COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bezanson v. Insurance Corporation of British Columbia,* 2026 BCCA 130

Date: 20260331
Docket: CA50454

Between:

Jamie Bezanson

Appellant
(Plaintiff)

And

Insurance Corporation of British Columbia, John Doe, and Jane Doe

Respondents
(Defendants)

Before: The Honourable Mr. Justice Groberman
The Honourable Justice Edelmann
The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia, dated February 5, 2025 (*Bezanson v. Doe*, 2025 BCSC 184, Vancouver Docket M1910995).

Counsel for the Appellant:	C. McIvor N.J. Hartney
Counsel for the Respondent, Insurance Corporation of British Columbia:	D.B. Devine Q. Chen
Place and Date of Hearing:	Vancouver, British Columbia November 13, 2025
Place and Date of Judgment:	Vancouver, British Columbia March 31, 2026

Written Reasons by:
The Honourable Justice Warren

Concurred in by:
The Honourable Mr. Justice Groberman
The Honourable Justice Edelmann

Summary:

The appellant, Mr. Bezanson, appeals the dismissal of his action for damages arising out of injuries he sustained in a motor vehicle collision he contends was caused by the negligence of an unidentified pick-up truck driver. The collision occurred when the plaintiff attempted to pass the pick-up truck and failed to navigate a curve in the road. The action was dismissed at trial as the judge found the appellant did not establish the pick-up truck driver's negligence was the factual or legal cause of the collision. Held: Appeal dismissed. The trial judge found that the hazard created by the pick-up truck driver's negligence had abated before the plaintiff attempted to pass the pick-up truck and that the plaintiff's passing maneuver was not evasive and not taken to avoid a collision. In these circumstances, the judge was not persuaded the pick-up truck driver's negligence was a factual cause of the accident. No reviewable error has been established in relation to this conclusion. Where causation in fact has not been established it is unnecessary to consider legal causation.

Reasons for Judgment of the Honourable Justice Warren:

Introduction

[1] This appeal arises from the dismissal of an action commenced by the appellant, Mr. Bezanson, who was injured in a motor vehicle collision while driving his motorcycle. He maintains that his injuries were caused by the negligence of an unidentified pick-up truck driver that forced him to take evasive action leading to the collision. Following a trial on liability only, the trial judge concluded Mr. Bezanson failed to establish that the collision was caused in fact and in law by the pick-up truck driver's negligence.

[2] Mr. Bezanson maintains that he does not challenge any of the trial judge's findings of fact. He submits the judge erred in law by misapplying the tests for factual and legal causation and by misapplying the "agony of the moment doctrine". The Insurance Corporation of British Columbia ("ICBC"), the sole defendant at trial, and the respondent on appeal, submits that the trial judge's analysis does not reflect reviewable error and the appeal should be dismissed.

Decision Below

Factual findings

[3] On November 1, 2017, just before 5 p.m., Mr. Bezanson was driving home on his motorcycle. He was travelling south on Nanaimo Street in Vancouver, in the right lane, which was next to the curb.

[4] As Mr. Bezanson approached the T-intersection of East 29th Avenue and Nanaimo Street, the pick-up truck turned left onto Nanaimo Street from East 29th Avenue. After turning onto Nanaimo Street, the pick-up truck immediately drifted from the left lane into the right lane, in front of Mr. Bezanson. This drifting into Mr. Bezanson's lane presented a clear hazard to Mr. Bezanson, as he was at risk of being pushed into a parked car or the curb. Mr. Bezanson slowed from about 50 km/h to about 40 km/h, backing off to avoid the hazard. This placed him behind the pick-up truck, which was now straddling the two lanes.

[5] After slowing down, Mr. Bezanson attempted to pass the pick-up truck using the left lane. At this point on Nanaimo Street the road curved and a median separated north and south bound traffic. As Mr. Bezanson moved into the left lane, he failed to navigate the curve and crossed over the median before colliding head on with a Toyota FJ Cruiser travelling north.

[6] At trial, Mr. Bezanson did not suggest he was at risk of rear-ending the pick-up truck at any time. There was no need for Mr. Bezanson to aggressively brake in response to the hazard presented by the pick-up truck driver.

[7] Mr. Bezanson was no longer at risk from the pick-up truck once he had backed off and placed himself behind it. It was not necessary for Mr. Bezanson to move into the left lane to avoid the pick-up truck and his maneuver into the left lane was not done to avoid a collision. Rather, Mr. Bezanson's maneuver into the left lane was "unnecessarily aggressive and not evasive": at para. 15.

[8] The entire sequence of events from the pick-up truck turning onto Nanaimo Street to Mr. Bezanson crashing into the Toyota FJ Cruiser occurred over a period of

about, but no more than, 10 seconds. The judge characterized this as "considerable time to react" (at para. 25) and found that Mr. Bezanson's decision to move into the left lane to go around the pick-up truck was not made in the "agony of the moment". On this point he said:

> [34] I also appreciate that decisions taken by drivers and especially motorcyclists in a split second to avoid a collision cannot be nicely parsed with the benefit of hindsight to assess whether it was the best response. Decisions made in the "agony of the moment" to avoid a collision must be given some latitude: *Biggar v. Enns*, 2017 BCSC 2290 at para. 49. Here, however, I find Mr. Bezanson was not ensconced in the agony of the moment. The incident occurred over the course of about, but no more than, 10 seconds which, as noted, is a fair bit of time to react to a driving hazard.

[9] Key to the judge's causation analysis were his findings that once Mr. Bezanson slowed down, the pick-up truck ceased to present any risk to him and Mr. Bezanson's maneuver into the left lane was not done to avoid a collision. The judge expressed these findings several times. For example:

- "… Mr. Bezanson's response to the pick-up truck was unnecessarily aggressive and not evasive": at para. 15.
- "… Mr. Bezanson had the opportunity to avoid a collision and he took that opportunity by slowing down and backing off from the pick-up": at para. 18.
- Mr. Bezanson's "maneuver [into the left lane] was unnecessary and was not done to avoid a collision with the pick-up": at para. 18.
- "… [T]here was no evidence of a risk of Mr. Bezanson running into the pick-up truck from behind [and] he was no longer at risk from the pick-up once he backed off": at para. 28.
- "Having backed off … he was now behind the pick-up truck and no longer at risk of a collision": at para. 30.
- "… I am not able to find there was anything for Mr. Bezanson to avoid once he backed off": at para. 32.

Causation

[10] Having made the above findings, the trial judge went on to consider whether Mr. Bezanson met the onus of establishing, on a balance of probabilities, that his injuries were caused by the negligence of the pick-up truck driver. Citing *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27 at para. 11, the judge correctly noted that Mr. Bezanson had to establish both factual and legal causation.

Factual causation

[11] The judge summarised the legal principles applicable to determining cause in fact: at para. 36. He noted that "the primary test is whether the plaintiff would have suffered the injury 'but for' the defendant's negligence" and he acknowledged that the defendant's negligence "need not be the sole cause of the injury so long as it is a necessary cause".

[12] The judge was not persuaded the pick-up truck driver's negligence was a cause of the collision. As mentioned, he found that Mr. Bezanson's decision to move into the left lane was not taken to avoid a collision or done in the "agony of the moment". Instead, after having avoided the hazard created by the pick-up truck driver, by slowing down and backing off, Mr. Bezanson unnecessarily tried to go around the pick-up truck by swerving into the left lane. The judge concluded that this maneuver put him in a position where he was unable to negotiate the curve in Nanaimo Street and it was the factual cause of the collision: at para. 38.

Legal causation

[13] The judge summarized the test for legal causation this way:

> [37] With respect to legal causation, the plaintiff must prove that the defendant's negligence was a proximate cause of the loss, the damage was not too remote from the factual cause, or the damage suffered was reasonably foreseeable: *Borgfjord v. Boizard*, 2016 BCCA 317 at para. 56. The relevant inquiry is whether the harm is too unrelated to the wrongful conduct to hold the defendant fairly liable: *Mustapha* at paras. 11-12.

[14] He then concluded that the conduct of the pick-up truck driver was not the legal cause of the collision: at para. 39. While he was satisfied that the driver

of the pick-up truck was negligent in drifting into the curb lane, he found it was not reasonably foreseeable that a motorcycle traveling in the curb lane would seek to avoid the hazard presented by the pick-up truck by attempting to go around the truck and into the left lane. Specifically, relying on *Borgfjord v. Boizard*, 2016 BCCA 317, the judge concluded that once Mr. Bezanson had contained the hazard created by the pick-up truck driver by slowing down, it ceased to be the proximate cause of the collision: paras. 40–42.

Issues

[15] Mr. Bezanson contends that the trial judge made three errors in his causation analysis, which he characterizes as extricable errors of law:

a) He misapplied the "but for" test by focussing on Mr. Bezanson's reaction rather than the pick-up truck driver's contribution.

b) He mischaracterized the requirement of reasonable foreseeability in determining legal causation, requiring an overly specific foreseeability of the sequence of events.

c) He failed to "adequately apply" the agony of the moment doctrine to Mr. Bezanson's conduct.

[16] In my view, the third alleged error does not raise a question of law. It amounts to a disagreement with the manner in which the judge assessed the evidence in making the key findings of fact. This alleged error should be addressed first because, as I will explain, those key findings of fact present insurmountable challenges for Mr. Bezanson's appeal.

Analysis

Application of the "agony of the moment" doctrine

[17] As noted, the judge acknowledged that "[d]ecisions made in the 'agony of the moment' to avoid a collision must be given some latitude": at para. 34. He cited *Biggar v. Enns*, 2017 BCSC 2290, a case involving a motorcyclist who, when faced

with another bike suddenly blocking his lane, braked hard and crashed. In *Biggar*, the Court considered that the plaintiff acted reasonably in the agony of the moment and the other rider was found fully liable for the accident.

[18] On appeal, Mr. Bezanson relied on *Biggar* as well as *Graham v. Carson*, 2015 BCCA 310, a case where a cyclist swerved to avoid a car that abruptly pulled out and crashed into a parked vehicle. The driver of the car was found fully liable.

[19] Mr. Bezanson says that *Biggar* and *Graham* "illustrate that when a plaintiff is forced to react in an emergency created by the defendant, the plaintiff's split-second decision – even if it leads to a crash – will not lightly be deemed unreasonable". Mr. Bezanson argues that the judge refused to give Mr. Bezanson "any latitude" and "effectively held him to a standard of care approaching perfection". He argues that "[i]f the judge had properly applied the agony-of-the-moment framework, he would have recognized that Mr. Bezanson's lane change, while perhaps not the ideal reaction, was an understandable reaction to the truck's encroachment" (emphasis in appellant's factum).

[20] The difficulty for Mr. Bezanson is that on the judge's findings of fact, he was not "forced to react in an emergency" or make a "split-second decision". As noted, the judge found that once Mr. Bezanson slowed down, the pick-up truck ceased to present any risk to him, and Mr. Bezanson's maneuver into the left lane was not taken to avoid a collision. He found that Mr. Bezanson was not "ensconced in the agony of the moment" when he made the lane change, that the incident occurred over the course of about but no more than 10 seconds, and that this was a "fair bit of time to react": at para. 34.

[21] Mr. Bezanson submits that the judge ignored his evidence to the effect that the entire incident, from the time the pick-up truck driver turned onto Nanaimo Street, to the time of the collision, took 5–10 seconds. This misstates both the evidence and the judge's findings. The judge did not ignore Mr. Bezanson's evidence. He found that Mr. Bezanson confirmed, at least twice, that the incident, "[f]rom the time [the pick-up truck] hit Nanaimo Street to the time [Mr. Bezanson]

hit the car", took "around, but no more than, ten seconds from start to finish": at paras. 22–23. When specifically considering the "agony of the moment" doctrine, the judge also referred to "[t]he incident [occurring] over the course of about, but no more than, 10 seconds": at para. 34.

[22] Mr. Bezanson has failed to demonstrate any reviewable error arising out of the judge's assessment of the applicability of the "agony of the moment" doctrine to his lane change maneuver. Rather, he simply disagrees with the judge's factual findings and argues he actually had a very short timeframe within which to perceive the hazard and react.

[23] In reviewing a trial judge's findings of fact, this Court can only intervene if satisfied a factual finding reflects a palpable and overriding error. It is not the role of this Court to re-assess the evidence or second-guess the weight to be assigned to various items of evidence: *Nelson (City) v. Mowatt*, 2017 SCC 8 at para. 38. The same is true of a judge's understanding of the evidence. A misapprehension of the evidence that goes to the core of the reasoning process will constitute a palpable and overriding error: *Greenway-Brown v. MacKenzie*, 2019 BCCA 137 at para. 19. However, Mr. Bezanson has failed to demonstrate any misapprehension of the evidence. Consequently, the judge's application of the "agony of the moment" doctrine provides no basis for appellate intervention.

Application of the "but for" test

[24] There is no dispute about the nature of the "but for" test for factual causation. It was articulated by Chief Justice McLachlin for the majority of the Supreme Court of Canada in *Clements v. Clements*, 2012 SCC 32, in these terms:

> [8] The test for showing causation is the "but for" test. The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. Inherent in the phrase "but for" is the requirement that the defendant's negligence was *necessary* to bring about the injury — in other words that the injury would not have occurred without the defendant's negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.
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> [Italics in original.]

[25] It is also settled that the defendant's negligence need not be the sole cause of the plaintiff's injury so long as it is a necessary cause: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 17, 1996 CanLII 183; *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130.

[26] Mr. Bezanson acknowledges that the judge correctly set out the "but for" test, including expressly noting that the defendant's negligence need not be the sole cause. However, he argues that the judge erred in concluding that the pick-up truck driver's negligence was not a factual cause of the collision "by focusing on the availability of an alternative response by [Mr. Bezanson]". He says the relevant inquiry is whether the defendant's breach was a necessary factor in the injury occurring, not whether the plaintiff might have avoided the injury by "behaving perfectly after the breach". He submits the trial judge's approach had the effect of wrongly imposing a requirement that the pick-up truck driver's negligence be the sole or immediate cause of the harm and argues that this error mirrors that identified in *Skinner v. Fu*, 2010 BCCA 321 and *Helgason v. Rondeau*, 2023 BCCA 339.

[27] In my view, the judge did not make the error Mr. Bezanson claims he made.

[28] In his factum, Mr. Bezanson asserts that "but for the pickup driver's negligent left turn and encroachment, [he] would not have been forced into making any emergency maneuver and no accident would have occurred". This submission highlights the flaw in Mr. Bezanson's position. The assertion that he was forced to make an emergency maneuver is directly at odds with the trial judge's findings of fact. As I have already said, central to the judge's analysis were his findings that the hazard created by the pick-up truck driver's negligence had abated before Mr. Bezanson moved into the left lane, and that Mr. Bezanson's decision to move into the left lane was not taken to avoid a collision. These findings distinguish this case from *Skinner* and from *Helgason*.

[29] In *Skinner*, the trial judge found that the defendant, who stopped his vehicle on a highway at night, without using warning lights, was not the "proximate cause" of an accident that occurred when the plaintiff's vehicle struck the defendant's vehicle

from behind. The plaintiff saw the defendant's vehicle but did not discern that it was stopped in time to stop his own vehicle without a collision. The trial judge found the defendant was negligent in failing to remove his vehicle from the highway in a timely way and/or in failing to use his warning lights. However, the judge concluded that the defendant's negligence was not the "proximate cause" of the collision because the plaintiff could have avoided the accident if he had been more attentive to the road ahead of him. This Court allowed the plaintiff's appeal, concluding that the judge's use of the term "proximate cause" diverted the analysis from the correct approach (the "but for" test), and resulted in the judge applying a "last clear chance analysis": *Skinner* at para. 20. The judge was found to have erred by focussing on the conduct of the plaintiff to the exclusion of the negligence of the defendant and failing to apply the "but for" analysis to the defendant's negligent conduct: *Skinner* at para. 22.

[30] This case is different because the trial judge's analysis, in this case, did not focus on whether Mr. Bezanson might have avoided the collision by responding differently to *an ongoing hazard* created by the pick-up truck driver. Rather, the judge found that by slowing down and backing off, Mr. Bezanson avoided the hazard created by the pick-up truck driver's negligence; he was not at risk from the pick-up truck when he moved into the left lane; and the maneuver into the left lane was not taken to avoid a collision.

[31] *Helgason* involved a three-vehicle collision that occurred when the plaintiff, Ms. Helgason, stopped her vehicle, waiting to turn left from a highway onto a side road. Mr. Pederson was driving his truck behind her in winter conditions. He saw her vehicle stopped and attempted to slow but worried he would not stop in time, determined the safer option was to pass her on the right (the shoulder of the highway). Ms. Rondeau was traveling behind Mr. Pederson. She was unable to stop and struck Ms. Helgason's vehicle from behind. The force of that collision pushed Ms. Helgason's vehicle to the right where she struck Mr. Pederson's truck. This second collision propelled Ms. Helgason's vehicle across the highway where it came to rest in a ditch.

[32] Ms. Rondeau admitted liability, Mr. Pederson did not. The trial judge found that Mr. Pederson's move onto the shoulder was an evasive maneuver taken in the agony of the moment. He concluded that Ms. Helgason had not proved that Mr. Pederson breached the applicable standard of care. Although that was sufficient to dismiss the claim in negligence, the judge went on to conclude in the alternative that, even if Mr. Pederson had breached the standard of care, Ms. Helgason had not established that he caused or contributed to her injuries despite acknowledging that she sustained injuries from colliding with Mr. Pederson's truck. Further, the trial judge found that it was not reasonably foreseeable that Ms. Helgason would suffer injuries as a result of Mr. Pederson driving around Ms. Helgason on the shoulder.

[33] This Court allowed Ms. Helgason's appeal. Speaking for the Court, Justice Fenlon concluded that the trial judge erred in finding Mr. Pederson did not breach the standard of care, and in his causation analysis. On the question of causation in fact, she found that once Mr. Pederson's breach of the standard of care was established, the judge's finding that the collision of Mr. Pederson's and Ms. Helgason's vehicles caused injuries to Ms. Helgason established causation in fact. She found the fact that Ms. Rondeau's conduct propelled Ms. Helgason's vehicle into Mr. Pederson's truck did not mean that Mr. Pederson's negligence was not a cause of Ms. Helgason's injuries. She found that but for Mr. Pederson's truck passing Ms. Helgason on the right, her car would not have collided with his in the manner it did or been pushed back across the highway into the ditch—a collision which the trial judge found contributed to Ms. Helgason's injuries.

[34] Again, this case is different. There was no collision between Mr. Bezanson's motorcycle and the pick-up truck, and the risk created by the pick-up truck driver had been contained by Mr. Bezanson slowing down and backing off before he decided to move into the left lane.

[35] As I have said, the trial judge found that the risk created by the pick-up truck driver's negligence had abated before Mr. Bezanson moved into the left lane and that Mr. Bezanson's decision to move into the left lane was not taken to avoid

a collision. In these circumstances, the judge was "not persuaded the pick-up truck driver's negligence was a cause of the accident": at para. 38. In other words, Mr. Bezanson failed to meet his burden of establishing, on a balance of probabilities, that the pick-up truck driver's conduct in drifting into the right lane was a cause of the collision in fact. In my view, no reviewable error has been established in relation to this conclusion.

Legal Causation

[36] As Mr. Bezanson bears the burden of establishing both causation in fact and causation in law, it is not necessary to determine whether the trial judge erred in his analysis of legal causation. In my view, where causation in fact has not been established, it is not helpful to proceed to consider legal causation, and I would decline to do so.

[37] Legal causation was described this way in *Nelson (City) v. Marchi*, 2021 SCC 41:

> [97] Second, the breach must be the legal cause of the loss, meaning that the harm must not be too far remote (*Mustapha*, at para. 11; *Saadati*, at para. 20; *Livent*, at para. 77). The remoteness inquiry asks whether the actual injury was the reasonably foreseeable result of the defendant's negligent conduct (*Mustapha*, at paras. 14-16; *Livent*, at para. 79).
>
> [Emphasis added.]

[38] The concept of remoteness limits the scope of liability imposed where a breach of the standard of care has in fact caused damage. It serves as a policy check on tort liability. As explained in Allen M. Linden *et al.*, *Canadian Tort Law*, 13th ed. (Toronto: LexisNexis Canada, 2025) at c. 6:

> The remoteness element in the negligence analysis answers the question: is that defendant's breach of the standard of care which caused some harm to this plaintiff too remote a cause such that society does not wish to attach legal liability to such action.
>
> [Emphasis added.]

[39] As noted in *Mustapha* at para. 12, the question is whether the harm is too unrelated to the wrongful conduct to hold the defendant fairly liable.

[40] Thus, the process of determining legal causation, or the extent of liability for wrongful conduct that has in fact caused damage, demands value judgments and the focus is, necessarily, on whether the damage caused in fact by the wrongful conduct was a foreseeable consequence of the wrongful conduct. In my view, it is not rational to attempt to assess whether it would be fair to attach legal liability for injury to particular conduct without first concluding that the conduct caused the injury. Put another way, it would be logically incoherent to ask if an event was a reasonably foreseeable consequence of conduct that did not, in fact, cause the event.

Disposition

[41] For the reasons given, I would dismiss the appeal.

"The Honourable Justice Warren"

I AGREE:

"The Honourable Mr. Justice Groberman"

I AGREE:

"The Honourable Justice Edelmann"