

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

TRENT ISBISTER

Plaintiff

- and -

RONNIE DWAYNE CARTER

Defendant

MEMORANDUM OF DECISION
of
W. J. QUINN, Master in Chambers

APPEARANCES:

Brenden W. Veale
Frieser Robinson
for the Plaintiff

B. J. MacLeod, Esq.
Barrister and Solicitor
for the Defendant

[1] This is an application by the plaintiff for summary judgment.

[2] The plaintiff was injured on March 2, 1996 when the Dodge Truck, in which he was a passenger left Highway 16 into a ditch and rolled.

[3] No other vehicle was involved. The plaintiff relies on section 180 of *Highway Traffic Act*, R.S.A. 1980, Chap. H-7 which is as follows:

180(1) If a person sustains loss or damage by reason of a motor vehicle in motion, the onus of proof in any civil proceeding that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is on that owner or driver.

(2) This section does not apply in the case of a collision between motor vehicles on a highway.

(3) In this section “motor vehicle” includes a tractor and a self-propelled implement of husbandry.

[4] The plaintiff alleges the defendant has not met the onus of proving that the injuries suffered by the plaintiff did not entirely or solely arise through the defendant’s negligence or improper conduct.

[5] By his affidavit, upon which he was not cross examined the plaintiff states that on the morning in question the defendant was driving his truck from Hinton to Edmonton, and had left Hinton at approximately 7:00 a.m.

[6] Sometime after leaving Hinton it began to snow and the road condition became somewhat slippery.

[7] Roughly 15 minutes before the accident the back end of the defendant’s truck skidded or “fish-tailed” dangerously.

[8] After this incident the plaintiff deposes he advised the defendant to pull over and rest for a while. The defendant refused to do so at first, but eventually let the plaintiff drive for a while. The plaintiff says the defendant appeared to be sleepy.

[9] The defendant subsequently resumed driving and when going up an incline lost control of the truck, which ran off the highway into the ditch and then rolled over.

[10] The defendant was examined for discovery. He was asked if he was sleepy at the time of the accident and at page 22 of the transcript he replied:

“Well, I can’t say I was and I can’t say, you know, I don’t remember, maybe. I know I was may be a little you know.”

[11] When asked about the situation after the truck “fish-tailed” the defendant replied, at page 15 of the transcript:

I reduced my speed to something I thought at the time was something I could control, like I thought, you know obviously it wasn't enough. But we hit another incline and that's when the accident occurred.

[12] The defendant was asked whether he was nervous and scared about continuing to drive but nevertheless continued. At page 15 of the transcript he said:

I was kind of nervous about driving the rest of the way.

[13] Paragraph 11, 12 and 13 of the plaintiff's affidavit is as follows:

11. It was clear from the moment that it began to snow that the road conditions were becoming worse, and that ice was present on the road. The road conditions were also clear throughout to Mr. Carter. Indeed, after the initial fish-tail, I told Mr. Carter he should probably pull over and rest for a while. Mr. Carter simply said "it's slipperty out" by way of reply.
12. Mr. Carter did not slow the vehicle to an appropriate speed, or take appropriate precautions to avoid the accident.
13. There is no mention of "black ice" anywhere on the police report (Exhibit "A") nor do I recall there being black ice on the highway.

[14] *McDonald v. Nguyen*, [1991] A.J. No. 1239 Action No. 8901-02567 is the decision of Lutz J. in a case where a motor vehicle collision occurred. Some of the observations made in that case are appropriate in the present case, even though this is not a collision case.

[15] At paragraph 47 Lutz J. quotes with approval the words of Sir Wilfred Greene, Master of the Rolls in *Laurie v. Raglan Building Co.*, [1941] 3 All E.R. 1332 [C.A.] at page 366:

If roads are in such a condition that a motor car cannot safely proceed at all, it is the duty of the driver to stop. If the roads are in such a conditions that it is not safe to go at more than a foot pace, his duty is to proceed at a foot pace.

And at paragraph 51 Lutz J. said:

From all the evidence before me, I am satisfied that the existence of ice and/or snow causing slippery conditions both for some distance before and at or near the place of the accident was a foreseeable condition. Whether the defendant accelerated that day to climb the grade or slowed - as he states was his usual practice when it is snowing - will likely remain unknown. The fact remains that he had reasonable foreseeability that the snow and potentially icy conditions that loomed on the highway for some miles before the accident site caused conditions where harm would have been reasonably foreseeable unless

reasonable precautions were taken even to the point of slowing to a snail's pace or stopping altogether.

[16] On the evidence before me on the present application I am convinced the defendant did not discharge the onus that was on him pursuant to section 180 of the *Highway Traffic Act*.

[17] In his statement of defence the defendant alleges the plaintiff was not wearing a seat belt but in his affidavit in opposition to the plaintiff's summary judgment application that is not mentioned.

[18] I have been asked to render a decision only on the question of liability. Apparently the matter of quantum of damages has been agreed on.

[19] In my opinion there is no genuine issue to be tried on the question of liability of the defendant.

[20] Accordingly judgment is granted in favour of the plaintiff in the amount already agreed to.

HEARD on the 20th day of March, 2002.

DATED at Edmonton, Alberta this 4th day of April, 2002.

W. J. QUINN
M.C. C.Q.B.A.