# Why A Speeding Vehicle Is Not Always At Fault For A Car Crash

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A common misconception is that if a driver is in violation of the motor vehicle act they are always at fault if involved in a motor vehicle collision. This is not the case and reasons for judgement were released today by the BC Supreme Court illustrating this principle.

If a person is violating the motor vehicle act at the time of the collision that violation has to be a causative factor in a collision for the act to constitute negligence. For example, a drunk driver who is clearly in violation of the motor vehicle act could have his/her vehicle rear-ended and be faultless for the collision despite being drunk.

In today's case the Plaintiff (a taxi driver) was travelling through an intersection in Vancouver, BC with the right of way. He was travelling an estimated 85 kmph which was above the posted speed limit. At the same time the Defendant, coming from the opposite direction, turned left in the path of the Plaintiff's vehicle and a collision occurred.

The Plaintiff argued that the defendant was fully at fault for failing to yield the right of way, the Defendant argued that the Plaintiff was at fault for speeding and had the Plaintiff been driving a lawful speed this collision would not have occurred.

Here the court found that the left hand turning vehicle was 100% at fault for this collision despite the Plaintiff's speeding. The key analysis takes place at paragraphs 35-45 of the reasons for judgement which I reproduce below:

*[35] Section 174 of the **MVA** provides:*

*174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.*

*[36] In **Raie v. Thorpe** (1963), 43 W.W.R. 405 (B.C.C.A.), Tysoe J.A. stated at 410 that:*

*[18] …if an approaching car is so close to the intersection when a driver attempts to make a left turn that a collision threatens unless there be some violent or sudden avoiding action on the part of the driver of the approaching car, the approaching car is an "immediate hazard" within the meaning of sec. 164 [now s. 174].*

*[37] Mr. Naeem was entitled to assume that all other drivers would observe the rules of the road. He was not required by law to slow down as he approached the intersection. The existence of the eastbound left turn lane did not cast a duty on Mr. Naeem to take extra care: **Pacheco** at para. 15.*

*[38] Mr. Garrett never saw the taxi before the collision so that those cases where a left-turning driver wrongly estimates the speed of the approaching vehicle are not of assistance.*

*[39] Mr. Garrett, if he exercised reasonable care, should have been able to see the taxi coming east past Fremlin Street more than a block away. While he suggests that perhaps a traffic sign partially blocked his view, I find, based on the videotape, that was not the case. If I am wrong and the traffic sign partially blocked his view, he should have taken more reasonable care before he encroached into the westbound lane.*

*[40] Mr. Garrett would have seen the taxi if he had been looking. He saw the two westbound vehicles turn right onto the Oak Street on-ramp. He saw the right turn signal of one of those vehicles. He may have been so focussed on the right-turning vehicles that he did not see Mr. Naeem, but that does not absolve him from liability. The law required him to yield the right of way to the westbound vehicles.*

*[41] If Mr. Garrett seeks to cast any blame onto Mr. Naeem for the collision, he must establish that after Mr. Naeem became aware, or by the exercise of reasonable care should have become aware, of Mr. Garrett's disregard of the law, he had sufficient opportunity to avoid the accident:* ***Walker v. Brownlee*** *at 461.*

*[42] Travelling over the speed limit will only constitute negligence if the speed prevented the driver from taking reasonable measure to avoid the collision. However, the experts agree that the moment that Mr. Garrett encroached onto the westbound lane, it was impossible for Mr. Naeem to avoid the collision.*

*[43] The next issue is whether the collision could have been avoided if Mr. Naeem drove at a lower speed or at the speed limit. The speed of a vehicle and the location of the vehicle are related. It is impossible for Mr. Naeem to have been travelling at about 85 kilometres per hour along Marine Drive and then instantly change to the posted speed limit 40 metres from where the collision occurred. As Mr. Naeem argues, if he had kept to 30 kilometres per hour from the outset, he would have been back in Burnaby when Mr. Garrett ploughed across oncoming traffic that morning. If he sped along at 120 kilometres per hour he would have cleared the area well before Mr. Garrett made his left-hand turn.*

*[44] While it seems attractive to attribute blame based on the speed of the dominant driver and hypothesize on what would have happened if Mr. Naeem kept to the speed limit, the fact is that Mr. Naeem drove at the speed he did and there was nothing he could have done, driving at the speed he did, to avoid the collision. When Mr. Garrett decided to proceed with his left-hand turn, Mr. Naeem was approximately 40 metres away. He was an immediate hazard and Mr. Garrett should have yielded to him.*

*[45] I find Mr. Garrett fully at fault for the accident.*

*[46] I note that counsel for the plaintiffs made no argument as to the costs. If the parties have not otherwise agreed, I find Mr. Garrett liable for the costs of the two actions.*