

Motorcyclist Found Liable For “Negligent Acceleration”

December 4th, 2008

Reasons for judgement were released today by the BC Supreme Court finding a motorcyclist liable for injuries to his passenger.

The Plaintiff was a passenger on the Defendants motorcycle. He turned onto a highway in British Columbia and changed gears. This produced a ‘burst of acceleration’ and at this time the Plaintiff was thrown off the back of the motorcycle.

The Plaintiff sustained road rash types of injuries ‘*including loss of skin to various parts of her body, soft tissue injuries, various extensions and strain injuries, a lingering loss of sensation in her fingertips, and a reoccurrence of previously suffered depression*’.

The court found that the Defendant driver was liable in negligence for these injuries. The courts key findings were made at paragraphs 23-24 which I reproduce below:

[23] *I find that Mr. James was an experienced motorcyclist. I also find that Ms. Santiago was an experienced passenger on a motorcycle and that she had considerable experience as a passenger on a motorcycle driven by Mr. James. As an experienced passenger, Ms. Santiago would have been very much aware of what occurs when the driver of a motorcycle shifts gears. I find that nothing on August 13, 2002 would have diverted Ms. Santiago’s attention away from what she could expect would be how Mr. James would operate his motorcycle. I find that she would have no expectation of sudden acceleration and that her previous experience including the trip that day from Dewdney to Harrison Mills would not have led her to believe that the motorcycle would be driven by Mr. James in a way that sudden acceleration would occur.*

[24] *I find that Mr. James did operate the motorcycle negligently that day. I find that he accelerated between first and second gear and beyond in an unsafe manner and at a rate which was far in excess of what a passenger like Ms. Santiago would expect and was entitled to expect. I find that the excessive acceleration was undertaken without warning Ms. Santiago that it was about to occur.*

The court assessed the Plaintiff’s non-pecuniary damages (pain and suffering) for her various injuries at \$40,000.

This is a useful case for anyone advancing an ICBC injury tort claim who was injured even though no actual collision occurred. This case demonstrates that a collision is not a pre-requisite for succeeding in an tort claim in British Columbia.