ICBC Injury Claims And Fault

April 2nd, 2009

If a Court finds that 2 or more people are responsible for a motor vehicle collision in British Columbia the Court must 'apportion' liability as between them. How does the court do this? What factors are considered when determining the percentage of blame to put on each at fault party?

Reasons for judgement were released today by the BC Supreme Court (Mills v. Seifred) addressing this topic.

Today's case involved a tragic accident between a motorcycle and a dump truck on September 1, 2005 in Langley, British Columbia. The truck turned in front of the motorcycle driver. It appears, based on the style of cause, that the motorcycle driver was killed as a result of this impact.

The court found that the motorcyclist was careless and contributed to the collision. He was travelling in a 60 kmph zone and the court found that he was travelling some 90 kmph at the time of impact. The court determined that this contributed to the collision because "*speed removes options for effective collision avoidance manoeuvres....there can be no doubt that (the Plaintiff's) excessive speed played a causative role in the occurrence of the accident*".

The court also found that the Dump Truck Driver was careless because he '*did not take sufficient time or care to keep a sharp lookout at the on coming traffic just before committing to the left turn.*'

In determining that the Dump Truck driver was 65% to blame for the crash and the Plaintiff 35% the Court summarized and applied the law as follows:

[97] Where, as here, the fault of two or more persons combine to cause a loss, liability will be apportioned. Apportionment is governed by the ***Negligence Act,*** *R.S.B.C. 1996, c. 333. The relevant provisions are set out below:*

s.1 Apportionment of liability for damages

(1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

(3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

s.4 Liability and right of contribution

(1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.

...

s.6 Questions of fact

In every action the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact.

[98] In assessing apportionment, the court examines the extent of blameworthiness, that is, the degree to which each party is at fault, and not the degree to which each party's fault has caused the loss. Put another way, the court is not assessing degrees of causation, rather, it is assessing degrees of fault: ***Cempel v. Harrison Hot Springs Hotel Ltd.****, [1997] 43 B.C.L.R. (3d) 219, 100 B.C.A.C. 212 [****Cempel****];* ***Aberdeen v. Langley (Township)****, 2007 BCSC 993 [****Aberdeen****]; reversed in part,* ***Aberdeen v. Zanatta****, 2008 BCCA 420.*

[99] In ***Alberta Wheat Pool v. Northwest Pile Driving Ltd.****, [2000] 80 B.C.L.R. (3d) 153, 2000 BCCA 505, Finch, J.A. (now the Chief Justice), for the majority of the Court of Appeal, explained this important principle at paras. 45-47:*

In my view, the test to be applied here is that expressed by Lambert, J.A. in ***Cempel****, supra, and the court's task is to assess the respective blameworthiness of the parties, rather than the extent to which the loss may be said to have been caused by the conduct of each.*

Fault or blameworthiness evaluates the parties' conduct in the circumstances, and the extent or degree to which it may be said to depart from the standard of reasonable care. Fault may vary from extremely careless conduct, by which the party shows a reckless indifference or disregard for the safety of person or property, whether his own or others, down to a momentary or minor lapse of care in conduct which, nevertheless, carries with it the risk of foreseeable harm.

[100] In ***Aberdeen****, Groves J. provided insight into the difficulty that the court faces in quantifying the concept of blameworthiness under the* ***Negligence Act****. At para. 62 he endorsed the enumeration of factors in assessing relative degrees of fault set out by the Alberta Court of Appeal in* ***Heller v. Martens****, as follows:*

1. The nature of the duty owed by the tortfeasor to the injured person…

2. The number of acts of fault or negligence committed by a person at fault…

3. The timing of the various negligent acts. For example, the party who first commits a negligent act will usually be more at fault than the party whose negligence comes as a result of the initial fault…

4. The nature of the conduct held to amount to fault. For example, indifference to the results of the conduct may be more blameworthy… Similarly, a deliberate departure from safety rules may be more blameworthy than an imperfect reaction to a crisis…

5. The extent to which the conduct breaches statutory requirements. For example, in a motor vehicle collision, the driver of the vehicle with the right of way may be less blameworthy…

[Authorities omitted.]

[101] To the foregoing factors, Groves J. added the following at para. 67:

6. the gravity of the risk created;

7. the extent of the opportunity to avoid or prevent the accident or the damage;

8. whether the conduct in question was deliberate, or unusual or unexpected; and

9. the knowledge one person had or should have had of the conduct of another person at fault.

[102] After surveying the authorities, Groves J. summarized at para. 67 the approach to be taken in assessing the relative degree of blameworthiness of the parties:

Thus, the key inquiry in assessing comparative blameworthiness is the relative degree by which each of the parties departed from the standard of care to be expected in all of the circumstances. This inquiry is informed by numerous factors, including the nature of the departure from that standard of care, its magnitude, and the gravity of the risk thereby created.

*[103] On appeal, the decision in **Aberdeen** in relation to the issue of contributory negligence was remitted for retrial. However, the Court of Appeal did not criticize Mr Justice Groves' careful summation of the governing legal principles on apportionment.*

[104] Mr. Cavezza continued in the oncoming lane at an excessive speed in order to pass a trail of vehicles long after the dividing line for eastbound traffic had become solid. He persisted in doing so on his approach to the Eastbound Hill, which would have hampered his view of oncoming traffic, and after the appearance of double solid lines which would tell him that the oncoming traffic had impaired visibility his way. He did not take advantage of the openings in the line of eastbound vehicles to merge earlier; had he done so, there would have been no accident. Instead, Mr. Cavezza chose to merge near the brow of the Eastbound Hill and once in the lead, maintained an excessive speed. In assessing the degree of Mr. Cavezza's blameworthiness, I have borne in mind the fact that traffic as a whole speeds along that segment of 16th Avenue. Even so, it cannot be overlooked that Mr. Cavezza's deliberate conduct violated, in a substantial way, the expected standard of care of a user of that road in those circumstances. He showed a reckless disregard for the safety of fellow users and created a substantial level of risk for himself and others.

[105] Turning to Mr. Seifred's fault, the law imposes upon him a very high degree of care to observe caution in crossing double solid lines. Although he was not speeding, he did not come to a complete stop or likely even hesitate prior to crossing the oncoming lane and cut the driveway at a 45 degree angle. Mr. Seifred travelled 16th Avenue frequently and is taken to know that speeding vehicles along that route were more the rule than the exception. Had he kept the sharp look-out reasonably expected of him, he would have seen Mr. Cavezza advancing in the eastbound lane and would not have initiated his turn in such patently unsafe circumstances. Mr. Seifred breached his duty to take reasonable care to a severe degree and created a grave risk for himself and a fatal one for Mr. Cavezza.

[106] In all the circumstances, I consider Mr. Seifred's conduct more blameworthy than Mr. Cavezza's. I apportion liability 65% against Mr. Seifred and 35% against Mr. Cavezza.