

I) Nature Of The Action And The Issues Raised

In this personal injury action, the plaintiff is claiming damages arising from a motor vehicle accident in which the plaintiff as a pedestrian was struck by a motor vehicle as she crossed the street.

The driver of the motor vehicle that struck the plaintiff did not stop and he/she has never been identified. Pursuant to the provisions of the **Insurance (Motor Vehicle) Act**, the plaintiff claimed damages against the Insurance Corporation of British Columbia ("ICBC") as the nominal defendant for the injuries that she suffered in this accident. This claim was settled prior to trial.

In this action, the plaintiff has pursued its claim against the District of Coquitlam ("Coquitlam") - namely, that Coquitlam was negligent in the inspection and maintenance of the overhead crosswalk signs and the street lights located at this intersection and that as a result of that negligence this accident happened.

Although both liability and damages were in issue with respect to this claim, as I have concluded that Coquitlam was not negligent or if it was negligent that that negligence was not the cause of this accident, I have dealt with liability only in this judgment.

With respect to liability, there are a number of issues to be resolved - namely, were the down lights that illuminate the overhead crosswalk signs and/or all of the street lights working at the time of the accident? If one or both were not working did this cause (in whole or in part) the accident? If it did, was there negligence on the part of Coquitlam?

II) Circumstances of the Accident

This accident happened at the "T" intersection of Clarke Road and Morrison Street in Coquitlam, B.C. Clarke Road forms the top of the "T".

At the time of the accident, the plaintiff was crossing in the marked crosswalk that traverses Clarke Road. This crosswalk was marked with two white painted lines which extend across the four lanes of traffic on Clarke Road. On each side of Clarke Road at either end of the crosswalk, there was a sign marked "Pedestrian X" - each sign facing the oncoming traffic.

In addition, suspended over the crosswalk were two signs each facing the oncoming traffic and depicting a stylized pedestrian. Above each of these signs was a flashing amber light. The apparatus from which each of these signs hung contained a light which was intended to illuminate the sign. The purpose of this downward light was to light the sign, not the crosswalk.

The accident happened on the 7th of November, 1991 at approximately 7:00 a.m. as the plaintiff crossed the street in an easterly direction on her way to catch the bus to go to work. As the day was dark and rainy, with daylight just beginning to emerge, most (if not all) of the motorists were using their headlights. A vehicle in the inside lane of the two southbound lanes had stopped to allow the plaintiff to cross. Although the driver of this vehicle (the vehicle that was stopped) had had some difficulty on other occasions seeing people in this crosswalk, on this occasion he had no trouble seeing the plaintiff from eight car lengths away. She was illuminated in the headlights of his own car and in the headlights of the other cars.

Both the plaintiff and the driver of the vehicle that was stopped in the inside southbound lane saw the vehicle in the inside northbound lane as it approached the crosswalk. Both had watched the oncoming headlights of this vehicle anticipating that it would stop. Unfortunately, it did not.

More particularly, the plaintiff had passed the centre point of Clarke Road, having crossed the two southbound lanes when she was struck by the vehicle travelling in the inside northbound lane. As a result of being struck by this vehicle, the plaintiff was thrown against the hood of the vehicle travelling in the outside northbound lane. As was mentioned earlier, the driver of the vehicle that struck the plaintiff did not stop.

The driver of the vehicle travelling in the outside northbound lane (the vehicle onto which the plaintiff was thrown) testified that she had been travelling beside the vehicle that hit the plaintiff until moments before the accident at which time, the vehicle that hit the plaintiff sped up, pulling ahead of her vehicle. Further, she stated that although there were no vehicles travelling immediately ahead of either her vehicle or the vehicle that hit the plaintiff, and although she knew there was a crosswalk somewhere in the vicinity, before the accident she did not see any of the crosswalk signs, the vehicle stopped in the inside southbound lane on the other side of the crosswalk, or the plaintiff.

III) Liability

According to one of the witnesses who was a resident of this area, on the day of the accident the amber lights on the overhead crosswalk signs were working, but the down lights that were supposed to illuminate the overhead crosswalk signs were not working. Moreover, these down lights had not been working for some months prior to the accident.

Although this situation was not reported to Coquitlam until the 27th of November, 1991 (approximately three weeks after the accident) it is consistent with the manner in which these down

lights had been functioning in other parts of the municipality; that they were burned out prior to the accident.

That is, long before the accident, Coquitlam had recognized that these down lights were coming to the end of their natural lifespan. Partly as a consequence of this fact, all of the crosswalk signs at this intersection had been replaced with signs having a reflective sheeting. These new signs were designed to be illuminated by the reflection of car headlights.

For budgetary reasons, with respect to the maintenance and inspection of these down lights, Coquitlam had stopped its preventive program (that is, replacing the down lights on a regular basis whether they needed to be replaced or not) but maintained its corrective program (that is, replacing down lights that citizens reported were burned out).

With respect to the street lights that are located along this portion of Clarke Road, although it was not noticed on the day of the accident, three weeks after the accident it was noted that one of the street lights was burned out. Prior to this time, no one had reported to Coquitlam that this street light was burned out. During the course of the trial, it was argued that this street light may have been out at the time of the accident. As far as the maintenance of street lights was concerned, at the time of the accident, Coquitlam was operating both a preventive program

(replacing the lights on a regular basis whether they needed to be replaced or not) and a corrective program (replacing street lights that were reported as being burned out).

As was mentioned earlier in this judgment, the issues to be determined are whether the down lights and/or all of the street lights were working at the time of the accident; if either or both of these lights were not working was that a cause (in whole or in part) of the accident; and if that caused the accident, was there negligence on the part of Coquitlam?

With respect to the down lights, given the evidence of one of the witnesses that the down lights had been burned out for some time, and that this situation was certainly consistent with the manner in which these lights were functioning in other areas of Coquitlam, I have concluded that the down lights were probably not functioning at the time of the accident.

However, I have also concluded that the evidence falls short of establishing that this situation caused (in whole or in part) the occurrence of this accident.

That is, even if the down lights were not working, there were too many other factors that should have alerted this driver to the fact that there was a crosswalk and in particular to the fact that the plaintiff was crossing the street. Given these circumstances,

it is probable, in my view, that this accident was caused because this driver was not paying reasonable attention or alternatively, because he/she, having seen the plaintiff mistakenly considered that, if they sped up, they could cross the intersection in front of the plaintiff. This latter alternative provides some explanation for the fact that this vehicle sped up just as it was approaching the intersection.

With respect to the other factors that should have alerted or did alert this driver to the existence of the crosswalk and the presence of the plaintiff, the crosswalk signs were not solely dependent on the down lights for illumination. Rather these signs were indicated by a flashing amber light and were illuminated by the headlights of vehicles. This driver had his/her headlights on. In these circumstances, this driver should have seen the crosswalk signs (if he/she was keeping a proper lookout) or he/she did see the signs.

Further, given that the road was relatively flat in the area around the intersection; that there was nothing (including other vehicles) to obstruct this driver's view; that another driver with the same view but from the opposite direction (namely the driver of the southbound vehicle in the inside lane) had no difficulty seeing the plaintiff eight car lengths away; that that vehicle (the vehicle in the inside southbound lane) was stopped and in plain view at the crosswalk; that the plaintiff would have been

illuminated in the headlights of this stopped vehicle moments before the accident happened; and that the plaintiff would have been illuminated by the headlights of the vehicle that hit her, this driver should have seen the plaintiff if he/she had been paying attention or he/she did see the plaintiff but tried to cross in front of her.

The fact that the driver in the vehicle in the outside northbound lane did not see the crosswalk nor the plaintiff is of little assistance. Her view of the stopped vehicle and of the plaintiff was obstructed by the vehicle that hit the plaintiff as it pulled forward on approaching the intersection. The only explanation as to why she did not see the flashing amber signs or the signs with the reflective sheeting was that she was not paying attention.

For these reasons, I have concluded that the evidence falls short of proving that this accident was caused (in whole or in part) by the fact that the down lights were not working.

With respect to the street lights, it is impossible to know if the street light was working on the day that the accident happened.

Assuming that the street light was not working, I have concluded that there is no evidentiary evidence on which a conclusion can be drawn that this fact caused or contributed to the

occurrence of this accident. In particular, the driver in the southbound lane did not have any difficulty seeing either the plaintiff or the vehicle in the inside northbound lane (that is, the vehicle that hit the plaintiff).

For all of these reasons, I have concluded that the claim against Coquitlam should be dismissed. As I have found no negligence on the part of Coquitlam, it is unnecessary to deal with the issue of damages.

IV) Costs

Given the limited financial circumstances of the plaintiff and the fact that this action was not frivolous, I am hopeful that the parties can reach some agreement with respect to costs. If an agreement cannot be reached, the parties are at liberty to attend before me for further directions.

"Sinclair Prowse, J."
Sinclair Prowse, J.

May 4, 1994
Vancouver, B.C.