HIS MAJESTY THE KING (RESPONDENT) ..... APPELLANT;

AND

CARL A. ANDERSON (SUPPLIANT) ..... RESPONDENT.

1945
*Oct. 3, 4
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*Jan. 24

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Motor vehicles—Negligence—Motor truck at street intersection turning left from westward course and colliding with passing motor car going westward—Responsibility for accident—Duties of drivers—Insufficiency of turning signal—Horn of passing vehicle not sounded.

*PRESENT:—Rinfret C.J. and Kerwin, Rand, Kellock and Estey JJ.

(1) (1908) 14 B.C.R. 51.

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The suppliant claimed damages against the Crown for injury suffered in a collision between his taxi, driven by him, and an army truck, driven by a member of the Canadian Army Service Corps, about 7.45 a.m. on January 28, 1944, in the city of Vancouver. The army truck, which had been going westward on Georgia street, turned left to go south on Bute street and struck the taxi which, going westward on Georgia street, was in the course of passing the truck on the truck's left side. The truck was a right-hand drive vehicle, and its driver, who was alone and did not see the taxi, extended his arm to the right, but this was not seen by the suppliant. The suppliant in proceeding to pass did not sound his horn.

Held (affirming judgment of Angers J. in the Exchequer Court): Having regard to all the circumstances (discussed), the accident was caused solely by negligence of the driver of the army truck.

Per the Chief Justice and Kerwin and Estey JJ.: The truck-driver violated the provisions of s. 3 (*j*) of the regulations passed under the *Motor-vehicle Act,* R.S.B.C. 1936, c. 195, in not ascertaining if the turn could be made in safety and in failing to give a signal plainly visible. The suppliant was entitled to rely upon compliance with such provisions.

Per Rand and Kellock JJ.: The truck-driver failed completely to take any precaution to see whether or not the turn could be made safely; and this, apart altogether from any statutory provision, was negligence. The suppliant, while obliged to keep a proper look-out, and it was not shown he did not, was not bound to anticipate that the truck would turn into Bute street in the absence of any indication that such was its driver's intention.

Per curiam: In the circumstances in question, it was not "reasonably necessary" (s. 3 (*h*) of said regulations) for the suppliant to sound his horn.

APPEAL on behalf of His Majesty the King from the judgment of Angers J. in the Exchequer Court of Canada in favour of the suppliant (the present respondent) for damages ($2,422.10) resulting from personal injuries to the suppliant caused by a collision of an army motor truck, driven by a private in the Canadian Army Service Corps, with a motor car driven by the suppliant, at or near the intersection of Georgia street and Bute street in the city of Vancouver, British Columbia, at or about 7.45 a.m. on January 28, 1944. Angers J. held that the accident was due solely to the negligence of the driver of the army vehicle.

R. Forsyth K.C. for the appellant.

C. K. Guild K.C. for the respondent.

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The judgment of the Chief Justice and Kerwin and Estey JJ. was delivered by

ESTEY J.—This is an appeal from a judgment after trial in the Exchequer Court in which the respondent (suppliant) taxi driver claims damages against His Majesty for injury suffered in a collision between his taxi and an army motor vehicle.

The learned trial judge found: "I have come to the conclusion that the accident is due solely to the negligence of the driver of the Army vehicle" in that he failed to give "a visible signal to the driver of the taxi". He accordingly directed judgment for the respondent (suppliant in the Exchequer Court) in the sum of $2,422.10. The appellant (respondent in the Exchequer Court) asks that this Court reverse that finding of fact and find that the respondent's conduct constituted negligence, either ultimate or contributory.

The army vehicle, driven by a member of the armed services, was proceeding westward on Georgia street in the City of Vancouver at about 7.45 on a frosty morning, the 28th of January, 1944. The city lights were still on; the street was hard surfaced and at the time described by some as slippery. He was alone in this right-hand drive army vehicle and proceeding at a speed which he estimated not to be in excess of 15 m.p.h. at any time and at the time of impact about 8 to 10 m.p.h. Other evidence suggests he was going a little faster, perhaps 20 to 25 m.p.h. As he was "just getting into the intersection" of Georgia and Bute streets he made a turn to the south. He admits that, notwithstanding his motor vehicle was equipped with a rear-view mirror, he did so without looking to ascertain if any vehicle was at or near this point. Moreover, he did so without giving any signal except to extend his arm on the right side where he knew it could not be seen by a driver of an over-taking motor-car upon his left. Immediately he started to make this turn he collided with the respondent's taxi, then in the course of passing him on the south side, as it was proceeding in the same direction westward on Georgia street.

There were only three parties who saw the accident: the respective drivers and the passenger in the taxi. The

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respondent, the driver of the taxi, was taking a passenger to work. He was driving at 25 to 30 m.p.h. near the centre of Georgia street and noticed the army vehicle when it was about 100 to 150 feet from Bute street and about 10 or 15 feet in front of him but to his right. Because the army truck was to his right and proceeding in the same direction, he did not change his speed, alter his course or sound his horn. As he was passing the army vehicle, and when the front of his taxi was approximately 3 or 4 feet from the front end of the army vehicle, the latter made a "fast turn" to his left and collided with the right front door of the taxi. The respondent suffered serious personal injuries, the passenger was rendered unconscious and the taxi damaged.

The passenger sitting in the front seat on the right-hand side saw nothing to attract his attention. He said:

> We were not going very fast * * * the truck was on our right side * * * we were just starting to go by it * * * Well we were going along the street, as I remember it, we seemed to be coming up onto the corner, and there was a truck on our right, and the next thing I realized we were sort of lifted up in the air and pushed across the street into a building, and from then on I don't know because I was knocked out.

Certain photographs were placed in evidence and these corroborated the statements of the respondent, his passenger and Constable Vance that the right front door of the taxi was damaged by contact with a front tire of the army vehicle.

Constable Vance of the Vancouver Police Force and Capt. Edwards of the Royal Canadian Army Service Corps arrived very soon after the accident and independently examined the tracks of the respective vehicles. They were able to trace the tracks of both vehicles approximately 20 or 30 feet eastward from the intersection and agreed that the vehicles were proceeding more or less parallel. They disagreed entirely with respect to the point of impact. Constable Vance found skid marks made by the taxi 20 to 30 feet east of the east curb line of Bute street and fixed that as the point of impact. Capt. Edwards found some dirt near the yellow line about 8 feet west from the east curb line of Bute street and he fixed that as the point of impact. Both felt that the marks of the respective vehicles justified or corroborated their conclusions as to the point of impact.

The respondent thought the collision occurred when he had "not quite" reached the intersection, and the driver of the motor vehicle thought it happened "when I got into the interestion I just started my left turn." It is impossible upon the evidence to reconcile these statements and with regard to which the learned trial judge made no specific finding either with respect to the point of impact or the credibility of the respective witnesses, no doubt because in his opinion the sole cause of the collision was the negligent conduct on the part of the driver of the army vehicle.

That the driver of the army vehicle was negligent there can be no doubt. He admits that he turned south without giving any signal evidencing his intention to do so, and without looking to ascertain if there was any traffic nearby. In this he violated the express provisions of section 3 (*j*) of the regulations passed under the provisions of the Motor-vehicle Act, R.S.B.C. 1936, Chap. 195:

> 3. (*j*). Before turning, stopping, or changing the course on the highway of any motor-vehicle, and before turning such vehicle when starting the same, it shall be the duty of the operator thereof first to ascertain whether there is sufficient space for such movement to be made in safety, and the operator shall give a signal plainly visible to the operators of other vehicles of his intention to turn, stop, or change his course. Such signal shall be given either by the use of the hand and arm or by the use of an approved mechanical or electrical device:

The word "highway" is defined to include "every * * * street, lane * * * used by the general public for the passage of vehicles." In my opinion, therefore, the appellant's servant violated the express provisions of section 3 (*j*) and his conduct in this regard constitutes negligence.

The respondent on his part was entitled to rely upon the appellant complying with these provisions of section 3 (*j*), "to ascertain" if the turn could be made "in safety" and also "give a signal plainly visible". *Carter* v. *Van Camp* (1); *Toronto Railway Co.* v. *King* (2), where Lord Atkinson stated:

> It is suggested that the deceased must have seen, or ought to have seen, the tramcar, and had no right to assume it would have been slowed down, or that its driver would have ascertained that there was no traffic with which it might come in contact before he proceeded to apply his power and cross the thoroughfare. But why not assume these things? It was the driver's duty to do them all, and traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less

(1) [1930] S.C.R. 156. (2) [1908] A.C. 260 at 269.

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upon the assumption that the drivers of all the other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets.

The appellant contended that the respondent's failure to see the warning painted on the rear of the army vehicle, "Caution Right Hand Drive Vehicle—No Signals", was evidence of his failure to keep a proper look-out. The only evidence, however, with respect to this caution sign is that it was "dirty", "smeared as though they had been used for a period of time". In fact there is no evidence that a reasonable driver in the position of the respondent could have seen these words. The respondent was not asked specifically as to whether he did see them. He admits, however, seeing the army vehicle but concluded that, as it was to his right, there was plenty of room for both to continue on their respective courses, and further that immediately he saw the army vehicle turn toward the south, he "tried to swing with it" but "he [driver of the army vehicle] turned too fast".

The appellant also contended that the driver of the taxi was negligent in not sounding his horn. The respondent admits that he did not sound his horn. The regulation with respect thereto, as passed pursuant to the *Motor-vehicle Act* (R.S.B.C. 1936, Chap. 195) and amendments thereto, includes the following as a part of paragraph 3 (*h*):

> The motor-vehicle shall be equipped with a suitable horn, * * * and the same shall be sounded whenever it is reasonably necessary as a signal or warning to any person of the approach of the motor-vehicle; * * *

What is "reasonably necessary" is a question of fact upon which point the learned trial judge in this case has made no finding. While I do not minimize the importance of sounding a horn under other circumstances, the evidence in this case, having regard to the width of the street, the absence of other traffic, the conduct of the respective drivers and the doubt as to their east-west position on Georgia street, does not establish a case of reasonable necessity therefor and consequently does not warrant a finding of negligence on the part of the respondent taxi driver.

The evidence establishes that the respondent was driving at a reasonable speed, maintaining a careful look-out and approaching the intersection with such care and

caution that he would have adjusted his course to meet any condition that might reasonably have been anticipated, including the giving of a signal evidencing a turn to the left at the intersection. On the other hand, the army driver, without either looking into his rear-view mirrors or giving any signal, turned left just after entering the intersection. It therefore appears to me that the evidence does not establish a case of contributory negligence on the part of the respondent, but rather supports the finding of the learned trial judge that it was the failure of the driver of the army vehicle to give a "visible signal to the driver of the taxi" which caused this accident.

It is unnecessary, in view of the foregoing, to consider the submissions made relative to the by-laws of the City of Vancouver and District Routine Order No. 122. Insofar as either or both of these submissions may be applicable, they merely add to or strengthen the conclusions already arrived at.

In my opinion, the judgment of the learned trial judge should be affirmed and this appeal dismissed with costs.

The judgment of Rand and Kellock JJ. was delivered by

KELLOCK J.—In my opinion, it is not possible in this case to absolve the driver of the appellant's truck of negligence. This vehicle, an army truck, was so constructed that the driver could not see to his rear through the truck but had to depend for his knowledge of traffic approaching from the rear upon two mirrors projecting from either side of the windshield. Admittedly, the driver made a left-hand turn for the purpose of proceeding south on Bute street without knowing anything as to the presence or absence of traffic to his rear and without looking in either mirror. While he gave a signal with his right hand on that side of the truck, this could not be observed by the respondent. The driver failed completely to take any precaution to see whether or not the turn could be made safely before proceeding to execute it. Apart altogether from any statutory provision, this, in my opinion, was negligence. The enquiry then resolves itself into one as to whether or not there was any negligence on the part of the respondent.

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The respondent said that he first observed the truck when at a distance of from 100 to 150 feet from Bute street. At that time, the truck was from 10 to 15 feet in front of his taxi-cab, but well to the right and close to the north curb on Georgia street, a wide street measuring 50 feet from curb to curb. The respondent said that his taxi cab was proceeding north of the centre line of the street, the two vehicles being separated by from 3 to 4 feet. The respondent said his speed was between 25 to 30 miles per hour but closer to the former figure, while the truck was travelling somewhat more slowly and that when the front end of the taxi cab was approximately 3 to 5 feet from the front of the truck, the vehicles not having "quite" reached the intersection, the truck turned quickly to its left. The respondent says that he also swung to the left, but could not get away from the truck which struck the right front door of the taxi cab with its left front wheel.

I do not think any point can be made of the fact that the respondent first observed the truck at the time above mentioned. At that time, it was well to his right and the two vehicles were some distance east of the point where any change in course was made by either.

The main contention on behalf of the appellant was that the respondent's taxi cab was endeavouring to pass the truck south of the centre line of Georgia street, as the two vehicles approached the intersection. It is said that the respondent ought not to have pursued such a course at that point but ought to have had his vehicle under control in anticipation of the possibility of the vehicle ahead turning into Bute street, and that in fact the respondent had been warned of such an intention on the part of the truck by the action of the truck driver in pulling his vehicle over toward the centre of Georgia street as he approached the intersection before he actually made the left-hand turn. This contention raises a question of fact and depends upon the proper view to be taken of the evidence.

The driver of the truck deposed that at no time had he travelled at a speed in excess of 15 miles an hour and that as he approached the intersection he slowed down to between 8 and 10 miles an hour and pulled over from the centre of the north half of the street to within 2

feet of the centre line at a point from 20 to 30 feet east of the property line on the east side of Bute street, which in turn, is 18 feet easterly from the east curb. He says that when he got into the intersection, he made his left-hand turn and the collision then occurred. He admits that the collision took place between the left front corner of his vehicle and the front door of the taxi cab and that it is possible that the point of impact may have been further to the east than he stated. If this evidence be accurate, the truck travelled a maximum of only 38 feet from the point where it began its inclination to the point of impact. The witness, Edwards, called on behalf of the appellant, who came on the scene after the accident, stated that he followed the tracks of the truck and that at a point 20 to 30 feet east of the east curb of Bute street they were from 2 to 3 feet north of the centre line. His evidence is not very clear, as he follows this statement up by saying that these marks were "right at the yellow line" and so continued up to the point 8 feet west of the east curb when they showed a decided turn to the left. On his evidence, there is only the one deviation from a straight course, namely, after the truck had entered the intersection, so that this witness has nothing to say about any earlier change of course on the part of the truck. He also says that he followed the marks of the taxi cab from a point 20 to 30 feet east of the east curb of Bute street to the point where the taxi cab came to rest against the building at the southwest corner of the intersection. This witness said that at the most easterly point where these marks began, one wheel was between 3 and 4 feet south of the centre line of Georgia street while the other was approximately 1 foot north of that line. He says these tracks travelled in a straight line until about 8 feet west of the east curb of Bute street where he found some dirt on the roadway where he says the marks moved slightly south of their original direction. Without taking into consideration the evidence of the respondent's witness, Vance, who places the marks of the vehicles in a different position, it is plain that, even giving full effect to the evidence of the truck driver, the first alteration of his course and the ultimate turn into the intersection all took place within a maximum

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of 38 feet. When it is remembered that the taxi cab at 25 miles an hour would cover this distance in slightly over one second and the truck at 10 miles an hour would cover the same distance in something over two seconds, it is evident that the taxi cab in the position in which it found itself had no sufficient warning of the actual turn. It may well be that the learned trial judge was of opinion that the truck was proceeding faster than its driver would admit. I do not think that the respondent was bound to anticipate that the truck would turn into Bute street in the absence of any indication that such was the intention of its driver. That is not to say that the respondent was not at all times obliged to keep a proper lookout. It is not shown he did not.

It was also argued on behalf of the appellant that the respondent was negligent in not sounding his horn. I do not think, in the circumstances, there was any obligation on the respondent to sound his horn. The two vehicles, prior to the sudden change of course of the truck, were proceeding westerly on the north side of this wide city street, the one overtaking the other at a speed which was not excessive. In the absence of some warning of a change of course on the part of the vehicle ahead, I see no reason why the horn of the respondent should have been sounded. There is nothing in the relevant statutory provision, regulation 3 (*h*) passed pursuant to R.S.B.C. 1936, c. 195, to require it. According to the respondent, the front of his taxi cab was from 3 to 5 feet only from the front of the truck when the left turn was made. The taxi in that position could easily have been seen by the truck driver had he looked. In all these circumstances, I do not think it was "reasonably" necessary that the horn of the taxi cab should have been sounded and if not reasonably necessary the blowing of the horn was prohibited by the same regulation.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *F. P. Varcoe (solicitor for the Attorney-General of Canada); R. V. Prenter.*

Solicitor for the respondent: *W. S. Lane.*