

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gandha v. Beauchesne*,
2025 BCCA 122

Date: 20250415
Docket: CA49888

Between:

Avinash Gandha

Appellant
(Plaintiff)

And

Maxime Albert Beauchesne

Respondent
(Defendant)

Before: The Honourable Justice Dickson
The Honourable Justice Iyer
The Honourable Justice Edlmann

On appeal from: An order of the Supreme Court of British Columbia, dated
May 16, 2024 (*Gandha v. Beauchesne*, 2024 BCSC 1977,
Vancouver Docket M211316).

Counsel for the Appellant:

G. Cameron

Counsel for the Respondent:

K. Armstrong, K.C.
E. Tahanha

Place and Date of Hearing:

Vancouver, British Columbia
February 21, 2025

Place and Date of Judgment:

Vancouver, British Columbia
April 15, 2025

Written Reasons by:

The Honourable Justice Edlmann

Concurred in by:

The Honourable Justice Dickson
The Honourable Justice Iyer

Summary:

The appellant appeals a jury verdict finding the respondent not liable for a motor vehicle accident. The appellant pulled out of her driveway onto a highway, driving substantially under the speed limit. The respondent struck her vehicle from behind. The jury found the appellant suffered \$752,000 in damages but that the respondent was not liable to her. The appellant argues that the trial judge erred in failing to instruct the jury on the law governing obligations between drivers.

Held: Appeal allowed; new trial on liability ordered. Trial counsel made conclusive statements in their closing submissions to the jury as to the parties' compliance with their legal obligations as drivers. The judge erred in not instructing the jury on the relevant law, especially given counsels' assertions in their closing submissions. The jury may also have been left with the mistaken impression that the legality of the appellant's conduct would determine liability. A jury properly instructed on the law may very well have reached a different verdict.

Reasons for Judgment of the Honourable Justice Edlmann:

[1] This appeal arises out of a collision that occurred outside of Trail, B.C. on February 18, 2020. Mr. Beauchesne’s vehicle collided with the rear of Ms. Gandha’s vehicle. After a 14-day trial, the jury concluded that Ms. Gandha had suffered damages of \$752,000 but found that Mr. Beauchesne was not liable as he did not breach the standard of care he owed to her. The appeal relates only to the finding on liability. A cross-appeal by the respondent on the issue of damages has been abandoned.

Grounds of Appeal

[2] The appellant raises the following three grounds of appeal:

- 1) The trial judge erred in failing to instruct the jury on the law governing the obligations between drivers on the road.
- 2) The trial judge erred in instructing the jury there was admissible evidence that a vehicle in the left-hand lane prevented the respondent from changing lanes.
- 3) The jury's verdict on liability is perverse.

[3] For the reasons below, I conclude that the appeal should be allowed on the first ground. I therefore do not find it necessary to address the other two grounds of appeal.

Evidence at Trial

[4] Three witnesses testified about the collision.

[5] Ms. Gandha lives on Highway 3B near where the collision occurred. She testified that she was planning to drive to the Walmart a few houses down the highway from her home. She backed the car out of the driveway. There were two lanes on that side of the highway and one lane going in the other direction. Ms. Gandha said she was on the shoulder of the highway and signalled before merging into the right-hand lane. She said she saw two cars coming who went past her in the left lane as she merged into the right lane. She estimated she was going about 30 or 35 km per hour when Mr. Beauchesne’s vehicle struck her from behind.

[6] Natalie Doig testified that she was driving in the right lane at about the speed limit of 80 km/h and Mr. Beauchesne's vehicle was behind her in the same lane. She saw Ms. Gandha's vehicle pulling onto the highway and she therefore switched lanes into the left lane. In cross examination, she accepted that she probably could either have slowed down so as not to hit Ms. Gandha's vehicle or change lanes and she chose to change lanes.

[7] Mr. Beauchesne testified that he was travelling in the right-hand lane. Ms. Doig's vehicle was in front of him and a pickup truck was beside him. Ms. Doig was able to merge into the left-hand lane to avoid Ms. Gandha's vehicle but he was not. Mr. Beauchesne says he applied his brakes and horn but there was not enough distance to stop before colliding with Ms. Gandha's vehicle.

Charge to the Jury

[8] The trial judge provided a draft charge to counsel and invited their comments during pre-charge conferences held both before and after closing submissions to the jury. Although the draft charge was not in the record before us, counsel did not request any additional instruction on the issue of liability after reviewing the draft.

[9] The printed version of the final charge was 111 pages, much of which related to damages and included a detailed review of the evidence. On the issue of liability, the trial judge began the charge by instructing the jury that the defendant owed a duty of care to the plaintiff and that it was for the jury to decide if he had breached the duty of care. He then provided a general instruction on the standard of care in the following terms:

Standard of Care

I will now discuss the second element, dealing with the standard of care. If the defendant's conduct fell below the standard of care expected in the circumstances, [he] was in breach of his duty of care to Ms. Gandha. The conduct of the defendant is not measured against perfection, but rather against the conduct of a person of ordinary prudence and intelligence in the community. A defendant is not required to exercise extraordinary caution or unusual skill or foresight. You must decide what a reasonably prudent person would have done in the circumstances described in the evidence. If the conduct of Mr. Beauchesne fell below that standard, then, subject to what I say elsewhere, you must find him liable in negligence. But if you find that the

defendant met the standard of care required of a reasonably careful person in the circumstances, you must dismiss the action.

[10] The trial judge then turned to the issue of contributory negligence, instructing the jury that if they found the defendant had breached the duty of care that the onus was on him to establish contributory negligence. The trial judge went on to instruct the jury on apportionment of liability, telling them that if they found the loss was caused by the negligence of both the plaintiff and the defendant then they were to assign a percentage to each party's fault by determining the nature and extent to which each party's negligent conduct departed from the standard of care required of a reasonable person in the circumstances.

Submissions to the Jury

[11] Submissions to the jury by trial counsel for the appellant (who is not counsel on appeal) were largely consistent with the approach taken in the draft charge, framing the question in terms of the actions of a reasonable person in the circumstances of the respondent, and focusing on the ability of Ms. Doig to either stop or change lanes:

She sees Ms. Gandha's vehicle when she's quite a ways back, and it's on the boulevard. She called it the boulevard. It's the shoulder of the road. She sees Ms. Gandha pull out and accelerate, getting into traffic. Ms. Doig can either slow down and not hit Ms. Gandha or change lanes. She has enough time to do both, and either can be done safely. She chooses to change lanes into the left lane, and she continues driving. When she passes Ms. Gandha's vehicle, it is fully established in the curb lane and accelerating.

[...]

The judge will tell you that to find the defendant at fault, you need to find that his conduct fell below the standard of care expected in the circumstances. That standard -- it's not measured against perfection, but against what a person of ordinary prudence, a reasonable person in the community, would do. So you need to think about what a reasonable person would do in the defendant's circumstances.

In this case you have the benefit of knowing exactly what a reasonably prudent person -- in this case Ms. Doig -- in fact, did or could have done. She can have slowed down or stopped. Ms. Doig changed lanes. Either of these two actions are what a reasonably prudent driver in the defendant's situation could have done. He didn't do either. He drove into Ms. Gandha.

[...]

[...] [Ms. Gandha] pulled out when it was safe, after making sure that it was. There's nothing negligent or wrong about that. Being in the wrong place at the wrong time on a highway in front of another driver who isn't paying attention, that's not negligent. Ms. Gandha did everything right, so did Ms. Doig. It's the defendant who wasn't paying attention. It's the defendant who didn't do what a reasonable driver should have done, and because of that, the collision is his fault.

[12] In contrast, counsel for the respondent not only framed his submissions in terms of the standard of care and contributory negligence, but made specific reference to the parties' legal obligations:

Now, as to liability, as I said Wednesday, we all know drivers have a duty to keep a proper lookout. Mr. Collins says my client breached that duty based on the fact it was a rear-end collision. Unfortunately, it's not that simple. The duty also applies to Ms. Gandha. She can't just pull off the shoulder of the road into the flow of traffic, which is so close the traffic can't stop. She has to yield to that traffic. We all know that. She knows her. Her son Ravi admitted it. We all know that.

[...]

So drivers have an obligation to enter any roadway when approaching traffic is so close they can't stop. We know that, and that's exactly what happened here. It doesn't make sense that Ms. Gandha couldn't see Mr. Beauchesne's car because it was blocked by the witness's car, yet there was space for Mr. Beauchesne to pull into highway traffic -- for Ms. Gandha, I should say -- to pull into highway traffic in front of Mr. Beauchesne safely. As such, we say she must have pulled out into oncoming traffic on a highway, posted 80 kilometres an hour, when that traffic couldn't stop, and hence the accident is her fault.

[...]

Her excuse was that she had to turn at a traffic light up ahead. That does not excuse jumping into 80-kilometre-an-hour traffic and travelling 50 kilometres an hour less than the speed limit. It just doesn't. We know that's illegal. She knows it's illegal. We know it's dangerous, especially on a highway.

[...]

Now, if you disagree and you find Mr. Beauchesne had time to stop and hence is at fault, in my submission, Ms. Gandha should still bear the bulk of responsibility. Not only did she not take a proper lookout and yield, she was also going too slow. That's two mistakes. And this idea that, I had to turn up ahead, frankly, it's an excuse. It's not a justification. It's not a reason. It's an excuse.

[Emphasis added.]

[13] In reply before the jury, trial counsel for the appellant responded to the submissions on the legality of the appellant's actions in the following terms:

Going back to liability, merging onto a road and accelerating is not illegal. Driving under the speed limit on a road while you approach an intersection to turn, that's not illegal. You have to slow down. There's -- it takes time for you to speed up on a highway. You can't round a corner going 80 kilometres an hour. It's unsupportable to say that Ms. Gandha was doing something illegal when she was driving the speed that she was. She's merging onto the road, she's accelerating, and she's planning to turn right. That's not illegal. You don't have to travel instantaneously the speed limit when you merge onto a road. That's impossible.

Ms. Gandha was in her lane. She's not coasting. She's preparing to turn right. Nothing is wrong with that.

[...]

This isn't about who made the first mistake. Ms. Gandha didn't make a mistake. She did what a reasonable driver would do. So did Ms. Doig. Ms. Doig did what a reasonable driver would do. There's one mistake here; it's the defendant, for not paying attention and crashing into Ms. Gandha.

[Emphasis added.]

Jury's Verdict

[14] The trial judge instructed the jury in accordance with the final charge described above. The jury were provided with a series of questions to answer. The first question was "Did the defendant breach the standard of care owed to the plaintiff?", to which the jury answered "No." As a result, the jury did not go on to consider contributory negligence.

[15] Before turning to my analysis of the charge, it will be helpful to set out the applicable law.

Applicable Law

[16] The general approach to liability in motor vehicle cases was summarized in the following terms in *Salaam v. Abramovic*, 2010 BCCA 212:

[21] In the end, a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of

the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way. [...]

[17] As noted in the passage above, having the right-of-way does not insulate a driver from an assessment of whether that driver exercised reasonable care in all the circumstances (*Coffey v. Sabbaghan*, 2020 BCCA 335 at para. 26).

[18] The general obligation to drive with care, attention, and reasonable consideration for other persons is set out in s. 144 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA]:

- 144** (1) A person must not drive a motor vehicle on a highway
- (a) without due care and attention,
 - (b) without reasonable consideration for other persons using the highway, or
 - (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[19] The duty of a following driver is set out in s. 162(1) of the *MVA*:

- 162** (1) A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

[20] This duty requires a driver to allow for emergencies that may arise, such as a sudden stop or unanticipated manoeuvre by a vehicle ahead (*Greenway-Brown v. MacKenzie*, 2019 BCCA 137 at para. 56, citing *Pryndik v. Manju*, 2001 BCSC 502 at para. 21, aff'd 2002 BCCA 639).

[21] A driver entering onto a highway must yield to approaching traffic that constitutes an "immediate hazard":

- 176** (2) The driver of a vehicle about to enter or cross a highway from an alley, lane, driveway, building or private road must yield the right of way to traffic approaching on the highway so closely that it constitutes an immediate hazard.

[22] A driver has an obligation not to drive at a speed so slow as to impede the reasonable movement of traffic:

145 (1) A person must not drive a motor vehicle at so slow a speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

Deficiency in the Charge

[23] Misdirection of the jury amounts to an error of law reviewable on a correctness standard (*Lennox v. New Westminster (City)*, 2011 BCCA 182 at para. 24). The appellant concedes that there was no objection to the charge before the trial judge, despite trial counsel's opportunity to do so. The approach to be taken in reviewing a civil jury charge when no objection was made at trial was recently summarized in *Aquino v. Insurance Corporation of British Columbia*, 2025 BCCA 56:

[32] The general rule in such cases is a new trial will not be ordered unless there has been a substantial wrong or miscarriage of justice: *Knauf v. Chao*, 2009 BCCA 605 at paras. 18–21; *Rhodes v. Surrey (City)*, 2018 BCCA 281 at para. 16; and *McCliggot* at para. 48. This is because inaction by counsel at trial, where the trial judge has an opportunity to take corrective action, "supports the presumption the instruction could not have been seriously misleading or unfair, leading to an injustice" (*Mazur*, at para. 41).

[33] The two questions on this second ground of appeal are therefore whether (1) the trial judge made an error in his direction to the jury and, if so, (2) whether this misdirection resulted in a substantial wrong or miscarriage of justice because a jury apprised of all relevant information might very well have arrived at a different verdict: *Mazur*, at para. 51.

[24] In my view, the trial judge erred in not further instructing the jury on the applicable law, in particular given the nature of the closing submissions. Once the issues had been framed in submissions in terms of the legality of Ms. Gandha's driving, it was incumbent on the trial judge to assist the jury in explaining the respective legal rights and obligations of the two drivers and to relate them to the theories of liability placed before the jury. In particular, he ought to have instructed the jury on the nature and scope of the obligations to keep a safe distance, yield to oncoming traffic constituting an immediate hazard and not drive so slowly as to impede the normal and reasonable flow of traffic. Instead, the jury was left with

categorical statements by counsel that Ms. Gandha’s driving was illegal and equally categorical statements that it was not, without being instructed on the applicable law.

[25] In addition, the jury may have been left with the mistaken impression that, if Ms. Gandha’s conduct was illegal, it would be decisive of liability. As noted above, this is simply not the case. Even if the jury concluded Ms. Gandha was in breach of s. 176 or s. 145 of the *MVA*, it ought to have been instructed to go on to assess whether Mr. Beauchesne exercised reasonable care in the circumstances.

[26] I conclude that a jury properly instructed on the law may very well have arrived at a different verdict on liability. Despite the invitation from the appellant to have this Court assess liability, I am not prepared to do so on the record before us. In my view, the appropriate remedy is to order a new trial on the issue of liability.

Conclusion

[27] I would allow the appeal and order a new trial on the issue of liability.

“The Honourable Justice Edelman”

I AGREE:

“The Honourable Justice Dickson”

I AGREE:

“The Honourable Justice Iyer”