

Claim No: 319973

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Tylak v. Allen, 2010 NSSM 15

BETWEEN:

STEFAN TYLAK

Claimant

- and -

LANCE (LANSON) ALLEN

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on January 12, 2010

Decision rendered on January 13, 2010

APPEARANCES

For the Claimant - self-represented

For the Defendant - self-represented

BY THE COURT:

[1] The Claimant was bicycling to work on January 9, 2009 when he had an encounter with the transport truck driven by the Defendant.

[2] The events as described by the Claimant are these:

[3] The Claimant was driving south along the stretch of road where Barrington Street becomes Hollis Street in downtown Halifax at about 9:02 a.m. The road was partially snow covered but suitable for cycling. Traffic was relatively light.

[4] The Defendant passed the Claimant to the left without leaving much space, and as it began to drift slightly to the right the Claimant was caught in a squeeze between the truck and the curb. He sensed that he might be hit and dragged under the truck, so he “bailed out” by jumping off his bike to avoid a more serious encounter. In doing so he suffered a minor injury and did damage to his bike and his eyeglasses. Once the truck was past, he got back on his bike and chased down the Defendant to advise him that he had been virtually run off the road. The Defendant did not admit to anything at that time. The Claimant noted the licence number and made a police report that morning. Eventually he found out the identity of the driver.

[5] The Defendant denies that he did anything to cause the Claimant to lose control of his bike. He did not see the Claimant actually fall, but theorized that the Claimant had been trying to pass him on the right, lost control and is just trying to blame him for something that he did not do.

[6] My task is to determine, on a balance of probabilities, what happened. This is sometimes a difficult task when comparing one person's word against the other.

[7] This case, however, is somewhat different. After hearing the evidence, I am left without any doubt that the version of the event offered by the Claimant is true. His recollection was vivid. He was consistent in his story from the time he chased down the Defendant and then made his police report. It is also an entirely plausible story. It is not uncommon for large vehicles to treat cyclists as if they are not vehicles also entitled to be on the road.

[8] The Defendant's evidence was not credible in the sense that his theory of what happened was just speculation. He seemed more focussed on the fact that the Claimant had described the street they were on as Hollis Street when, it appears, it was still technically Barrington, as if this cast doubt on the Claimant's credibility. It did not, as this distinction is essentially meaningless.

[9] I find that the Defendant passed the Claimant unsafely by failing to yield a sufficient part of the roadway. This was contrary to both s.114(a) of the *Motor Vehicle Act*, as well as ordinary prudent driving practice. Both parties are lucky that the results were not more serious.

[10] The damages claim is modest, which also suggests to me that the Claimant is acting in good faith.

[11] The Claimant seeks \$100.00 in general damages for the scrapes and fright that he experienced. I allow that claim as asked.

[12] He also seeks:

- A. \$48.00 for extra public transit costs for days when he could not use his bicycle.
- B. \$102.75 for repairs to the bike.
- C. \$271.25 for the cost of new glasses to repair the ones that were damaged.
- D. \$80.00 for 4 hours of lost productivity on the day of the incident.

[13] In my view the amounts claimed have all been proved and should be allowed.

[14] The Claimant is also entitled to costs of \$89.68 as the filing fee and a total of \$81.40 for service of the claim.

[15] The total judgment shall therefore be in the amount of \$602.00 plus costs of \$171.08 for a total of \$773.08.

Eric K. Slone, Adjudicator