

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Tremblay v. Crabbe, 2012 NSSM 53

Claim No: SCCH 381599

BETWEEN:

Name John Tremblay

Claimant

Name Olga Crabbe

Defendant

DECISION

Editorial Notice

This decision has been edited to correct several typographical and grammatical errors. The findings and results have not changed. Addresses and phone numbers have been removed.

Date of Hearing: August 9, 2012

Date of Last Correspondence: August 16, 2012

Date of Decision: September 24, 2012.

Michael Blades and Julia Crabbe (Student at Law) appeared on behalf of the Claimant.

The Defendant Olga Crabbe appeared in person.

- (1) This action concerns a motor vehicle accident which took place on March 10, 2010. The Claimant, John Tremblay, is the owner of the motor vehicle but it was driven by Sarah Jane Sullivan, who testified on behalf of the Claimant. Mr. Tremblay was present in court but did not give evidence. The Defendant, Olga Crabbe, was the owner and operator of

her motor vehicle.

- (2) The facts surrounding the accident are not seriously in dispute. On the morning of March 10, 2010, the defendant was exiting the driveway at Payzant Building Supplies, a business in Lower Sackville, Nova Scotia. Ms. Crabbe intended to proceed onto Sackville Drive by making a left-hand turn. At the time of her entrance onto Sackville Drive, there was a truck stopped in the lane nearest to her immediately before the driveway. Ms. Crabbe drove past the truck and while making a left-hand turn intending to cross the passing lane, struck Tremblay's vehicle which was being driven by Ms. Sullivan. As a result, the Claimant's vehicle sustained damage. The Claimant is suing for the cost of the damage to repair the vehicle plus incidental expenses.
- (3) Sarah Jane Sullivan testified that she was proceeding along Sackville Drive towards Dartmouth, Nova Scotia. Ms. Sullivan is a real estate agent with Century 21 and was returning to her office in Cole Harbour from a business meeting at a home in Mount Uniacke. She was proceeding in the inside lane and at the last moment noticed a vehicle turning left out of the Payzant driveway. She testified that the vehicle was moving quickly and she did not have time to react. She testified that her speed at the time was 50 kilometres per hour, consistent with the posted speed limit along Sackville Drive. She did not experience any distractions such as the radio or cellular phone.
- (4) Following the accident, Ms. Sullivan checked with Ms. Crabbe to ensure she was not injured. The driver of another car called 911 and the police arrived shortly thereafter. It is to be noted that neither the driver of the vehicle, the driver of the truck, nor the attending police officer testified before me. Ms. Sullivan testified to observing damage on the right-hand side of the vehicle. She could not use the vehicle and was required to use rental vehicles provided to her by her insurance company.
- (5) There was testimony by both parties respecting statements made by Ms. Sullivan to whether she had her license suspended. However, no evidence was called to corroborate such a statement. I find at all material times that Ms. Sullivan and Ms. Crabbe were licensed drivers. However, Ms. Crabbe did not have insurance coverage in place at the time.
- (6) Mr. Blades submitted the affidavit of Wanda Gillette, Claims coordinator with Dominion Insurance Company concerning the cost and extent of damages to the claimant's vehicle.
- (7) Olga Crabbe testified that she did strike the Claimant's vehicle. At the time when she was intending to make a left-hand turn onto Sackville Drive, she was stopped in front of a large truck. She testified that she thought the truck driver was waving her on into the next lane. She acknowledged in Court that she should not have proceeded out of the driveway. She stressed that at all times this was an accident and not intentional. I fully accept that this was indeed an accident. Furthermore, she confirmed to the police officer that she did

not have automobile insurance at the time. Ms. Crabbe is unable to work due to an illness and she is currently receiving social assistance.

Liability

- (8) The issues in this claim are relatively straightforward.
- Was the Defendant negligent in the operation of her vehicle in striking the Claimant's vehicle?
 - If so, what damages were caused as a result of the negligence?

Negligence

- (9) In reviewing the evidence presented at trial, I have no hesitation in finding the defendant negligent in the operation of her vehicle.
- (10) Section 123 (1) of the *Motor Vehicle Act*, RSNS 1989, c. 293 *as am.*, states as follows:
- “the driver of a vehicle entering the highway shall yield the right-of-way to all vehicles approaching on the highway.”
- (11) The breach of a statutory provision, such as this one, does not by itself create a cause of action. Rather, it is evidence to be considered in an assessment of whether the driver, in this case Ms. Crabbe, breached the standard of care of a reasonable and prudent driver. In making this determination, the Court must consider all of the relevant evidence available to it.
- (12) It is clear that Ms. Crabbe did not yield the right-of-way to the claimant's vehicle driven by Ms. Sullivan. She stopped before entering Sackville Drive, as she was required to do. I find that her signal light was on, and she proceeded to turn left past the stopped truck in the outside lane. However, she was required to check the inside lane to her left to ensure there were no additional vehicles approaching before she proceeded. Even though she thought the truck driver was waving her on, it was still incumbent upon Ms. Crabbe to ensure that she could safely cross the inside lane before proceeding to the opposite side of the road. I find Ms. Crabbe liable for the damage caused to the Claimant's vehicle.
- (13) I must state that given Ms. Crabbe's current circumstances, I have some personal difficulty in entering judgment against her. At the same time, it is important to note that she was aware she was driving without insurance and personally assumed the risk of any consequential damages arising from a potential accident.
- (14) Having found the claimant negligent, I turn now to the question of damages.

Damages

- (15) In support of their claim for damages, the solicitor for the Claimant submitted an affidavit on behalf of the Claimant's insurer along with photographic proof of damages. Neither the representative from the insurance company nor the individual who estimated the damage appeared at the hearing. As a consequence, I have only the estimated repairs in support of this claim. To be awarded damages, it is not necessary the repairs be completed; however, the evidence is stronger and more meaningful when the work is actually performed and a final invoice presented in court.

Repairs

- (16) In support of this claim, the claimant's have submitted a statement from Canavans Central Appraisal (1999) Ltd. - Summary Report. It shows appraised damage to the vehicle of \$4966.95. The report is consistent with Ms. Sullivan's evidence that the vehicle could not be driven due to the damage.
- (17) The vehicle sustained damage to the front bumper and there are estimates reflecting that. The passenger's side fender was to be replaced and refinished as well. The vehicle required repairs to the rear door and to have the vehicle realigned. The total estimate of parts was \$2013.08 and total estimate for labor \$2200.50. The claimant submitted photographic evidence with the report which shows damage to the passenger side rocker panel, front fender and bumper as well as the rear fender and bumper. Several of the photographs taken of the vehicle were of other parts not related to that vehicle. However, it is clear that there was damage to the front and rear passenger side fenders, rocker panels and bumpers requiring repairs which I find were the result of the accident.
- (18) In the report there are several statements which are of concern. For example, several items are shown to have a code "01". The description of this code states "Call Dealer for Exact Parts #/price". This code is applied to the rear door and front door side moldings and the side fender. I interpret this to mean that it is simply an estimate of the approximate charge. It is not a figure provided from a repair shop. The total of these three parts is not that significant, \$369.06. In the absence of proof of the exact cost to repair those parts, I reduce that amount to \$200. I disallow the line item markup of \$150 and the 2.5 hours "Added to the Estimate Based on Audatex's Two Stage Refinish Formula".

- | | | | |
|------|-----------------------------|------------|-----------|
| (19) | Estimated Parts: | \$2013.08 | |
| | Less: Code 01 | (\$369.06) | |
| | Plus: Allowed | \$ 200.00 | |
| | Less: Line Item Markup | (\$150.00) | |
| | Total Allowed for Parts | | \$1694.02 |
| | Estimated Labor | \$2200.50 | |
| | Less: 2.5 hours noted above | (\$115.00) | |

Total Allowed for Labor:	\$2085.50
Sublet Repairs	\$ 141.95
Towing	<u>\$ 40.00</u>
Total	\$3961.47

The appraisal report uses a percentage of 13% for HST. I will apply that rate for this claim at \$514.99. In summary, I allow a total claim for repairs \$4476.46.

Rental car

- (20) In order to affect the repairs necessary, the Claimant and Ms. Sullivan were required to be without the use of the vehicle for a period of time. There are two invoices in evidence for a rental car from Discount Car and Truck Rentals. The first is for a seven-day rental with charges totaling \$259.90. The vehicle was a Ford escape 4 x 4. A second invoice was produced showing car rentals for a period of 30 days totaling \$1380. I do not have any difficulty with the daily rate of \$46 per day.
- (21) In reviewing the evidence presented to me, I find 37 days to be an excessive period of time for the rental of the vehicle. The repairs were extensive but only required a total of 48.9 hours to complete according to the appraiser's estimate. There is no evidence before me to explain why a 37 day rental is necessary. I presume some of the molding and painting may require time to harden or dry resulting in some delay. Perhaps the repair shop needed to await the shipment of parts. There was no evidence of this before me. Accordingly, I find the repairs ought to have been completed in a shorter period of time than 37 days. I allow for a 10 day rental at \$46 a day for a total of \$460 plus HST of \$69 for a total of \$529.
- (22) The damages allowed for this claim are as follows:
- | | |
|----------------------|------------------|
| Costs of Repairs: | \$4476.46 |
| Loss of Use (rental) | <u>\$ 529.00</u> |
| Total | \$5005.46 |
- (23) In summary, the claim is allowed. The claimant shall have judgment in the amount of \$5005.46. In the circumstances, there will be no costs.

Dated at Halifax, NS,
on September 24, 2012;

Gregg W. Knudsen, Adjudicator

Original: Court File

Copy: Claimant(s)
Copy: Defendant(s)