

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Wong v. Ayoub, 2005 NSSM 18

2005

Claim No. 250928

Date:20051130

BETWEEN:

Name: **Chiu Wah Wong** Claimant

- and -

Name: **Ramez Ayoub** Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on December 13, 2006. This decision replaces the previously distributed decision.

Appearances:

Claimant: Amanda Carew, Morris Bureau

Defendant: Roger Shepard, Huestis Ritch

DECISION

[1] This matter was heard on September 22, 2005.

[2] This proceeding arises from a motor vehicle collision which occurred on March 7, 2005, on Ontario Street in Halifax.

[3] The Claimant was operating a 2000 Toyota motor vehicle at the time of the collision and was engaged in a delivery of Chinese food from the Silver Dragon Restaurant (of which he is the principal) to a customer or a friend on Brunswick Street. The Silver Dragon is on Robie Street and the route the Claimant took involved going along Ontario Street which is a short street in North End Halifax.

- [4] The Defendant was, and is, a taxi cab driver and has worked in that trade for approximately five years at the time of the incident. He was driving a 1995 Grand Marquis vehicle and was stopped on Ontario Street on the side of the street across from civic 5669. This was the address of the two passengers which he had in the back seat of the vehicle and who were in the process of disembarkment when the collision occurred.
- [5] The evidence seems consistent that the Defendant's vehicle was stopped in what could fairly be described as the traveled portion of the street. Ontario Street is not a multi-laned street but is a typical Halifax side street, i.e. one lane going each way.
- [6] There would also seem to be no dispute that at the time the Claimant came upon the Defendant's vehicle, it was stopped and had been stopped for a period of time. It was not clear exactly how long the vehicle was stopped but it would have been long enough to allow Mr. Ayoub to come to a complete stop, confirm by looking and then announcing to the passengers the amount of the fare from the meter, the passengers to get out a purse or wallet and pay the money and possibly wait for change, and then for Mr. Ayoub to disengage the locks.
- [7] Once all of this occurred the male passenger opened the rear passenger door at which point the Claimant's vehicle struck the edge of the door causing damage to the Claimant's vehicle and, as well, the Defendant's door. As indicated, these facts are essentially agreed to between the parties.
- [8] The principal dispute relates to which signal flasher was on. The Claimant says that the left signal flasher was on and therefore, based on that he concluded that the Defendant's vehicle was turning left into the driveway and accordingly it was appropriate to pass on the right. (I would note here as well that the position of the Defendant's vehicle in the traveled way would be consistent with making such a left turn).

[9] The Defendant on the other hand, says that he had his right signal turned on as he had had it on from the time he stopped. He also indicates that he would have pulled over farther to the right side of the road but the male passenger who apparently had some difficulty with his leg had asked that he not pull in too close as there was some snow or ice at the edge of the road. The Defendant also says that he was intending to turn right onto Belle Aire Terrace after the passengers had left.

[10] The Claimant also called evidence through a third party witness, Gordon Drysdale, who was walking on the corner of Fuller Terrace. Mr. Drysdale testified that he saw the left signal light come on.

[11] The Claimant did not use his horn when passing on the right.

[12] It was pointed out in cross examination and it is noteworthy that the Claimant did not state on the police report that the left signal light was on. It would seem that had the left signal indeed been on, and relied on as stated by the Claimant to conclude that the vehicle was turning left, that this would have been very present in his mind at the time of making the statement and it would have been included. Its absence from the police report leads to an inference that the left signal light was not on.

[13] There is the evidence of Gordon Drysdale who was put forward as an independent witness and who appears to be such. I am not convinced by Mr. Drysdale's evidence. It is unclear from exactly where Mr. Drysdale's vantage was at the time and he himself seemed somewhat confused to some of the questioning. That left me with the impression that he may have been confused about which was left and which was right in the context. Also, I would question why this disinterested witness, walking on a nearby sidewalk, would even take note or which flasher was on.

[14] Despite my misgivings about whether or not the left flasher was actually on, I shall proceed, at this point at least, on the basis that it was indeed on. Assuming the left blinker

was on and in light of all of the other evidence, was the Defendant the negligent party and the cause of this collision at law? In my opinion he was not.

[15] I refer to the principles which Mr. Shephard suggests are applicable to this case and are set out at page four of his written submission dated September 21, 2005. It appears to be good law that the overtaking vehicle has the higher burden to be sure that the action can be taken safely. This is entirely consistent of course with the general principle in rear end collisions that the preceding vehicle is almost always found to be liable at law.

[16] Here, we have a taxi cab with a lighted roof light, stopped in the middle of the road on a residential side street. In my view the Claimant should have been alert to the possibility that passengers might be disembarking from that vehicle. Further, I understood the evidence to be that there were no vehicles coming from the other direction and, bearing in mind that the taxi was stopped for some not insignificant period of time, that would then put the driver in the position of the Claimant here on notice that despite the left signal being on, the vehicle was not turning left.

[17] I also note that while the Claimant denies he was in a rush, the fact is he was making a delivery of hot food. I would also note that given that he struck the door, it logically follows that he was attempting to pass within a distance of approximately three feet or less. The Claimant did not signal his horn, and while the evidence does not indicate excessive speed, it also does not suggest that he had first stopped and then proceeded slowly or "inched" his way around the vehicle.

[18] Based on all of the evidence, it is my view that, even assuming the left flasher was on, the Claimant was the cause of this collision, not the Defendant.

[19] The claim is dismissed.

DATED at Halifax, Nova Scotia, this

day of November, 2005.

Michael J. O'Hara
Adjudicator

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