

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gibson v. Matthies*,
2017 BCSC 839

Date: 20170519
Docket: M173589
Registry: New Westminster

Between:

Brian Charles Gibson

Plaintiff

And

Ruben Matthies and 596526 B.C. LTD.

Defendants

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Plaintiff:

S.G. Price

Counsel for the Defendants:

C.D. Drinovz

Place and Date of Trial/Hearing:

New Westminster, B.C.
February 22-24, 2017

Place and Date of Judgment:

New Westminster, B.C.
May 19, 2017

Introduction

[1] September 14, 2013, was a glorious fall day. Mr. Gibson and his friend, Henry Kramer, decided to ride their Harley Davidson motorcycles out from the Surrey/Langley border up to Mission, where they enjoyed lunch at the Sasquatch Inn. They ate, drank some beer and set off on their way home around midday.

[2] They drove in a southwesterly direction along the Lougheed Highway. They exited at Mission, at which point the road is a two lane highway.

[3] Approximately two kilometres down the road, Mr. Gibson drove into the back of Mr. Matthies' stationary red truck. Mr. Gibson brings a claim for the personal injuries sustained in the accident. The parties have agreed on the quantum of damages. The issue before the court is determination of liability.

[4] The case law, the statutory law and common sense are clear: The onus lies on the trailing vehicle in motor vehicle collisions to establish it is not his negligence, but the negligence of the forward vehicle that gives rise to the claim. Nathan Smith J. summarised this neatly in *Cue v. Breitkreuz*, 2010 BSCS 617 [*Cue*] at para. 15:

Where there has been a rear-end collision, the onus shifts to the following driver to show that he or she was not at fault: *Robbie v. King*, 2003 BCSC 1553 at para. 13. It is also the case that the driver of a following vehicle must allow a sufficient distance to stop safely in the event of a sudden or unanticipated stop by the vehicles ahead: *Pryndik v. Manju*, 2001 BCSC 502 at para. 21, aff'd 2002 BCCA 639; and *Rai v. Fowler*, 2007 BCSC 1678 at para. 30.

[5] I may summarise the parties' positions by saying that the plaintiff asserts that the defendant came to a sudden halt without warning. The plaintiff also concedes he was looking in his rear view mirror to check the vehicle behind him, and, on looking forward saw the stationary truck, braked hard, which caused his motorcycle to start to slide onto its left side and to ultimately hit the defendant's vehicle.

[6] Fortunately, Mr. Matthies saw the motorcycle sliding towards the back of his truck and accelerated which allowed Mr. Gibson to fall forward from his motorcycle,

tumble on the ground and come to a halt. But the essence of Mr. Gibson's position was that the red truck stopped suddenly and unexpectedly.

[7] Mr. Matthies, to the contrary, says that he noted the motorcyclist a considerable distance behind him, from the time he passed him at the Sasquatch Inn to the point of impact, that he slowed as he approached the Malcolm Road turnoff (which is not easy to see as one approaches from the northeast) and that he was there for some 20 or 30 seconds before he noticed the motorcycle sliding into the back of his truck. Furthermore he asserts he had his left turn signal on when he approached the turnoff.

[8] I turn to the evidence.

Natalie Steele

[9] At the time of the accident, Natalie Steele was driving to work at the Sasquatch Inn.

[10] As with all the witnesses, she described the weather as sunny and the road as dry with light traffic. She noticed a truck in front of two motorcycles coming towards her and then she started to see the motorcycle "going down" on its side. It appeared the motorcyclists were behind each other and she had no impression of anyone speeding. She did not see if the truck was stopped when the motorcyclist hit the rear of the truck. She did not see any signals from the truck. She immediately pulled over, called 911, and ran to the motorcyclist, telling him to not move. She said Mr. Gibson was on the ground and responding but she thought he was confused and in shock. She recalled hearing the other motorcyclist and the truck driver arguing as it appeared to her that the truck driver wanted to leave.

[11] She said the volunteer fire department arrived on scene first and later the ambulance and police attended. A nurse also arrived and assisted in caring for Mr. Gibson.

[12] Ms. Steele had completed her first aid training three weeks before the accident.

[13] Asked as to the distance between the motorcyclist and the truck, she was not sure, initially saying two or three car lengths and the truck was not stopped, but then saying they were not close and “quite far back” or one to one-and-a-half car lengths behind the truck when the motorcycle fell to the ground.

[14] At the time of collision, she said she was approximately beside the motorcycle and truck and pulled over past the truck. She did not see the motorcycle/truck impact. She saw Mr. Gibson tumble and roll in her rear-view mirror. She also saw the truck roll forward.

[15] She believed there were two vehicles ahead of her.

[16] She did not speak to the truck driver.

[17] In cross-examination, she agreed that the accident had occurred three and a half years ago and that her present memory was less than it was immediately after the accident.

[18] She recalled not being in a rush to get to work as she had called to work advising she was on her way.

[19] She agreed there was an intersection to her right.

[20] She reiterated that she saw the truck moving towards her but neither saw it stop nor hear its breaks screech.

[21] As to the truck moving, she then said it only stopped when the motorcycle hit it, and it was not clear to her it was going to turn.

[22] As to the other motorcyclist, she said she did not really see him but observed he went to the right of truck, onto the gravel. She did not remember seeing his vehicle or speaking to him.

[23] As to the argument between the other motorcyclist and the driver, she said the driver wanted to leave and the motorcycle driver was telling him to stay. She did not recall any discussion regarding lights or signals. However, she was not prepared to say under oath that she had heard that conversation, or that she was certain about the truck signal light being on.

[24] She had given a statement on December 4, 2016, where she had said the truck was stopped at the time of the collision but could not say so with certainty under oath.

Henry Kramer

[25] Mr. Kramer is 54 years old and has been riding motorcycles for over 30 years. He and Mr. Gibson have been friends for 12 years. At the time of the accident, he was living in Surrey, five minutes away from Mr. Gibson. On the day of the accident, he drove to Mr. Gibson's house and then they drove up 200th Street and out to Lougheed Highway to Mission where they had lunch and a cigar on a patio. He believed they left for home at about 12:30pm.

[26] He wore full leathers.

[27] As they left Mission, they were on a two lane highway with good weather.

[28] He said he had been driving on the right hand side of the lane ahead of Mr. Gibson, who was driving to his left and a bit behind. As they were driving along, he could see Mr. Gibson in his left hand mirror, about three motorcycle lengths behind him.

[29] He described the truck driving ahead of them as curious. He said he became concerned about the truck as it seemed to be speeding and slowing but there were no lights or signals coming from the truck and he said his "spidey sense" was on. The truck then suddenly hit its brakes, the truck's nose went down and its back lights went on. To avoid collision, he steered right into a ditch and heard a noise from Mr. Gibson's motorcycle as it passed his own motorcycle and hit the truck.

[30] He said when the truck lights went on, he thought he was some 40 or 50 feet from the back of the truck, or four or five truck lengths, although then he made reference to the distance between his position in the witness box and the courtroom wall which appeared to be a shorter distance.

[31] He said his speed had been no more than 70 km/h and then it was reduced to 50 km/h and slowing.

[32] He said he swerved right as there was oncoming traffic and then into the ditch, and as the motorcycle went down, he jumped off.

[33] He saw Mr. Gibson's motorcycle in slow motion, the suitcase off Mr. Gibson's vehicle sliding in front of him, and Mr. Gibson going underneath the truck before Mr. Gibson's back seemed to hit the truck. He saw Mr. Gibson's leg buckle under and his shoulder, face and head hit the ground. He thought Mr. Gibson was dead because he hit the ground so hard.

[34] He said he got off of his motorcycle quickly and ran over to Mr. Gibson. People were yelling at Mr. Gibson to sit down.

[35] He said the truck moved forward. Mr. Gibson was lying close to the center line and he was sitting up but shaking and trembling.

[36] After seeing that Mr. Gibson was being tended to, he said the truck driver asked if he was okay. Shortly after, the truck driver said he had to get going. Mr. Kramer told him not to leave and questioned whether he had been drinking because of the beer cans he saw in the back of his truck. The truck driver said that they were from the night before. He recalled the driver giving a reason for needing to leave and told him that it was important to stay as Mr. Gibson was injured. He said the truck driver did not give any drivers licence information and that while he was concerned that he might leave, a fire truck stopped and blocked the truck's path.

[37] The truck driver did not identify himself, but did say that he was trying to turn left.

[38] Mr. Kramer said that he drove that road 30 or 40 times a year and was familiar with it, and that he knew the Malcolm Road turnoff, describing it as easy to see if you are coming in the opposite direction but hard to see if going west. He did not recall there being a road sign or a turning lane.

[39] The balance of his evidence dealt with events thereafter.

[40] That was the last time he had ridden his motorcycle.

[41] On cross-examination, he said that day he and Mr. Gibson had gone for a casual ride. He said they had a sandwich and a beer each at the Sasquatch Inn and were in no rush going home. He agreed Mr. Gibson would be two or three motorcycle lengths behind him and while he could go behind him, that was not necessarily safe, given the motorcycles' proximity to each other.

[42] He said the red truck pulled in front of them at the pub. After the second bend in the road, he started noticing the truck slowing and speeding up as if its driver were looking for something.

[43] He said the only time he saw the truck brake lights was when the truck driver slammed them on.

[44] He said they kept a constant distance behind the truck as they slowed and closed and then stayed three to four car lengths behind, and he agreed they gained on the truck as they approached the intersection. Mr. Gibson did not catch up to him at that point. He did not believe the truck was a hazard at that stage.

[45] He agreed that as the truck became a hazard Mr. Kramer slammed on his brakes and heard a noise behind him, believing it was a motor vehicle behind them hitting Mr. Gibson's motorcycle.

[46] He put the distance between him and the hazard at three-to-four car lengths, and that as he drove to the right his motorcycle slid on the ground, and he saw Mr. Gibson's motorcycle going into the back of the truck. He was able to jump off his

motorcycle as it went into the shallow ditch. He was not harmed but he did scratch the side bars of his motorcycle.

[47] He believed the truck was stopped when Mr. Gibson's motorcycle hit the truck and the truck then moved forward on impact from the position shown on the photographs in Exhibit 1. He was unable to say whether the truck had taken any avoiding action. He did not agree the truck had moved forward before the collision.

[48] He agreed he spoke to the police but was unable to agree with the officer's note that the truck had pulled forward to avoid the collision.

[49] He identified the red motorcycle in Exhibit 1 as his, the other motorcycle as Mr. Gibson's, and believed it was at its place of rest in the picture. He could not recall whether Mr. Gibson was in front of his motorcycle when he was on the ground.

[50] He said his own motorcycle, with assistance from others, had been stood up and pushed out of the ditch and therefore was some five to ten feet in front of where it had come to a stop.

[51] Asked about the beer cans in the back of the truck, he could not say whether some were full or empty, and agreed he told the driver to put them away before the police came. He said he did not smell any alcohol on the truck driver's breath or see the police perform a breathalyzer test.

Mr. Gibson

[52] Mr. Gibson said that he was age 51 at the time of the accident, and that he was six feet two-and-a-half inches tall and weighed some 300 pounds.

[53] He had ridden a motorcycle for at least 30 years and at the time of the accident had been riding a Harley Davidson Road King for four years. He rode frequently, three or four times a week, often for four or five hours a day. He had known Mr. Kramer for twelve or thirteen years and he was a regular co-rider.

[54] The plan that day had been to head “up the Valley”, have lunch and return. There were no time constraints and it was a beautiful day in September, possibly the last ride of the year. They stopped at the Sasquatch Inn for lunch and ate, had a bottle of beer and ordered a second beer, but did not finish it.

[55] He said that the traffic was normal for the Valley and moving nicely.

[56] He recalled waiting for traffic to pass them when they left the Inn and that they drove down the highway at a steady 70 or 80 km/h.

[57] He drove slightly to the left and behind Mr. Kramer.

[58] He recalled a red truck in front of them and a white car behind them. He believed they followed the truck from the time they got onto the highway.

[59] He said they kept a couple of hundred feet behind the truck. When asked what the problem was, he said the truck stopped. He said there was no indication the truck was stopped 10 to 30 seconds. He recalled checking his rear-view mirror for the white car and then looking forward to see the red truck stopped. He immediately clutched and braked both front and rear wheels and the front wheel “washed out”. He fell off the motorcycle and “tucked and rolled”. He said he figured he was going to hit the truck and tried to bring the motorcycle down but it kept on going straight.

[60] He said he did not see any signals from the red truck before it suddenly stopped.

[61] He said he knows the road but was not aware of the Malcolm Road intersection.

[62] He said he separated from the motorcycle as it hit the back of the truck and he tumbled down. He recalled making grunt sounds and being on all fours and wondering why glass was on the pavement around him, and then it was quiet. He heard someone yelling “stay down” as he got to his knees. He stayed down while a lot of people came to help him.

[63] He could not estimate the distance between himself and truck when he looked at the truck to see it stopped, and could not say if he was still behind Mr. Kramer's motorcycle at that time. He repeated that he had not seen any brake lights or signal lights on the truck.

[64] He believed he got in front of his motorcycle when the motorcycle went down and he came off, but did not recall hitting anything else.

[65] He was taken to the hospital and Mr. Kramer attended to his motorcycle.

[66] He agreed that his motorcycle was illustrated at picture three of Exhibit 1, and the truck at picture 11 of Exhibit 1.

[67] In cross-examination, he repeated much of his earlier evidence and said his motorcycle was in good condition. For lunch he recalled having a burger, fries, beer and a cigar and then part of a second beer. He believed they left the Sasquatch Inn at 1pm. He did not recall seeing the red truck immediately, but did recall driving into a space in the traffic.

[68] Mr. Gibson agreed he rode about two motorcycle lengths behind Mr. Kramer and to his right. If Mr. Kramer was two motorcycle lengths ahead of him he could go right behind his motorcycle.

[69] He said Mr. Kramer was not blocking his view and that he had prescription sunglasses on and was not affected by the sun. He said that because of the noise of the motorcycles, they could not talk but that he listened to music on his motorcycle as he had installed a stereo.

[70] He said while he could not recall the last time they had ridden to the Sasquatch Inn, they had been there a couple of times earlier that season.

[71] Asked if he was an experienced motorcyclist, he said he was and that the number one rule was that "everything was dangerous". He agreed that a hazard to a motorcyclist is a motor vehicle stopping suddenly or blowing a tire, and that he was aware of the need to maintain a safe distance from other traffic and to keep a good

look out. He said that included checking traffic behind was not a danger. He agreed he looked back and forward to see the truck stopped and that when he realized it was a hazard, he had to take evasive action. He could not say how long he looked in his rear-view mirror, nor how far away the red truck was when he looked forward. He disagreed it was 200 feet, but he did not what distance it was.

[72] He had never seen the Malcolm Road intersection sign located some 70 metres from the intersection and shown in photos in Exhibit 1.

[73] When it was suggested that the truck driver had tapped his breaks and slowed down, he disagreed.

[74] When it was suggested the truck driver had turned on his left turn signal, he disagreed. He said as he drove into the truck, he did not see any flashing signals. He was unable to say whether the truck driver had driven forward to avoid him while his motorcycle was sliding.

[75] He agreed he tried to stop his motorcycle as fast as he could and estimated the clutching and braking took two seconds before the motorcycle went down on its left side, but he could not say how far the motorcycle slid, just that it was “brake, boom, bang”. He did not recall his body hitting the truck but did recall tumbling. He agreed his motorcycle stopped but his body kept going. He did not remember the truck moving but the truck driver had said it had.

[76] He recalled a couple of fire department trucks arriving.

Ruben Matthies

[77] Mr. Matthies is 34 years of age, and came to Canada in 1997 and is a Canadian citizen. He is a commercial transport mechanic with eight years’ experience and has a commercial licence, so is he able to move semi-trucks and trailers. He also has a motorcycle licence and has owned a Harley Davidson which he sold last year.

[78] At the time of the accident he was driving a 2003 Dodge Ram, a three quarter tonne, four door short box truck. His father-in-law owned the truck, but he has kept it in good condition with regular trips to the garage.

[79] He agreed the truck was shown in the pictures in Exhibit 1.

[80] He said that the brakes are very good and that, at the time of the accident, all the lights were working.

[81] On the night before the accident, he was at home with his young baby daughter. His plan for the following day was to go to a softball team barbeque at Lake Errock.

[82] He dropped off his daughter at approximately 11am and went to Agassiz and purchased some beer, putting it in a cooler on the truck tray. It was his intention to enjoy the barbeque and stay overnight. He did not drink any of the beer before the accident.

[83] He said as he was driving over the bridge at Harrison, he could see the Sasquatch Inn. Two motorcyclists waited for him and came on the road behind him.

[84] He regularly goes to Lake Errock as a family relation has land there and the team was going to celebrate its season.

[85] As he drove along the road to the Malcolm Road turnoff, he said the motorcyclists were quite a distance back and he kept checking on them. He said he knew where he could turn and as he approached the turn, four cars came towards him and he had to stop. He said he slowed and looked back and there were no issues, the motorcyclists were well back.

[86] He did not know the name of Malcolm Road but knew of its location.

[87] He said he slowed “way ahead” of the intersection because of the oncoming traffic, and said he “tapped the brakes a bunch of times” and he moved towards the center line in case the motorcycles wanted to pass him on his right.

[88] He said the speed limit is 80km/h and believed the motorcyclists were travelling at a safe distance at a similar speed.

[89] Asked to estimate the distance to the motorcyclists when he stopped, he estimated that they were 700 yards behind him. He said the motorcycle riders seemed to be talking to each other, as their heads were turned towards each other.

[90] He said he then waited 20 or 30 seconds and looked in the rear-view mirror and saw a motorcycle “going down” sideways. He took his foot off the brake and “hammered it forward”, but the motorcyclist caught up to him.

[91] He said he saw the other motorcyclist pass him on the right hand side.

[92] He said he felt the other motorcycle hit the back of his truck. The rider lurched over the bars and cartwheeled forward. He was some 20 feet away from the motorcycle when he got out of his truck.

[93] Asked when he first saw the motorcyclist sliding, he said the motorcycle was 150 feet away when it went down. He said he was good at estimating distances because he is a hunter.

[94] He agreed he remained at the scene of the accident when the firemen and police arrived. He said they took about 10 minutes to get there after the accident.

[95] Asked if he spoke with the motorcyclists, he said he spoke to the other rider and exchanged information including plate numbers.

[96] Asked about the collision’s effect on his truck, he said he opened the tailgate and beer cans rolled out and the other motorcyclist told him to put them away, to put them in the cooler. He did, but the cooler lid had been shattered.

[97] He said when the police arrived, the other cyclist told them he had beer and the police asked him and he confirmed he did and pointed out that three or four of the cans had been punctured and were fizzing, but the tops had not been opened. He was not given a ticket. No charges were laid against him.

[98] He denied a firetruck was ever parked in front of his truck and said there was only one firetruck on scene.

[99] On cross-examination, he estimated the distance from the Sasquatch Inn to the Malcolm Road corner at two kilometres. He had difficulty estimating the time it might take to drive there and did not disagree that it might take one-and-a-half to two minutes.

[100] He agreed he saw the two motorcyclists waiting as he came across the Harrison Bridge and they let him pass by them and pulled out behind him.

[101] He said he looked back several times when they were behind him as he knew he would be turning at Malcolm Road.

[102] It was suggested he would have difficulty describing what the motorcyclists were doing if they were 700 yards behind him but he said he saw their heads turning and the men talking, not looking forward. They kept their distance.

[103] He said the road was not straight and the area of the intersection was on a slight downgrade.

[104] He said he tapped his brakes about 300 feet from the intersection.

[105] He said once he stopped 20 or 30 seconds passed before he saw the motorcyclist "going down". He later called the 20 or 30 seconds an "estimated guess".

[106] He agreed they had been 300 yards behind him but that he and the motorcyclist were closer when the motorcyclist started slowing down.

[107] He was asked how he estimated the 120 feet of motorcycle slide when he said (presumably on discovery) if a person walked behind his truck with the tailgate up, he would not see their feet until they were 50 feet from the back of his truck. He said he saw the motorcycle go down and he had time to accelerate before it

contacted the back of his truck. He thought the motorcycle slid 120 feet before impact, which resulted in the dent to his back bumper.

[108] He disagreed his motorcycle was stopped at impact and said he moved.

[109] He agreed Mr. Gibson appeared to do six cartwheels after coming off his motorcycle and after the motorcycle had hit the back of his truck. Asked when he accelerated, he said as he saw the motorcycle going down, he accelerated as he knew the road was clear in front of him.

[110] He agreed there were scratch marks on the asphalt from the motorcycle. He said the firetruck blocked at least half the skid marks in the picture in Exhibit 1.

[111] He believed the time of the accident was between 12 and 1pm.

[112] With the respect to the sunlight, he agreed it was not in his face, since he wore a visor to shield him from direct sunlight.

[113] He agreed the exhibit pictures showed the motorcycle at rest and a jacket on the side of the road. He estimated the distance from the motorcycle to the back of his truck after stopping at 40 feet.

[114] Asked why he tried to leave before the police arrived, he said he had given his information and the fire department had said it would be an hour before the police arrived.

[115] He said that conversation took place after Mr. Gibson had been taken away by the ambulance.

[116] He agreed the red motorcycle passed him and that it stayed upright the whole time. As Mr. Kramer's vehicle travelled into the ditch, it wobbled but did not go down.

[117] He agreed he was late going to the barbeque.

[118] It was put to him the motorcycle was the width of the courtroom away when he stopped his truck, and he said the red motorcycle was closer to him. It was put to

him the red motorcycle was only the width of the courtroom away when he came to a stop, and he agreed.

[119] He was asked if he stopped suddenly with the front of the truck going down and the tail going up, but he disagreed that he stopped suddenly.

Michael Araszewski

[120] Mr. Araszewski is a professional engineer and since 1997 has been working with Intech. He is a specialist in motor vehicle accident reconstruction and I accepted him as an expert in motor vehicle accident reconstruction.

[121] He prepared a report in December 2016, based on site visit which took place on November 28, 2016, from which he obtained aerial pictures to get the geometry. Due to the asphalt repairs in the road way still being much the same as they were at the time the pictures were taken in 2013, he felt the location points in his diagrams were accurate. His report was also based on other evidence, including the police report and photos.

[122] He noted the motor vehicle damage, the markings on the road and the damage to the truck. Other factors coming assessed were the debris field, the location of the jacket on the side of the road, the location of the truck, and the road scuff marks.

[123] He stated driver average response times are 0.7 to 1.1 seconds while motorcyclist average response times are slightly slower: 1.5 seconds unless the motorcyclist is on alert.

[124] He was given an assumption that Mr. Gibson's motorcycle slid 20 metres. He noted the scuff marks on the road and the damage to the motorcycle and the truck were consistent with the motorcycle being on its side at impact, which in turn was corroborated by the debris field from the motorcycle.

[125] His calculation of the speed the motorcycle was travelling at on impact - 35 to 40 km/h - was based on the damage to the Dodge vehicle and his placement of

Mr. Gibson's body from the motorcycle. This calculation also assumed that the truck driver accelerated forward which he found corroborated by the debris field, the front damage of the motorcycle, and the fact that Mr. Gibson did not strike the truck with his body.

[126] Assuming 20 to 70 feet of motorcycle sliding, he estimated Mr. Gibson's motorcycle speed at 54 km/h, with a range of 35 to 78 km/h as it began to slide. Mr. Gibson would have been braking before sliding and he estimated the pre-brake speed at 80km/h, with a brake length of two to 40 metres before the sliding began.

[127] If the motorcyclist braked 37 metres before impact, he calculated there were 2.2 seconds to impact, and, prior to that, 1.5 seconds of perception response for a total of 3.7 seconds of time elapsing before impact of the motorcycle to the truck, and the distance at initial perception being 70 metres, or some 230 feet.

[128] He noted there could be a considerable variance in the truck's dynamics on braking from 80 km/h: if it was an ordinary slowing to stop of 11.3 seconds, the truck would stop within 126 metres; but if the braking to stop was 7.6 seconds, the stop distance would be 84 metres, and if a hard stop, 5.7 seconds would elapse over a distance of 63 metres.

Arguments

Plaintiff

[129] Plaintiff's counsel referred to *Ayers v. Singh* (1995), 59 A.C.W.S. (3d) 1030 (B.C.S.C.) for the general principle that the onus is on the rear motor vehicle to be able to stop in the space between it and the forward motor vehicle. In *Cue*, the forward vehicle cut across in front of the plaintiff vehicle and then stopped suddenly and liability was found against the forward driver.

[130] *Bern v. Jung*, 2010 BCSC 730 was referred to for the proposition that one assumes that other drivers on the road drive according to the law.

[131] *Brooks-Martin v. Martin*, 2011 BCSC 194, a decision of Halfyard J. was cited for the general principles previously stated. There, the forward motorcycle cut in front of the rear motorcycle as both motorcycles were approaching a stationary truck. It was conceded the stationary truck driver was not liable and the rear motorcyclist was, in fact, at fault for being too close to the forward motorcyclist.

[132] It was submitted that Mr. Kramer and Mr. Gibson rode together within the speed limit from the Sasquatch Inn for some two kilometers to the Malcolm Road intersection.

[133] Ms. Steele said the truck was followed by the motorcycle and that the truck stopped. She said she did not see any signal from the truck before it stopped and then she saw the motorcyclist “going down” and the motorcycle struck the back of the truck.

[134] Counsel disputed that Mr. Matthies was stopped for 20 seconds or that he was 300 yards ahead of the motorcycles as he came to a stop. It was evident it was not a 20 second stop as averred by Mr. Matthies.

[135] Further, Ms. Steele said she heard the conversation wherein Mr. Matthies tried to leave the scene. Ms. Steele also noted traffic ahead of her.

[136] Mr. Kramer saw the truck slowing, saw no lights and stopped suddenly. He heard the sound of Mr. Gibson’s motorcycle hitting the asphalt. Mr. Kramer then steered to the right of the truck and drove his motorcycle into the ditch. In his peripheral vision, he saw Mr. Gibson sliding towards the truck.

[137] Mr. Kramer said their speed was some 60 to 70 km/h and they had a roughly steady gap between themselves and the truck in front of them and that their position was changed when Mr. Matthies suddenly stopped.

[138] As to the intersection, it was not easy to see, nor was the sign post for the intersection easy to see. It was submitted the failure of Mr. Matthies to signal his intention to turn at the intersection was an aspect of his negligence.

[139] It was submitted both motorcyclists were experienced riders and while Mr. Kramer could exit, Mr. Gibson could not due to oncoming traffic, as he was the motorcyclist closest to the centre lane.

[140] Mr. Gibson had looked back and looked up only to see the truck already stopped. He had less recollection than Mr. Kramer of the accident.

[141] It was patent Mr. Gibson was a careful motorcyclist and was taking due care and did not become aware of the truck's changing speed. He said he was in a constant position relative to Mr. Kramer and was suddenly faced with the stationary truck. When he braked after seeing the stopped truck, his front tire "washed out" and his motorcycle hit the rear of the truck.

[142] It was submitted that Mr. Matthies was late to his barbeque and hit the brakes suddenly. His credibility could not be accepted with respect to the suggestion the motorcyclists were 300 yards behind him and he was stopped for some 20 or 30 seconds when Mr. Gibson's body was hurdled toward him. But Mr. Matthies did see Mr. Gibson's motorcycle go down and reacted.

[143] It was submitted Mr. Kramer and Mr. Gibson were keeping a proper lookout and were entitled to rely on Mr. Matthies to be careful and not suddenly stop on a highway where it was not patent there was an oncoming intersection. It was submitted the failure to signal and the sudden slowing and stopping were such that Mr. Matthies is 100% liable.

Defendant

[144] It was submitted on the basis of Ms. Steele's evidence that the plaintiff was only one to one-and-a-half car lengths behind the truck when it started sliding.

[145] With respect to Mr. Kramer's evidence, it was noted that Mr. Kramer had become concerned Mr. Matthies' driving while Mr. Gibson did not notice the truck slowing.

[146] It was further noted that if Mr. Kramer was well ahead of Mr. Gibson, Mr. Gibson could also have pulled right and avoided the collision.

[147] Mr. Kramer said they were gaining on Mr. Matthies' truck while Mr. Gibson said the distance was constant. Mr. Kramer said he slowed to 50 km/h but the plaintiff said they were going 70 to 80 km/h before the crest of the hill, well before the intersection.

[148] Mr. Kramer stated that he saw the truck slow but there was no brake light until it stopped, that then Mr. Kramer estimated four or five car lengths, or some 40 or 50 feet between the motorcycles and the truck, but appeared to define a shorter distance in the courtroom between himself and the truck when they both came to a stop, that Mr. Kramer saw the truck stop and was able to take his motorcycle to the right and into the ditch and avoid the collision and that there was no visible damage to Mr. Kramer's motorcycle.

[149] It appeared Mr. Kramer had told the police officer that Mr. Matthies had pulled forward to try to avoid the collision but Mr. Kramer said he did not recall saying that.

[150] Mr. Kramer noted the beer cans in the truck but agreed he did not smell any beer on Mr. Matthies nor did the police conduct a breathalyzer test. It was noted Mr. Matthies denied trying to leave early and in fact said he stayed and exchanged information with Mr. Kramer and spoke to the police.

[151] As to the firetruck preventing Mr. Matthies from leaving, the pictures only showed one firetruck behind the point of impact and not a second in front of Mr. Matthies' truck.

[152] Mr. Kramer appeared to be incorrect in asserting Mr. Gibson's body hit the truck.

[153] Counsel submitted that Mr. Kramer was not consistent, that his evidence was biased towards the plaintiff, that it vilified Mr. Matthies and that some of his evidence was not supported by the physical evidence.

[154] Counsel agreed the plaintiff was an experienced season motorcycle rider and had ridden the road before. Mr. Gibson was an honest witness who said he saw the truck in front of them and that Mr. Kramer was riding some two motorcycle lengths ahead of them, that they were cruising at 70 to 80 km/h and did not reduce their speed, and were a constant distance behind the truck, between 100 and 300 feet. Mr. Gibson did not see any strange driving behaviour by Mr. Matthies and said the white car behind the motorcycles was a safe distance behind him, that he checked in the side mirror and then looked forward and saw the truck stopped and that could not say if any brake lights were on.

[155] He clutched, braked and his motorcycle went down and slid for an unknown distance. His motorcycle hit the truck and he was thrown forward off his motorcycle.

[156] Counsel submitted the defendant's version of events should be accepted as he is a qualified professional driver with 18 years of experience driving his red truck which was in good order, that he was going to a barbeque at Lake Errock and was familiar with the road having been there many times. Mr. Matthies was aware of the motorcycles following him from the pub and that the speed was about 80 km/h and the motorcycles stayed a constant distance behind him.

[157] Mr. Matthies' evidence was that he tapped his brakes to slow to a stop because of four oncoming cars, then looked back to see Mr. Gibson's motorcycle sliding into him and he accelerated and saw the motorcycle hit the rear of his truck and Mr. Gibson tumble forward and come to a rest.

[158] Mr. Matthies accepted the scene photographs were accurate, that others treated Mr. Gibson, that the firemen arrived and his exit was not blocked and that it took an hour before the police came and he gave a statement.

[159] Mr. Matthies denied coming to a sudden stop or leaving the scene.

[160] With respect to the expert evidence, the expert opined that the plaintiff had five seconds to recognise the hazard and if he had had one second more there would have been no collision. This opinion was not challenged and was confirmed

by photographs of the scene. The opinion was not focused on whether there was any truck signal but simply based on response times available. It was submitted the expert's report was the best independent evidence.

[161] Counsel submitted that Mr. Kramer had stopped before the point of impact (though I noted was contradicted by Mr. Matthies' evidence that he saw Mr. Kramer's motorcycle to his right as he started to accelerate).

[162] It was submitted that the plaintiff was negligent in looking back and forward to see the Matthies vehicle at a stop, a breach of his duty to keep a proper lookout. While the defendant conceded that Malcom Road was not an obvious intersection, it was marked by a roadside sign, exemplifying the ongoing duty of vigilance.

[163] It was submitted there was no evidence that Mr. Matthias had not signalled or slammed on the brake, he knew the road and had driven it many times and was an experienced driver, there were no visible tire marks left of his braking, and Ms. Steele did not say she heard any braking from the oncoming vehicle.

[164] The expert's opinion was that the motorcycles were not immediately behind the truck, and had they been so, they would have been too close. Even if the Matthies vehicle did brake suddenly, the obligation in law is on the rear driver to drive in expectation that something unexpected could happen. Reference was made to the decision in *Barrie v. Marshall*, 2010 BCSC 981, where the court found the rear driver at fault.

Discussion

[165] The statute and case law places a heavy onus on a rear position motor vehicle to be able to stop in the distance ahead of it. The evidence is that it was a clear sunny day and a red truck came to a stop at an intersection. How then is one to explain why two experienced motorcyclists, travelling at approximately 70 km/h, were suddenly faced with avoiding a collision?

[166] If I accept Mr. Matthies' evidence when he says he was stationary for 20 or 30 seconds, then it is plain that the cause of the collision is the plaintiff's negligence.

[167] Mr. Gibson said that when he looked in his rear-vision mirror to check the car behind him, he saw a stationary truck.

[168] Mr. Kramer said the truck slowed and then he started to slow his motorcycle to 50 km/h and then the truck suddenly stopped and he had to brake and veer right into the ditch to avoid collision. He estimated his distance behind the truck at some four to five car lengths (and if given a standard car length is some 15 feet) or some 60 to 75 feet, though he appeared to have shortened that when he used the courtroom wall to gauge the distance.

[169] Mr. Matthies said he looked in his rear view mirror to see Mr. Gibson's motorcycle sliding into the back of his truck and had time to punch his accelerator and started his truck moving just before the motorcycle hit the rear of his truck. In my view, his quick reaction doubtless saved Mr. Gibson from far greater injury or possibly the loss of his life.

[170] Mr. Araszewski's calculation of time from Mr. Gibson from looking up to impact is 3.7 seconds allowing 1.5 seconds for perception and 2.2 seconds of braking and sliding to an impact at 35 km/h.

[171] He provided a scenario where Mr. Gibson failed to detect the Dodge truck as being a hazard for 5.5 seconds, which I do not accept on the evidence and indeed he allows in his conclusion that he has begun his analysis with the instruction to assume a gap of some 500 feet. In my view, the evidence shows the vehicles were far closer, perhaps some 70 metres apart from one another, and that Mr. Matthies (and Mr. Kramer) slowed, but then stopped quite abruptly.

[172] I further accept that Mr. Kramer started to notice the truck slowing and also slowed which closed the gap between himself and Mr. Gibson. That meant when Mr. Gibson looked up to see, as he perceived it, a stationary truck, Mr. Kramer's

motorcycle was close to his front wheel, albeit to his right, and he was not able to take evasive action to his right.

[173] I accept Mr. Matthies did start to slow down for his turn. Indeed, Mr. Kramer said the truck was slowing. But I do not accept Mr. Matthies' evidence that he waited 20 or 30 seconds before the impact of the motorcycle. Indeed, the major concession he made in cross examination was that the red motorcycle was only the width of the courtroom away when he stopped.

[174] Therefore I accept Mr. Kramer's evidence that the truck came to a sudden stop, and if I were to speculate, it may have been that Mr. Matthies was debating whether he was going to make a left turn in front of the oncoming traffic but decided it was safer to come to a stop, albeit quickly.

[175] In the circumstances, Mr. Kramer, who was watching the red truck, was able to brake and evade the truck by swerving to his right and into the ditch and Mr. Matthies recalled seeing Mr. Kramer's motorcycle beside him at that time.

[176] Mr. Gibson, according to the evidence, had been trailing behind Mr. Kramer but closer to the centre line.

[177] Mr. Gibson said he checked his rear-view mirror for the traffic behind him and looked up to see Mr. Matthies' truck already stopped. He said he could not go left into the oncoming traffic, or go right, probably because Mr. Kramer had slowed because of Mr. Matthies' truck slowing, and therefore Mr. Kramer's motorcycle was relatively close to his right and he could not safely veer right. So he braked, the motorcycle "laid down" and the motorcycle slid into the back of Mr. Matthies' truck. Mr. Matthies said he looked back to see Mr. Gibson's motorcycle sliding into the rear of his truck. I credit Mr. Matthies for an extremely quick reaction, to accelerate his truck so that the motorcycle struck the rear of his truck as it was already starting to pull away and Mr. Gibson, who was catapulted from his motorcycle, somersaulted onto the roadway behind Mr. Matthies' accelerating truck. Had Mr. Matthies not acted so promptly, Mr. Gibson may have been injured far more seriously.

[178] Ms. Steele's evidence to some degree confirmed Mr. Kramer's evidence as to not seeing a turn signal and there being a discussion between Mr. Kramer and Mr. Matthies about leaving the scene of the accident.

[179] The primary onus however, in law (and in common sense), falls on Mr. Gibson as he is the rear motor vehicle, to keep a safe distance from the vehicle ahead. In addition, I find contributing negligence of both he and Mr. Matthies, Mr. Matthies for a sudden stop and Mr. Gibson for lack of lookout. The lack of lookout has two facets; a failure to see the truck slowing and stopping suddenly; and that in turn meant Mr. Gibson continued at cruising speed while Mr. Kramer slowed, and Mr. Gibson lost his ability to veer right behind Mr. Kramer.

[180] Both parties are in agreement in terms of applying the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333, s. 1. I find that the larger burden should fall on the plaintiff and thus I conclude that Mr. Gibson is at 75% at fault for the accident and Mr. Matthies at 25%.

[181] If the parties need to speak to costs, that may be arranged with trial scheduling.

"Crawford J."