



On March 10, 1988 at about 5:40 p.m. the appellant Desbiens was driving a taxi owned by the appellant Rose in an easterly direction on Portland Street in the City of Dartmouth. She approached the intersection of Portland Street with Portland Estates Boulevard on the right and Spring Avenue on the left. This intersection is controlled by traffic lights and Portland Street has three eastbound lanes at the intersection. Desbiens was in the extreme left of these lanes and intended to make a left turn into Spring Avenue. She said that she entered the intersection on a green light, then stopped to wait for oncoming traffic which was proceeding in a westerly direction on Portland Street. The light turned from green to amber and then to red. She noted a van stopped, facing west on Portland Street, which appeared to be intending to turn into Spring Avenue. The driver of the van "flicked his lights" and remained stopped to permit her to proceed through. She thereupon started through the intersection when she noticed a westbound car coming down the hill on Portland Street which was obviously not going to stop. She then stopped and the car hit the front corner of her taxi.

Desbiens' testimony received some support from that of James Ludlow, driver of the westbound van stopped on Portland Street. He said he recalled the accident very vividly. He said there was very little traffic in the area, and as he was coming down the hill prior to reaching the intersection the light turned amber. He noticed the taxi which he said was northbound out of Portland Estate Boulevard. By the time he reached the intersection, the light had turned red. At this point, the taxi was proceeding "out of Portland Estates". He then saw a westbound car on Portland Street coming up behind him at an extremely high rate of speed. The taxi stopped in response to this but the car did not slow down, went through the red light hitting the front end of the taxi and spinning it clockwise. This vehicle then bounced further to the right, went across the intersection and finally came to a stop.

The respondent, Gary Murphy, testified that he was travelling westerly on Portland Street, and as he approached the intersection in question, he reduced his speed to 50 kph from 70 kph in response to a change in the speed zone. The light did not turn to amber until he "crossed the intersection". He then noticed the taxi starting to turn. He weaved to the right thinking he was going

to get hit which was what happened, his vehicle being struck in the front left corner, bouncing off and being struck again in the rear. When questioned further he said that the light turned to amber as he entered the intersection at the crosswalk point, giving him "ample time to make the intersection".

In a brief oral decision, the trial judge referred to s. 122 of the Motor Vehicle Act, imposing on a left turning driver the duty to yield to oncoming traffic. He referred to the heavy burden the section imposed on such a driver. He then referred to the evidence of Mr. Ludlow which he considered to be largely discounted because of several obvious inconsistencies. One was that he testified that the taxi came out of Portland Estates Boulevard. As well, the trial judge expressed obvious reservations about Mr. Ludlow's estimate that the light had been red for traffic on Portland Street for some four seconds before the collision occurred.. He also commented on the obviously inaccurate estimate of Desbiens that she had been in the intersection some four or five minutes. He then commented that, in his view, the "clincher" came from Desbiens' evidence when she claimed that the respondents' motor vehicle was so close that he would have had to "slam on the brakes to avoid a collision". The trial judge said that indicated to him that the respondents' motor vehicle was so close to the intersection as to constitute an immediate hazard. He therefore concluded that the appellants' case had not been established and he dismissed the action.

The main thrust of the appellants' argument is that the trial judge erred in not taking into account the evidence that the respondents "went through a red light". That was certainly the testimony of Desbiens and Ludlow. It was not that of the respondent, Gary Murphy, whose evidence was "as I entered the intersection at the crosswalk point it turned amber". From this, it is a safe inference that the respondent, Gary Murphy, was saying that the light was green prior to that.

Regrettably, the trial judge has not made a finding whether or not by reason of the state of the traffic signals, the respondents were entitled to enter the intersection at all. The respondent, Gary Murphy, at no time, testified that the light was green. He simply stated that as he "entered the intersection at the crosswalk point it turned amber". There is no finding whether or not

he could have stopped in safety at this point. The evidence of the other two witnesses was that he entered the intersection on a red light. If he did so, then it would be error for the trial judge to find that the case was governed solely by s. 122(3) of the Act.

In a trial of an action for damages, the parties are entitled to clear reasons for the decision which include at the minimum the necessary findings of fact. The state of the traffic light was a very live issue and the failure to make any finding with respect to it was, in our opinion, a palpable and overriding error.

The appeal is allowed with costs to the appellants at 40% of those fixed at trial, plus disbursements to be taxed and a new trial is ordered.

J.A.

Concurred in:

Clarke, C.J.N.S.

Matthews, J.A.