

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kuma-Mintah v. Delange*,
2013 BCSC 1094

Date: 20130621
Docket: M111123
Registry: Vancouver

Between:

Kofi Boakye Kuma-Mintah

Plaintiff

And

Shannon H. Delange

Defendant

- and -

Docket: M112457
Registry: Vancouver

Between:

Shannon Delange

Plaintiff

And

Kofi Kuma Mintah and Jacinta M. Danso-Dapaah

Defendants

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

Counsel for the Plaintiff:

W.D. Mussio

Counsel for the Defendant:

D.M. Smart

Place and Dates of Trial:

Vancouver, B.C.
June 11-13, 2013

Place and Date of Judgment:

Vancouver, B.C.
June 21, 2013

Introduction

[1] My reasons for judgment determine the issue of liability for a motor vehicle accident that occurred at the intersection of the Lougheed Highway and United Boulevard in Coquitlam, B.C. (the “Intersection”) in the early morning hours, between 1:00 and 2:00 a.m., on Saturday, November 15, 2009. Two vehicles were involved in the collision. The drivers of each vehicle have brought separate actions against the other. By consent, the issue of liability in both actions, VA M111123 and VA M112457, was tried at the same time.

[2] Mr. Kuma-Mintah was driving his mother’s white Ford Explorer when the accident occurred; Ms. Delange was driving her dark blue Volkswagen Golf. She was heading home after attending a concert in Vancouver earlier in the evening.

[3] Both parties agree to the time, date, and location of the accident. Otherwise, their descriptions of the circumstances of the accident are diametrically opposed. Both parties are adamant that the other driver proceeded through a red light and caused the collision.

[4] I have determined that Ms. Delange is solely at fault for the accident.

The Intersection

[5] Mr. Kuma-Mintah was heading west on the Lougheed Highway on his way to his mother’s home near White Rock, B.C., where he had been staying. There are four lanes of westbound travel on the Lougheed Highway heading towards the Intersection. Those lanes are divided in the middle, separated into two sections by a low-rise barrier. After vehicles cross the Intersection, those travelling in the two lanes in the right-hand section continue on the Lougheed Highway heading west and can enter onto Highway 1 westbound. Vehicles travelling in the two lanes in the left-hand section continue to travel on the Lougheed Highway in a different direction.

[6] United Boulevard meets the Lougheed Highway at a “T” intersection. Vehicles travelling on United Boulevard at or near the Intersection are heading south. It is not

possible to cross the Lougheed Highway from United Boulevard at the Intersection. Southbound traffic on United Boulevard must either turn left (east) or right (west) onto the Lougheed Highway.

[7] With the exception of a special sequencing designed for specific conditions such as rush hour traffic, the default position for the traffic control signals governing vehicle traffic heading westbound on the Lougheed Highway towards the Intersection is constant green.

[8] Thus, when the accident occurred, the traffic signals facing Mr. Kuma-Mintah remained green, indicating that he was able to proceed through the Intersection, unless sensor pads embedded in certain places on the roadways leading to and at the Intersection of the Lougheed Highway and United Boulevard were activated by other vehicles. Specifically, the traffic control signals governing Mr. Kuma-Mintah would have been affected if sensor pads located close to and at the Intersection were activated by vehicles travelling southbound on United Boulevard moving into position to turn east or west onto the Lougheed Highway or by vehicles heading eastbound on the Lougheed Highway intending to turn left to travel north on United Boulevard.

[9] I find that there were no vehicles travelling eastbound on the Lougheed Highway that would have affected the signals governing Mr. Kuma-Mintah. I also find that other than Ms. Delange's vehicle, there was no other vehicle travelling southbound on United Boulevard that triggered the sensor pad so as to affect the green traffic signals governing Mr. Kuma-Mintah. I am satisfied that Mr. Kuma-Mintah was travelling westbound on the Lougheed Highway with the traffic signals controlling his direction of travel displaying green throughout.

[10] Mr. Kuma-Minta denied the presence of any vehicles that could have triggered the traffic signal sensors governing his direction of travel. The only potential source of evidence concerning the possibility of other vehicles came from Ms. Delange's evidence in chief, when she described the possibility of vehicles in the eastbound lanes of traffic on the Lougheed Highway (and not United Boulevard).

Her evidence was neither credible nor reliable. It was general in nature and speculative at best. In all, she did not identify any vehicles in any lane of traffic that could have activated a sensor that would affect the signals facing Mr. Kuma-Mintah. As well, her evidence was inconsistent with the very clear evidence she gave at her examination for discovery to the contrary. Finally, the two passengers in her vehicle who testified on her behalf, her husband and brother-in-law, did not identify any such vehicles.

[11] Accordingly, the only way that the traffic signals facing Mr. Kuma-Mintah could have been affected would have been by Ms. Delange's vehicle when she approached the Intersection from United Boulevard, heading south, as she proceeded to make a left-hand turn to head east onto the Lougheed Highway.

Advanced Warning Lights

[12] There are also other lights facing vehicles, such as Mr. Kuma-Mintah's, travelling west on the Lougheed Highway, which warn that the traffic signals facing them at the Intersection are about to change from green to red. For example, when a vehicle approaches the Intersection southbound on United Boulevard to turn left or east onto the Lougheed Highway, advanced warning lights located on the Lougheed Highway are activated to display continuous flashing yellow lights facing westbound traffic (Mr. Kuma-Mintah's direction of travel). The lights controlling westbound traffic on the Lougheed Highway remain green for a time while the advanced warning lights flash yellow.

[13] Although no actual distances were provided, photographs in evidence show that the advanced warning lights are set a considerable distance back from the Intersection.

Traffic Signal Sequence

[14] The traffic signal sequence design establishes that once the advanced warning lights are activated, the green lights facing westbound traffic remain green for 5.2 seconds before turning to solid yellow for a further 4.6 seconds before finally

turning to red. To ensure that traffic will clear the Intersection before a left turning vehicle from United Boulevard proceeds into the Intersection, all of the lights displayed through the Intersection display red for 1.5 seconds before the traffic signal lights governing southbound traffic on United Boulevard turn to green. Thus, in summary, from the time the advanced warning lights are activated until the time the lights facing traffic heading south on United Boulevard turn to green, a person waiting at the Intersection to turn left to travel east on the Loughheed Highway would have to remain stationary for at least 11.3 seconds.

[15] The time during which the traffic signals facing westbound traffic on the Loughheed Highway remain green may be extended if there is sufficient traffic volume travelling westbound in close enough proximity to trigger certain sensors. Here, however, there was no such traffic on the Loughheed Highway before the accident occurred. I accept Mr. Kuma-Mintah's unchallenged evidence that there was only one vehicle travelling ahead of him and that it was a considerable distance away so that it had no effect on the traffic signal sequencing.

[16] There was also no evidence of any malfunction to the traffic signal sequencing or to any of the traffic lights governing the travel of the parties shortly before or at the time the accident occurred.

[17] From the discussion that follows, it is clear that the sequence design of the traffic signals controlling traffic approaching and entering into the Intersection at the time of the accident provides independent and objective confirmation of Mr. Kuma-Mintah's description of the accident.

Discussion

[18] Mr. Kuma-Mintah's evidence is that he was travelling westbound on the Loughheed Highway, toward the Intersection, in the inner lane of the two lanes that would take him to Highway 1 westbound. The traffic signal lights controlling his travel remained green throughout. He estimated that his speed was 60 k.p.h, He was driving to his mother's home near White Rock after spending the evening with his

girlfriend. He denied having consumed any alcohol or drugs at any time within 24 hours of the accident, and there is no evidence to suggest otherwise. He described clear visibility, although it was raining. He said that the traffic signal governing his lane of travel was green as he approached the Intersection. The advanced warning lights warning him to stop at the Intersection were never activated. It was only when he was very close to the Intersection that he saw headlights from a vehicle at or close to the Intersection heading south on United Boulevard. That was the vehicle driven by Ms. Delange. Mr. Kuma-Mintah heard the sound of brakes screeching, which he assumed came from the other vehicle. He did not have time to take evasive action before their vehicles collided.

[19] Ms. Delange claims to have been stopped facing south at the Intersection on a red traffic signal. She said that she waited to turn left to head eastbound on the Loughheed Highway before the signal facing her turned to green. Once the traffic signal facing her turned to green, she proceeded slowly into the Intersection. As she did, she heard her husband, who was sitting behind her in the passenger seat on the left side of the vehicle, yell out that Mr. Kuma-Mintah's vehicle was not going to stop. The collision occurred.

[20] There was a period of time while she was giving evidence during the trial when Ms. Delange sought to move away from her wait-time estimate of 30 seconds that she gave at her examination for discovery. Her discovery evidence was very clear on the point. She also suggested the possibility that other vehicles were present at or near the Intersection. The evidence from the traffic engineer concerning the traffic signal sequence for the Intersection, which was not expert evidence, became known to Mr. Kuma-Mintah's counsel only a few days before the trial began and to defence counsel shortly before the start of the trial (no adjournment of the trial was sought by the defence). While I do not consider that Ms. Delange, in providing new evidence suggesting a different wait-time and the possibility of other vehicles at or near the Intersection, was attempting to provide dishonest or misleading testimony following the recent disclosure of the traffic engineer's evidence, her attempt to explain away her very clear discovery evidence

was indicative of her ongoing struggle to comprehend how the accident could have occurred. I accept that she was trying to provide an overall account that she thought was truthful; it was, however, an account that was premised on *post hoc* reasoning.

[21] I reject the able submissions made by her counsel that her discovery evidence was sufficiently unclear to create ambiguity. Counsel conducting the discovery ensured that Ms. Delange had full opportunity to confirm her evidence on key points. Her evidence on many foundational factual issues, including her wait time, the manner in which she proceeded into the Intersection, and the lack of any other vehicles, was reviewed to ensure clear and accurate responses. I am not left in any doubt about the clarity of her evidence at discovery. I found that her attempts in cross-examination to explain away inconsistencies between her trial evidence and discovery evidence lacked credibility.

[22] Ms. Delange, along with her husband and brother-in-law, had driven to a punk country rock concert at the Commodore Ballroom in Vancouver earlier that evening. She was driving home late at night, well past her normal bedtime on weekends. Although there is no evidence to establish that she was impaired by alcohol or drugs, I am satisfied that she was fatigued. She was also in shock following the accident, which may have affected her ability to recall events.

[23] The passengers in Ms. Delange's vehicle had consumed alcohol earlier in the evening and then at the concert (at least four to five beers at the concert). While I am satisfied that they were not intending to provide untruthful evidence, I am equally satisfied that their full attention to the details of their travel, including the circumstances leading up to the accident, was not engaged. They were returning from hearing one of their favourite bands, they had been drinking, and it was very late. By their own admission, they were listening to music and reminiscing about the concert they had just attended. I am satisfied that their attention was also distracted while they were eating food in the vehicle.

[24] Ms. Delange's vehicle was the only one present at or near the Intersection that could have triggered any of the embedded traffic sensors. And as I have pointed

out, I find that other than Ms. Delange's vehicle, there was no traffic on the Loughheed Highway or United Boulevard during the relevant time before the accident occurred that would have made any difference to the traffic signals affecting Mr. Kuma-Mintah. That means that if Ms. Delange was stopped at the Intersection as she claims, then she would have been waiting for only 11.3 seconds, and not 30 seconds, before she could proceed to make her left-hand turn. Her vehicle would have automatically triggered the various traffic signals controlling the Intersection to change in accordance with the sequence design.

[25] The description of the accident provided by Mr. Kuma-Mintah is also supported by the expert accident reconstruction evidence tendered as part of his case. The expert was not asked by the defence to be produced for cross-examination, and his opinions were not challenged. Also, the defence did not call any reconstruction evidence as part of Ms. Delange's case in response. From the engineering opinion, which includes an analysis of the damage to both vehicles from photographs in evidence, I am satisfied that the extent of the damage caused by lateral forces demonstrates that Ms. Delange's vehicle was travelling at a speed far greater than she was prepared to admit in her evidence.

[26] I wish to add that I am not able to place any reliance on Ms. Delange's evidence concerning the speed of her vehicle at the time of impact. Her evidence at trial - that she proceeded slowly into the Intersection - was completely at odds with her very clear evidence at examination for discovery that she was stopped when the collision occurred. As I have observed, her explanations for the differences in her testimony concerning this as well as other foundational issues were not credible.

[27] I am mindful of the able submissions of defence counsel concerning reliability and credibility problems with Mr. Kuma-Mintah's evidence. Nevertheless, in all, I found that he provided a straightforward and consistent account of the circumstances giving rise to the accident. His account also withstood cross-examination. His recollection of events following the collision may well have been impacted because he hit his head and suffered from immediate "haziness" and a

concussion. However, I accept his counsel's submission that Mr. Kuma-Mintah, who had attended college in the United States on a football scholarship and was waiting to try out for the B.C. Lions and other professional football teams, would not have jeopardized his career by speeding through the Intersection without regard to the traffic signals warning him to stop.

[28] I also accept Mr. Kuma-Mintah's evidence that his attention was not distracted and that he was not suffering from impairment or fatigue when the accident occurred. He was accustomed to being awake at that time of the night. The few inconsistencies arising in his evidence concerned only minor issues. His explanation for how he lost a piece of paper with witness names or his failure at trial to provide current contact information for his former girlfriend are not things that detracted from his credibility. He immediately reported the accident to the Insurance Corporation of British Columbia ("ICBC"), and advised them of the name of at least one witness and his girlfriend's name when he gave his statement describing the accident. There was no evidence, let alone any suggestion, that Mr. Kuma-Mintah was withholding information or that he failed to provide information to ICBC about that witness and his past girlfriend.

Conclusion

[29] I find that Ms. Delange proceeded into the Intersection on a red traffic signal and collided with the vehicle being driven by Mr. Kuma-Mintah, contrary to s. 129(1) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. Mr. Kuma-Mintah was entitled to proceed through the Intersection on a green traffic signal pursuant to s. 127(1). I accept his explanation that there was insufficient time for him to have taken evasive action.

[30] My findings are made on a balance of probabilities. My determination of fault is premised on the clear objective evidence concerning the sequence design of the traffic signals and the evidence of the accident reconstruction expert contained in his report. My determination is only partly derived from my assessment of the credibility of the witnesses when they gave their testimony. I have determined that the

description provided by Mr. Kuma-Mintah is in “harmony with the preponderance of probabilities”: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.); *Gariepy v. Ritchie*, [1993] B.C.J. No. 2304 (S.C.); and *Hou v. McMath*, 2012 BCSC 257 at para. 27.

[31] Absent something of which I am unaware, Mr. Kuma-Mintah is entitled to his costs.

“P. Walker J.”

The Honourable Mr. Justice Paul Walker