUNG TANG**

**CLAIMANT**

- and -

**ASHLEY DAWN NOWE**

**DEFENDANT**

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## DECISION AND ORDER

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**Adjudicator: David T.R. Parker**

Heard: February 18, 2008

Decision: March 25, 2008

Counsel: Andrew Gough for the Claimant/Defendant Ashley Nowe  
**Robert H. Pineo for the Claimant Chien Chung Tang and  
Defendant Fei He**

This matter came before the Small Claims Court on February 18, 2008, and involved two actions. Pursuant to Section 25 of the *Small Claims Court Act* and with the consent of Counsel, both claims were heard at the same time.

### *Summary*

These claims involved a motor vehicle accident. Chien Chung Tang (“Tang”) was the owner of a 2001 Chevrolet Venture minivan and it was being driven by Fei He (“Fei”). Fei was under the employee of Tang at the time of the accident and Fei was driving the vehicle with the consent of Tang.

Ashley Dawn Nowe (“Ashley”) was driving her own vehicle at the time of the accident.

Counsel advised the Court that the total damage claimed on the Tang vehicle was \$3,634.32 and the total damage claimed on the Ashley vehicle was \$5,995.00.

Ashley was also claiming towing charges of \$96.80 and one-day loss of wages of \$70.00, as well as transportation costs resulting from the loss of use of the Ashley vehicle.

The Fei vehicle and the Ashley vehicle were stopped at a red light in the left lane of a two-lane highway. The left lane went towards Halifax and the right lane went towards the bridge. The vehicles while travelling in the left lane were approximately three vehicle lengths apart and travelling at approximately 60 – 70 kilometers per hour. While travelling behind the Fei vehicle, Ashley noticed a construction truck with a flashing yellow light in the left lane. Ashley noticed this half-ton construction truck when she was approximately a soccer field length away from the construction truck. Ashley put her signal light on and moved into the right lane. Fei, who had been travelling in front of the Ashley vehicle, pulled up behind the construction truck and stopped. Fei then turned the vehicle's wheel and proceeded into the right lane. Fei and Ashley noticed an 18-wheeler truck behind them. Fei felt there was enough distance between the Tang vehicle that he was driving and the 18-wheeler to pull out into the right lane and go around the parked half-ton construction truck. As Fei went to turn into the right lane he was struck by the Ashley vehicle. Fei did not see the Ashley vehicle. Fei was struck on the van's passenger side rear and the Ashley vehicle was struck on the driver's side front portion of her vehicle.

Both parties are negligent and the following points relate to the negligence of each.

#### Ashley

- Ashley was aware of the construction truck that was stopped and that traffic

was required to move into the right lane and that there was a flashing light on the construction truck indicating traffic should move into the right lane.

- Ashley knew that the Tang vehicle was in front of her and would have to move into the right lane.
- Ashley did not slow down as she proceeded into the right lane to pass the construction truck.
- Ashley did not wait for Fei to move into the right lane and she did not sound her horn when proceeding to pass Fei and the construction truck.

#### Fei

- Fei came to a complete stop behind the construction truck.
- Fei did not see the Ashley vehicle and he did not take enough precaution to move into the right lane.
- Fei's concentration was solely on the 18-wheeler coming down the highway behind him.

#### *Decision*

The greater onus is on the vehicle changing lanes to make certain that it is safe to do so. The Fei vehicle was stopped and as such he should have taken time to ensure he could now proceed to the right lane safely while passing the construction truck. He did not notice anything behind him except the 18-wheeler which was in the right lane.

I realize it is somewhat of an art in apportioning liability and I could be off five or ten percent one way or another as this is not an exact science. It is my view, based on the facts that I have before me, that the Fei vehicle had a greater duty of care when changing lanes and I would assess his liability at 65% and Ashley's at 35%.

The owner of the vehicle Fei was driving is responsible within the provisions of the *Motor Vehicle Act*.

The total damages claim of the Tang vehicle is \$3,634.32 and Ashley would be responsible for 35% of that, which is \$1,272.01.

The Ashley claim of damages is \$6,161.80 (\$5,995.00 + \$96.80 + \$70.00), and Tang and Fei are responsible for 65% of that amount, which is \$4,005.17.

**IT IS THEREFORE ORDERED** that Fei He and Chien Chung Tang pay Ashley Dawn Nowe the following sums:

	\$4,005.17	Tang and Fei portion of damages
Less	<u>\$1,272.01</u>	Ashley portion of damages
	\$2,733.16	Total

There is no Order as to costs and Ashley Dawn Nowe will not succeed on her claim for transportation costs.

Dated at Halifax, Nova Scotia, this 27<sup>th</sup> day of March, A.D., 2008.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia