

SUPREME COURT OF NOVA SCOTIA

Citation: Miller v. Andrecyk, 2010 NSSC 12

Date: 20100113

Docket: Syd. SCN 306356

Registry: Sydney

Between:

Bradley C. Miller

Appellant

v.

Shannon Andrecyk

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Frank Edwards

Heard: January 11, 2010, in Sydney, Nova Scotia

Subject: Small Claims Court Appeal; liability in a motor vehicle accident; *Motor Vehicle Act* Section 111.

Facts: Claimant/Appellant made a lane change (from right to left lane) while the Respondent vehicle – which was exceeding the posted limit – was attempting to overtake him. The vehicles collided. The Adjudicator found the Appellant had breached S. 111(b) of the *MVA* and was therefore 50 percent responsible for the collision.

Issue: Appellant argues: (a) error of law saying the speeding Respondent 100 percent liable; and

(b) failure to follow requirement of natural justice – Adjudicator allegedly biased – questioned witness giving contradictory evidence.

Result: Appeal dismissed. (a) Adjudicator entitled to apportion blame when he found that, despite Respondent's speed, the Appellant

made an unsafe lane change.

(b) Difficult (without transcript) to assess merit of natural justice argument. Appellant claimed that Adjudicator repeatedly questioned witness who gave contradictory evidence. Alleged questioning appeared to play no role in Adjudicator's decision.

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Counsel:

Bradley C. Miller, in person

Dennise K. Mack, for the respondent

By the Court:

[1] This is an appeal of a decision of an adjudicator of the Small Claims Court.

The adjudicator found that the Claimant Bradley C. Miller was 50 percent responsible for a motor vehicle accident.

[2] In a decision dated September 8, 2009, the adjudicator gave the following overview of the facts:

“On May 20, 2008, the Claimant, Bradley C. Miller, was travelling in his motor vehicle in an easterly direction along Highway 125. The Defendant, Shannon Andrecyk was also travelling in her motor vehicle in an easterly direction along said Highway. The Claimant was travelling in the right hand lane and driving the posted speed limit of 100 kilometers per hour when he noticed Defendant's vehicle in the left hand lane attempting to pass. The Claimant attempted to pull his vehicle into the left hand lane and thereafter a collision between the two vehicles occurred. The Claimant's position is that the Defendant is solely liable in negligence for the damages to his vehicle that were caused by the accident. The Defendant states that the Claimant is entirely or predominately liable for the accident. The Defendant's insurer has paid the Claimant 50% of his damages. The Claimant is seeking the remaining 50% of his loss.”

[3] The adjudicator quoted Section 111(b) of the *Motor Vehicle Act*:

“111 Whenever a street or highway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following regulations:

...

(b) a vehicle shall be driven as nearly as is practicable entirely within a single lane and shall not be moved from such lane ***until the driver has first ascertained that the movement can be made with safety.***” (Emphasis added)

[4] The adjudicator then made the following finding:

“In relation to the Claimant, I find that the Claimant noticed the Defendant's vehicle in the left hand lane attempting to pass his vehicle when he attempted to change lanes. I am satisfied that the collision between the vehicles of the Claimant and the Defendant occurred after the Claimant attempted this manoeuver. As such, I conclude that the Claimant breached section 111(b) of the “Act” when he attempted to change lanes when it was not safe to do so. I would reject the argument that the Claimant's obligation to comply with Section 111(b) of the “Act” was somehow negated due to the breaches of the Defendant in the circumstances.”

[5] As noted above, the adjudicator then went on to find the Claimant 50 percent responsible for the collision.

[6] In his Notice of Appeal, the Claimant/Appellant alleges error of law and failure to follow the requirements of natural justice.

[7] The gist of the error of law argument is that the Defendant/Respondent was speeding and was therefore 100 percent responsible for the collision. With respect,

that argument is not legally tenable. The adjudicator was entitled to apportion blame when he found that, despite the Respondent's speed, the Appellant had made an unsafe lane change.

[8] The natural justice argument appears to be that the adjudicator shed his cloak of impartiality by repeatedly questioning a witness who had apparently given contradictory evidence. An adjudicator is entitled to ask questions to clarify ambiguous matters. He should be careful not to take over the cross-examination of a witness. Without a record, it is difficult for me to assess the merit of the Appellant's contention. I am satisfied, however, that the adjudicator's questioning of the witness played no role in the adjudicator's ultimate determination.

[9] As well, the Appellant takes issue with the adjudicator's rejection of the Appellant's interpretation of photographed skidmarks. The adjudicator was well within his rights to do so. The Appellant has no expertise in the interpretation of the skidmarks. I might add that I listened carefully to the Appellant's argument on the photos. I am satisfied that the adjudicator was still entitled to find that the Appellant was 50 percent responsible for the collision. The skidmarks appear consistent with Counsel's argument that the Appellant's unsafe lane change caused

the Respondent to swerve abruptly into the oncoming traffic lane. In the agony of collision, the Respondent then overcorrected and collided with the Appellant's vehicle.

[10] I am therefore dismissing the appeal. The Appellant shall pay the Respondent \$190.00 in costs and disbursements (\$50.00 Barrister's fee and \$140.00 witness and service fees).

Order accordingly.

J.