

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20171114  
Docket: M157092  
Registry: Vancouver

Between:

**Karen Chima**

Plaintiff

And

**Ranjit Hans and Joginder Singh Chahal**

Defendants

Before: The Honourable Mr. Justice Bernard

## **Oral Reasons for Judgment**

Counsel for the Plaintiff:

D.J. Gomel

Counsel for the Defendants:

D. Stewart

Place and Date of Trial:

Vancouver, B.C.  
October 30 – November 1, 2017

Place and Date of Ruling:

Vancouver, B.C.  
November 14, 2017

**A) Overview**

[1] **THE COURT:** On February 3, 2012, a BMW X3 driven by Karen Chima and a dump truck driven by Ranjit Hans collided at the intersection of Highway 10 and 184th Street in Surrey, BC. The collision occurred when Ms. Chima was completing a left turn onto 184th Street from Highway 10. As Ms. Chima was clearing the traffic-light controlled intersection, the right rear corner of her BMW was caught by the right front of the truck, as Mr. Hans drove through the intersection westbound along Highway 10.

[2] The issue of liability was severed from damages by the order of Master Harper, to preserve an existing trial date; thus, the purpose of the present trial is to resolve the liability issue only.

[3] Ms. Chima's position is that the collision was caused solely by the negligence of Mr. Hans. More specifically, she submits that Mr. Hans entered the intersection on a red light and that before she made her turn she ascertained that the approaching truck was sufficiently far from the intersection that it did not pose an immediate hazard to her.

[4] Mr. Hans' position is that Ms. Chima's negligence was the sole cause of the collision. More specifically, he submits that he entered the intersection on a stale green light, that Ms. Chima's BMW suddenly turned into his path and that given his speed, the weight of his truck, the load and his proximity, he could not reasonably avoid colliding with the BMW. Alternatively, he submits that Ms. Chima was contributorily negligent by turning into his path when he posed an immediate hazard to her.

**B) Evidentiary Synopsis**

[5] On February 3, 2012, at 9:00 p.m. 16-year-old Karen Chima was driving her father's BMW X3 eastbound along Highway 10, and Mr. Hans was driving his loaded dump truck and pup trailer westbound. Ms. Chima held a "learner's licence" and her father, Mohinder Chima, was supervising her driving from the front passenger seat.

As the holder of a valid BC driver's licence for more than 30 years, Mr. Chima was a suitably qualified supervisor.

[6] Mr. Hans is a "class 1" licensed professional truck driver. He was transporting a load and was the lone occupant of his truck.

[7] The collision in question occurred as Ms. Chima was completing a left turn to travel north on 184th Street, and Mr. Hans was passing through the intersection to continue westbound along Highway 10. At this intersection, Highway 10 is five lanes wide and the speed limit is 70 kilometres per hour. 184th Street is three lanes wide. Included in these numbers are designated left-hand turn lanes for all four directions of travel. On the night in question, the roads were dry, traffic was light, and no visibility concerns existed.

[8] Ms. Chima testified as follows: that as she neared 184th Street she moved into the designated lane for turning left onto 184th Street with her turn signal engaged; that when she arrived at the intersection, the light for Highway 10 traffic was green; that she moved slightly into the intersection and waited for the approaching westbound traffic to clear before executing her turn; that there were no vehicles ahead of her waiting to turn left; that as she waited to make her turn, the light turned yellow for Highway 10 traffic; that a westbound car in the centre lane came to a stop at the stop line; that she saw a westbound dump truck in the curb lane that was "very far" from the intersection (on an aerial map she pointed to a spot approximately 90 metres back from the intersection); that she could not say how fast the truck was travelling; that upon determining that the truck did not pose an immediate hazard, she executed her left turn; that as she turned she saw the yellow light turn to red; that as she cleared the intersection she realized the westbound truck was going to hit her car; that it was too late to accelerate and avoid the collision; and, that the truck caught the rear corner of her car and pushed her across 184th Street and into an electric pole.

[9] Mr. Chima testified for the plaintiff. He said: that he was paying attention to his daughter's driving at the time in question because she was a "newer" driver; that

the light was green for Highway 10 traffic when his daughter came to a stop in the intersection to turn left onto 184th Street; that she waited for westbound traffic to clear; that when the light turned yellow he saw a westbound car in the centre lane stop for the light and saw a westbound truck approaching the intersection from "quite far down" Highway 10; that he could not estimate the truck's speed, but he anticipated that the truck would stop because the car in the centre lane had stopped for the light; that he saw the truck enter the intersection on the red light just as his daughter had almost cleared the intersection; and, that at this point there was nothing his daughter could do to avoid being hit by the truck.

[10] Hanit Nagra was heading northbound along 184th Street and had stopped her car for a red light at Highway 10 just prior to the collision in question. She testified as follows: that nothing obstructed her view of the intersection; that as she waited at the red light she saw a BMW stopped in the intersection waiting to make a left turn to head north on 184th Street; that she saw the light for Highway 10 traffic turn to yellow; that when the BMW began to turn left, she noticed that the light for 184th Street traffic had turned to green; that she first noticed Mr. Hans' dump truck when it was near the location of the "advance warning" flasher for westbound traffic along Highway 10; that she saw this truck collide with the BMW; that at the time of the collision she noted that the light had already turned green for 184th Street traffic; and, that she could not estimate the speed the dump truck was travelling at or before the time of the collision.

[11] Mr. Hans testified in his defence. He said: that he was hauling a load in his dump truck and pup trailer, westbound along Highway 10, at the time of the accident; that he approached the intersection with 184th Street in the curb lane and remained in this lane until the collision with the Chima BMW; that the westbound approach to the intersection was uphill, and his speed was approximately 50 kilometres per hour or less; that he believed the speed limit was probably 60 kilometres per hour, but he said he was moving more slowly because he was travelling uphill with a heavy load; that as he approached the intersection he observed a vehicle turning left from Highway 10 to travel northbound on 184th

Street; that the Chima BMW was behind this vehicle and waiting to turn; that when he reached the intersection the lights for Highway 10 traffic were green; that the light changed to yellow as he crossed the east crosswalk; that at this point, the Chima BMW was at the west crosswalk and moving slowly into the intersection; that he believed the BMW entered the intersection very shortly after him, perhaps one second later; that he only realized the Chima BMW was going to turn into his path when he was "really close" to it; and that at this point he applied his brakes and struck the right rear corner of the BMW as it was crossing the north crosswalk.

[12] In Mr. Hans' cross-examination, it was suggested to him that it would have been impossible for the BMW to cross in front of the truck if the BMW were at the west crosswalk and the truck had entered the intersection first. Mr. Hans appeared not to understand this suggestion and did not respond directly; instead, he said, "This whole thing is about a new driver."

[13] Rick Wiltshire is a commercial transport enforcement officer who attended the accident scene shortly after the collision. He testified that he weighed Mr. Hans' truck and pup trailer with portable scales. He said that the truck, with its load, was over the allowable axle weight by a total of 4,500 to 4,999 kilograms. He issued a violation ticket for \$633. He noted that the truck was "significantly" over its allowable weight and that this would affect its stopping distance "by far."

[14] Amrit Toor is a professional engineer with an expertise in accident reconstruction. He was qualified to give opinion evidence regarding: (a) the consistency of his findings and analysis with two hypothetical scenarios ("Chima" and "Hans") provided to him by counsel for the plaintiff; and (b) the "avoidance potential" based upon the Hans hypothetical. These hypotheticals were as follows:

**The Chima Scenario**

Ms. Chima described the subject event as follows:

She was stopped in the intersection prior to making her left turn.

She was the first vehicle in line waiting to make a left turn.

She commenced her left turn on a late amber light and the light turned to red as she was making the left turn.

**The Hans Scenario**

Mr. Hans described the subject event as follows:

When Mr. Hans first observed the Chima BMW, his vehicle was located next to the westernmost left turn arrow in the westbound left turn lane.

When Mr. Hans first observed the Chima BMW, her vehicle was in motion and located within the crosswalk on the west side of the intersection.

There was another vehicle in front of the Chima BMW that was also making a left turn.

The traffic light changed from green to amber when the Hans dump truck entered the intersection.

The advanced warning flashers located east of the intersection were not illuminated when the Hans dump truck passed them.

[15] Dr. Toor attended to the intersection in question. He noted, *inter alia*, that Highway 10 sloped downward for westbound traffic approaching 184th Street.

[16] In his report, Dr. Toor stated that there was "insufficient data to fully reconstruct the subject incident with a reasonable degree of confidence." In his testimony, he said, "I have very little information as to how this accident happened." To provide the requested opinions he said he assumed that the truck was travelling between 50 to 70 kilometres per hour and that it travelled in the middle of the curb lane. These assumptions were in addition to those comprising the two hypothetical scenarios provided to him, and were consistent with the evidence given by Ms. Chima and Mr. Hans. Dr. Toor said he did not take the weight of the truck into account because he said weight has no bearing on stopping distance.

[17] Dr. Toor's ultimate opinions were as follows:

- a) that the Hans scenario did not reconcile with the analysis of the subject incident;
- b) that the Chima scenario was consistent with the results of the analysis of the subject incident;

- c) that Mr. Hans observed the Chima BMW in motion at or near the crosswalk on the west side of the intersection (likely about 4 to 4.7 seconds before impact);
- d) that in order to avoid impact, Mr. Hans needed to delay the arrival of his dump truck at the point of impact, by 0.1 seconds; and,
- e) that if Mr. Hans did not apply his brakes until he was in the intersection (assumption #8) but observed the Chima BMW initiating a left turn when it was at or near the crosswalk on the west side of the intersection, then there was a reasonable opportunity for him to detect the Chima BMW as a hazard and delay his vehicle arrival at the point of impact, by 0.1 seconds or more.

**C) Discussion**

[18] The collision in question occurred at a traffic-light controlled intersection; accordingly, the first matter for determination is the colour of the traffic lights, see *Miller v. Dent*, 2014 BCCA 234. This serves to identify the parties' respective statutory duties and who had the right-of-way: that is, who was the dominant driver and who was the servient driver. It is the servient driver who bears the onus of proving that the dominant driver, despite having the right-of-way, knew or ought to have known of the servient driver's disregard for the law and could have avoided the accident if acting with reasonable care.

[19] For the reasons that follow I am satisfied that the evidence establishes that Mr. Hans entered the intersection on a red light.

[20] Ms. Chima gave her evidence in a frank, forthright and credible manner. I accept, as true, her evidence that she entered the intersection on a green light; that she commenced her turn after the light for her turned to yellow; and, that she saw the light turn to red for Highway 10 traffic as she was completing her turn, but before she had cleared the intersection to proceed north on 184th Street. At the point of collision, the BMW was very close to the intersection's east sidewalk, and the

collision occurred within a split second of Ms. Chima's observation that the light for Highway 10 traffic had turned to red. The truck was in the curb lane and caught the right rear corner of the BMW virtually upon entry into the intersection on the red light.

[21] Critical aspects of Ms. Chima's testimony were supported by the evidence of her father and Ms. Nagra. Both of these witnesses were well positioned to make reliable observations, and I found each to be a credible witness. Importantly, Ms. Nagra was also an independent witness. She does not know the parties and has no stake in the outcome. She witnessed the collision because she was stopped at a red light at Highway 10 for northbound traffic along 184th Street and was watching, as one might expect, for the light to change. She testified that she saw the light for 184th Street traffic change to green while the BMW was making its turn and before the truck collided with it. Ms. Chima's evidence also found support in the opinions of Dr. Toor.

[22] In stark contrast to Ms. Chima's version of events, Mr. Hans testified that he entered the intersection on a green light while travelling approximately 50 kilometres per hour, and that the light changed to yellow as he crossed the east crosswalk. He said he observed Ms. Chima's BMW enter the intersection from the west crosswalk shortly after he had entered the intersection, at which point the BMW unexpectedly turned into his path and made a collision unavoidable.

[23] When Mr. Hans was challenged as to the plausibility of such a scenario, particularly given the area of damage to the BMW caused by the truck, Mr. Hans had no explanation. On Mr. Hans' version of events, Ms. Chima inexplicably turned directly into the path of his dump truck as it entered the intersection, in the curb lane, travelling 50 kilometres per hour; moreover, Ms. Chima almost completed this turn by passing in front of the truck and into the most easterly lane of 184 Street, before her BMW was clipped on the right rear corner by the right front corner of the dump truck.

[24] Mr. Hans' version of events is not only unsupported by any other evidence, it is entirely implausible. Even if Ms. Chima had inexplicably executed her turn with



complete disregard for Mr. Hans' looming truck in the intersection, it would have been virtually impossible for Ms. Chima to accelerate quickly enough to pass in front of the truck and almost complete her turn onto 184 Street before being struck.

[25] Mr. Hans' general reliability as a witness was also strained when he testified that Highway 10 sloped upward to 184th Street for westbound traffic. Both Dr. Toor, who attended the scene in preparation of his report, and Ms. Chima, who was familiar with the intersection as a result of living one block from it for six years, testified that Highway 10 sloped downwards to 184 Street for westbound traffic. There was no suggestion that these witnesses were in error, in either cross-examination or in submissions.

[26] The apparent significance of the upward slope to Mr. Hans was that it supported his evidence that he was travelling approximately 20 kilometres below the speed limit when he entered the intersection. The significance of the excessive load, from Mr. Hans' perspective, was that it not only increased his stopping distance, but also the likelihood of a dangerous loss of control of the truck if he were to brake suddenly.

[27] Having regard to the foregoing, I am satisfied: (a) that Ms. Chima entered the intersection on a green light; (b) that Ms. Chima commenced her turn on a late yellow light; (c) that the yellow light turned to red as Ms. Chima was executing her turn; and, (d) that Mr. Hans entered the intersection against a red light.

[28] The relevant provisions of the *Motor Vehicle Act* R.S.B.C. 1996, c. 318, are ss. 127, 128, 129, and 174 as follows:

Green light

127 (1) When a green light alone is exhibited at an intersection by a traffic control signal,

- (a) the driver of a vehicle facing the green light
  - (i) may cause the vehicle to proceed straight through the intersection, or to turn left or right, subject to a sign or signal prohibiting a left or right turn, or both, or designating the turning movement permitted,

(ii) must yield the right of way to pedestrians lawfully in the intersection or in an adjacent crosswalk at the time the green light is exhibited, and

(iii) must yield the right of way to vehicles lawfully in the intersection at the time the green light became exhibited, and

(b) a pedestrian facing the green light may proceed across the roadway in a marked or unmarked crosswalk, subject to special pedestrian traffic control signals directing him or her otherwise, and has the right of way for that purpose over all vehicles.

...

Yellow light

128 (1) When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,

(a) the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety,

(b) a pedestrian facing the yellow light must not enter the roadway, and

(c) a pedestrian proceeding across the roadway and facing the yellow light exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

...

Red light

129 (1) Subject to subsection (2), when a red light alone is exhibited at an intersection by a traffic control signal, the driver of a vehicle approaching the intersection and facing the red light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, and subject to the provisions of subsection (3), must not cause the vehicle to proceed until a traffic control signal instructs the driver that he or she is permitted to do so.

(2) The driver of a bus approaching an intersection and facing a red light and a prescribed white rectangular indicator may cause the bus to proceed through the intersection.

(3) Despite subsection (1), and except when a right turn permitted by this subsection is prohibited by a sign at an intersection, the driver of a vehicle facing the red light, and which in obedience to it is stopped as closely as

practicable to a marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, as closely as practicable to the intersection, may cause the vehicle to make a right turn, but the driver must yield the right of way to all pedestrians and vehicles lawfully proceeding as directed by the signal at the intersection.

(4) When a red light alone is exhibited at an intersection by a traffic control signal,

(a) a pedestrian facing the red light must not enter the roadway unless instructed that he or she may do so by a pedestrian traffic control signal,

(b) except when a left turn permitted by this paragraph is prohibited by a sign at the intersection, the driver of a vehicle facing the red light at the intersection of not more than 2 highways, and which in obedience to it is stopped as closely as practicable to a marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, as closely as practicable to the intersection, may cause the vehicle to make a left turn into a highway on which traffic is restricted to the direction in which he or she causes the vehicle to turn, but the driver must yield the right of way to all pedestrians and vehicles lawfully proceeding as directed by the signal at the intersection, and

(c) a pedestrian proceeding across the roadway and facing the red light exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

...

Yielding right of way on left turn

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.

[29] In the case at bar, Mr. Hans breached his statutory duty under s. 129(1) of the Act when he entered the intersection against a red light; Ms. Chima had the right-of-way and Mr. Hans was the servient driver.

[30] As the court observed in *Salaam v. Abramovic*, 2010 BCCA 212, at paras. 18 and 21:

[18] While the statutory provisions provide guidelines for assessing fault in motor vehicle accident cases, they do not, alone, provide a complete legal framework.

...

[21] In the end, a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way . . .

[31] Ms. Chima relies principally on Mr. Hans' breach of s. 129(1) as the basis for a finding of negligence against him, but she also submits that the defendant should have seen her executing her turn in front of him as he approached the intersection and that he failed to slow the truck to avoid collision. In this regard, Ms. Chima notes that based upon on Dr. Toor's calculations, if Mr. Hans arrived at the intersection one-tenth of a second later, she would have cleared the intersection and a collision would have been avoided.

[32] I agree with the plaintiff's submissions that as Ms. Chima began to execute her turn, she was "there to be seen" by Mr. Hans, and had nearly cleared the intersection when Mr. Hans entered it. With even a slight slowing or minor change in the truck's direction, a collision was avoidable. Mr. Hans did neither; rather, he maintained a straight course in the curb lane and did not slow down. It must be noted that his vague evidence that he slowed somewhat by taking his foot off the accelerator as he approached the intersection is based upon his erroneous testimony that he was travelling uphill as he approached the intersection. Even without Dr. Toor's calculation, it may reasonably be inferred from the evidence of the point of contact with the BMW, and the fact that it was in motion and moving out of the truck's path, that if Mr. Hans had made a slight adjustment to the truck's speed or its trajectory through the intersection, the collision would have been avoided.

[33] In light of the foregoing, I find that Mr. Hans, having entered the intersection on a red light - a serious breach of the rules of the road - failed to attempt to stop, or slow, his truck or to alter its course to avoid colliding with Ms. Chima's vehicle. I conclude that Ms. Chima has proved that Mr. Hans was negligent.

[34] On the question of whether Ms. Chima was also negligent because Mr. Hans' truck posed an immediate hazard when she commenced her turn, the onus of proof falls to Mr. Hans, as the servient driver. He must establish that it would have been apparent to a reasonable and prudent driver, in the position of Ms. Chima, that Mr. Hans was not going to stop for the red light, and that the collision was avoidable if she had acted with reasonable care.

[35] I am not persuaded that Mr. Hans has met the burden of proof he bears. As observed, Mr. Hans' version of events is implausible and unsupported, whereas Ms. Chima's evidence is not. I accept, as true, her evidence that she began to execute her turn on a late yellow light; that at this time a westbound car was in the centre lane of Highway 10 and had come to a stop for the light; that she looked for approaching westbound traffic and saw Mr. Hans' truck near the advance warning signal (approximately 90 metres east of the intersection); and, that she considered it would be safe to execute her turn.

[36] Ms. Chima admitted that she could not estimate the speed of the approaching truck. There is, however, no evidence that the truck was travelling at such a speed that it would have been evident to a reasonable and prudent driver in her position that a truck 90 metres away was unlikely to stop for the imminent red light and, thus, presented an immediate hazard. Notably, Mr. Hans testified that he was travelling under the speed limit as he approached the intersection.

[37] It is well settled that left-turning drivers may proceed on the assumption that oncoming traffic will act in accordance with the law, absent any reasonable indication to the contrary, and provided they act with reasonable care: see *Kokkinis v. Hall* (1996), 19 B.C.L.R. (3d) 273 (C.A.); *Uyeyama (Guardian ad litem of) v. Wittenberg*, [1985] B.C.J. No. 1883 (C.A.). In the case at bar, I find there was no

reasonable indication to the contrary until the point when a collision was inevitable. I am also satisfied that Ms. Chima acted as a reasonable and prudent driver when she executed her turn. She saw Mr. Hans' truck at approximately 90 metres from the intersection, when the light for highway traffic was yellow. It was reasonable for her to assume that the truck would come to a stop at the intersection as required by law. There was nothing apparent about the truck's speed, weight, or proximity that would have caused a reasonable and prudent driver to assess the truck as an immediate hazard.

**D) Conclusion**

[38] In light of all the foregoing, I conclude that Mr. Hans failed to meet the common law duty of care he owed to Ms. Chima, as another user of the road, and that the collision in question was caused, solely, by the negligence of Mr. Hans.

“Bernard J.”