

## Can You Be At Fault For A BC Car Crash If You Are Rearended?

May 29th, 2009

Although such a finding is unusual the short answer is yes, you can be at fault for a car crash when rear-ended by another motorist. Reasons for judgment were released today by the BC Supreme Court, Vancouver Registry demonstrating this.

In today's case (Saffari v. Lopez) the Plaintiff sustained injuries when she rear-ended the Defendant's vehicle in West Vancouver on the on-ramp to the Lion's Gate Bridge.

Traffic at the time of the crash was sparse. The Plaintiff was following the Defendant's vehicle. The Defendant's passenger attempted to 'throw out a cigarette and thought it came back in' and in reaction to this the Defendant brought his vehicle to 'a fairly sudden slowdown'. At this time the Plaintiff collided with the Defendant vehicle.

Mr. Justice Harvey of the BC Supreme Court found that both the Plaintiff and Defendant were equally to blame for this collision, he reasoned as follows in reaching this conclusion:

[41] *Section 144(1)(b) prohibits drivers from driving without reasonable consideration for other persons using the highway.*

[42] *Such would include, in my opinion, consideration of the circumstances of stopping or suddenly slowing one's vehicle in the flow of traffic where other viable options, such as exiting the roadway, existed. The emergency resulting in the deceleration of the Lopez vehicle was self-created. In any event, there is no suggestion that the cigarette had fallen onto the driver's lap or otherwise onto his person. Mr. Lopez's reaction, that is to suddenly slow or stop his vehicle, was but one of several choices he had. He acknowledged these included signalling an intention to change lanes to reach a point of safety where he could stop his vehicle without impeding traffic or putting on four-way flashers to alert following vehicles and other users of the road to an emergency.*

[43] *I find Mr. Lopez was negligent in suddenly stopping or slowing his vehicle on the roadway approaching the Lions Gate Bridge: **Ayers**. Here, unlike in the authorities referred to by the defendant, traffic was not stop and go as was the case in **Pryndik v. Manju**, 2001 BCSC 502 at para. 2, *aff'd* 2002 BCCA 639, nor was there such a lapse of time between the action of the defendant and the happening of the accident to bring the circumstances of this case within the reasoning of the Court in **Peterson v. Cabot**, 2000 BCSC 1453.*

[44] *I also need to consider the actions of the plaintiff Ms. Saffari and what, if any, responsibility rests with her actions leading to the collision.*

[45] *I must reject, almost in its entirety, the evidence of Mr. Javanpour as it relates to the driving of Ms. Saffari prior to and leading to the accident.*

[46] *His evidence concerning matters such as the conversations he overheard, the use or availability of a cell phone during the journey preceding the accident coupled with his description and explanation as to the Jeep's running lights, all make his evidence of events unreliable.*

[47] *Ms. Saffari's description of events, while more credible in terms of the totality of the evidence, is equally wanting in some areas. Her description of the conversation with Ms. Pfeifer coupled with her denial of it on discovery, her varying estimates of her speed and that of the Jeep, her admission that she "momentarily lost sight of the Jeep" coupled with the elaborate description of her evasive actions also cause me to question more important aspects of her evidence as it relates to the moments or seconds leading to the accident.*



[48] Ms. Saffari never said the Lopez vehicle slammed on the brakes. She testified she saw the brake lights of the Jeep come on as she entered the arc of the curve. She did not describe a panic stop nor is such consistent with the evidence of Mr. Lopez. Her evidence as to “losing sight of the Jeep” simply makes no sense if her estimate as to the separation between the vehicles and her speed is consistent and she was maintaining proper lookout. Were she travelling both at the speed she describes and the distance from the Jeep when she saw the lights come on, she could have stopped. This is not a case where the doctrine of “agony of collision” applies. Drivers are daily confronted with vehicles in front of them stopping or slowing for all sorts of reasons. If Ms. Saffari did react in the elaborate manner she and Mr. Javanpour described in their evidence then she did so because she was travelling either too fast for conditions or too close behind the Lopez vehicle to bring her car to a timely stop once confronted by the hazard posed by the defendant’s driving.

[49] In the circumstances, I find the plaintiff and defendant equally at fault for the accident. The defendant Ms. Pfeifer is accordingly liable, as owner, in like proportion to Mr. Lopez.