

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Taheri v. Borden, 2007 NSSM 29

2007

Claim No. 277362

Date: 20070611

BETWEEN:

Name: **Farid Taheri**

Claimant

- and -

Name: **William Borden**

Defendant

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on June 20, 2007. This decision replaces the previously distributed decision.

Revised judgment: The text of the original judgment has been corrected according to the erratum dated July 10, 2007.

Appearances:

Claimant: Self Represented
Defendant: Self Represented

ORDER

[1] This claim came before the Small Claims Court in Halifax on April 10, 2007, and arises as a result of a collision on the Armdale Rotary.

[2] The Claimant states as follows in his Notice of Claim:

On Aug 21/06 at approx. 5:00 pm the defendant changed lane on the Armdale Rotary. The right front bumper of the defendant vehicle struck the left rear quarter panel of the claimant's vehicle in the claimant's lane.

[3] The Defendant states in his Defence:

I did not change lanes on the Armdale Roundabout. The claimant entered the Roundabout after me & I hit his vehicle while trying to avoid him when he crossed in front of me.

- [4] Entered into evidence were a number of photographs and diagrams of the Armdale Rotary which were very helpful in analyzing the case.
- [5] The only specific provision in the *Motor Vehicle Act* dealing with a traffic rotary or roundabout is Section 135, which reads:

Rotary or roundabout

135(1) The driver of a vehicle entering a roadway in or around a rotary or roundabout shall yield the right of way to traffic already on the roadway in the circle and approaching so closely to the entering highway as to constitute an immediate hazard.

(2) The driver of a vehicle passing around a rotary or roundabout shall drive the vehicle in a counter-clockwise direction around the island or the centre of the circle, c. 2004, c. 42, s. 10.

- [6] In this case, it appears that both vehicles were properly in the Rotary itself, although traveling in differing lanes.
- [7] In the case of the Defendant, he had entered the Rotary from the Quinpool Road point and immediately went into the inner most lane. The Defendant's intended destination was the Purcell's Cove Road.
- [8] The Claimant entered the Rotary from Joseph Howe Drive and was intending to exit on to Quinpool Road.
- [9] The collision occurred at or near to the area where the Rotary exists on to the Herring Cove Road. The evidence shows, and I find as a fact that the right front bumper of the Defendant vehicle struck the left rear panel of the Claimant's vehicle.

[10] It would appear from the evidence that the Claimant did not see the Defendant's vehicle at all but only heard some tires screeching just before contact. The Defendant did not see the Claimant's vehicle until just before the point of impact which, at that stage, made the collision unavoidable. My conclusion from this is that both drivers failed in their general duty to keep a lookout, or, to use the words of the *Motor Vehicle Act*, R.S.N.S. 1989 , c.293, to drive in a careful and prudent manner:

Duty to drive carefully

100(1) Every person driving or operating a motor vehicle on a highway or place ordinarily accessible to the public shall drive or operate the same in a careful and prudent manner having regard to all the circumstances.

[11] This is a general duty imposed on drivers at all times and I would suggest that in the context of operating a vehicle on the Armdale Rotary that such duty is even more pronounced.

[12] The Claimant's position is that he was driving properly in the outside lane which, after passing the St. Margaret's Bay Road and Herring Cove exits would have spilled onto Quinpool Road, his intended destination. He states that the Defendant improperly changed lanes and therefore is responsible at law for the collision.

[13] The Defendant refers to the signage which is clearly shown in the photographs he introduced and which shows what a driver coming down Quinpool Road sees signage which, for Purcell's Cove Road, clearly indicates the most inner lane. Based on that, he suggests, or I understood what he was suggesting, that he was to stay in the inner most lane and exit directly from that lane. The fact is, the Armdale Rotary does not directly exit on to Purcell's Cove Road but the Rotary does go on to the Herring Cove Road where there are two lanes, and the left lane is one-way, outbound for part of the day (afternoons and evenings), and reverses for part of the day so that it is one-way, inbound (mornings).

[14] The problem as I see it with the Defendant's logic is that he has in effect, made a lane change at the point where he exited from the Rotary or, to put this another way, he crossed over what would be the outside lane in getting to the Herring Cove Road. And, further, his vehicle therefore could well have constituted a danger to other vehicles traveling in the outside lane. As it is he who is making the lane change or, crossing over to the outside lane, from the inside lane, I believe in law he has the primary responsibility to ensure that such manoeuver may be made safely. This would seem to entail activating a signal light and checking in his mirrors and over his right shoulder to ensure that it was safe to proceed across the outside lane. The Defendant did not indicate that he made these checks and, even if he had, I would find it very difficult to accept that he had, in light of what has occurred here, i.e. the collision.

[15] I turn now to the Claimant. As will be apparent from my comments above, it would appear that the Claimant entered on the outside lane and then stayed in that lane until the collision occurred. However, as I alluded to above, the Claimant has a duty to be on the lookout as part of his duty to drive in a careful and prudent manner, and it seems to me, he ought to have been aware that vehicles traveling in the inside lane would be seeking egress from the Rotary at the Herring Cove Road point. I think the Claimant bears some responsibility to be aware of the vehicles that are near him.

[16] Given that the Defendant's vehicle entered from Quinpool Road and the Claimant's vehicle entered from Joseph Howe Drive, the logical inference is that the Defendant's vehicle was in the Rotary before the Claimant's vehicle. The evidence of the Defendant that the Claimant was "traveling much too fast" is supportive of this conclusion. In light of the relative distance between where Joseph Howe Drive enters in the Rotary and the point of collision, I would infer that the vehicles were fairly close to each other, and by this I mean two or three car lengths, when the Claimant's vehicle entered the Rotary. So, either the Claimant's and Defendant's vehicles were more or less along side each other in the inside and outside lane or one or the other was within two to three car lengths of the other. Just before the point of contact, the Claimant's car was ahead of the Defendant's car. It is my view that the Claimant ought to have been aware of the Defendant's vehicle

as part of his general duty to be on the lookout. Had he checked over his left shoulder at the time of crossing through the area just before the point of impact, he undoubtedly would have seen the Defendant's vehicle and perhaps could have taken evasive action. There was no evidence that he was aware of the Defendant's vehicle and in fact, his evidence was that he did not see the Defendant's vehicle.

[17] In light of the above analysis, I believe this is an appropriate case to apportion some liability to each driver. In my view the primary liability rests with the Defendant and I would allocate liability to him at 75%. Accordingly, the liability to be allocated to the Claimant is 25%.

[18] The evidence on the damages indicated the repairs, together with two days rental, would total \$1,380.20. At 75% liability, that equals \$1,035.15.

[19] The costs comprise the filing fee of \$80.00, plus the process service fee of \$75.24, for a total of \$155.24 of which I will allow 75%, i.e. \$116.43.

Order

[20] It is hereby ordered that the Defendant pay the Claimant as follows:

Debt:	\$1,035.15
Costs:	<u>116.43</u>
Total:	\$1,151.58

DATED at Halifax, Nova Scotia, this 11th day of June, 2007.

Michael J. O'Hara
Adjudicator

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