Citation: Melchor Reyes v. Ryan Marley
1999 BCPC 0002

Date: 19991210
File No: 9810663
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Civil Division

MELCHOR REYES,
infant by his Guardian Ad Litem, The Public Trustee of British Columbia

Claimant

v.

RYAN MURRAY LEONARD MARLEY

Defendant

DECISION
OF THE
HONOURABLE JUDGE W.J. RODGERS

Counsel for the Claimant:	J. Coady
Counsel for the Defendant:	T. Pettit
Place of Hearing:	North Vancouver, B.C.
Date of Hearing:	October 28 & November 5, 1999
Date of Judgment:	December 10, 1999

[1] On November 20, 1995 Mr. Reyes was a passenger in a motor vehicle travelling southbound on the Willingdon Avenue on-ramp leading to Highway 1, in the City of Burnaby, when the motor vehicle being operated by the Defendant, Mr. Marley, struck the rear of the vehicle in which Mr. Reyes was riding. The accident was caused by Mr. Marley's negligent operation of his motor vehicle.

[2] The accident occurred as the two vehicles were waiting on the ramp leading to Highway 1. The vehicle in which Mr. Reyes was travelling moved forward and then stopped. Mr. Marley anticipated that the Reyes' vehicle would proceed onto Highway 1. He removed his foot from the brake and allowed his car to roll forward. He did not lift his foot from the clutch. He estimates that his car rolled forward approximately five feet before it struck the Reyes' vehicle. The impact caused no damage to Mr. Marley's vehicle and very minor damage to the Reyes' vehicle.

[3] At the time of the accident, Mr. Reyes was 10 years old. I have concluded that Mr. Reyes has little, if any, memory of the accident which occurred four years ago. The evidence concerning Mr. Reyes' injury was provided by his foster father, Vernon Haubirch. On the day following the accident, Mr. Haubirch took Mr. Reyes to a medical clinic and, later that week, to his family doctor. The doctor prescribed Tylenol medication and advised that Mr. Reyes should be absent from school for one or two days. Mr. Reyes complained about having a stiff neck and back and Mr. Haubirch observed that Mr. Reyes was not as mobile as usual. Within two weeks, Mr. Reyes had returned to his usual activities including playing floor hockey. There are no permanent injuries.

[4] Mr. Haubirch testified that, from time to time during the three years following the accident, Mr. Reyes would ask Mr. Haubirch to rub his back. It was suggested that the need for back rubs arose from the accident. However, there is no medical evidence to support the submission and I find that Mr. Reyes had completely recovered from the injury he suffered in his accident after two weeks.

[5] I do not find that Mr. Reyes was exaggerating or fabricating his evidence in order to obtain an award of damages. I do not accept that a ten-year-old boy could have the sophistication required to carry out such schemes.

[6] The Public Trustee of British Columbia is the Guardian of the Estate of Mr. Reyes, pursuant to the Order of the Supreme Court of British Columbia pronounced on April 5, 1994. Throughout these proceedings, Mr. Reyes was ably represented by counsel appointed by the Public Trustee. The Defendant, Mr. Marley was also ably represented by counsel retained by the Insurance

Corporation of British Columbia.

[7] Counsel for the Defendant submitted that the Claim ought to be dismissed as it was not objectively foreseeable that the Claimant, Mr. Reyes, would be injured as a result of the negligence of the Defendant, Mr. Marley. Counsel each provided for the assistance of the Court a volume of Authorities ranging from the Privy Council decision in the case of *Wagon Mound* (No. 1) to a recent unreported decision of a case which came before me.

[8] It is clearly established tort law that in order for a Claimant to recover damages for personal injury as a result of the negligence of a Defendant, it must be objectively foreseeable that such injury would arise from the negligent act.

[9] There may well be accidents involving a collision between motor vehicles where it is not foreseeable that personal injuries will result and, in such cases, recovery by a plaintiff will be denied. For example, were a small vehicle to be driven at a slow speed into the rear of a large cement truck, then it is difficult to foresee the truck driver would suffer personal injuries.

[10] The test of foreseeability is objective and not subjective. In the present case, Mr. Marley, immediately after the accident, spoke to the occupants of the vehicle in which Mr. Reyes was a passenger and inquired, "Are you all right?". I do not take this statement by Mr. Marley to be determinative of the issue of foreseeability. Mr. Marley was a polite, well-spoken witness and his natural politeness, no doubt, caused him to make his inquiry of the passengers in Mr. Reyes' vehicle.

[11] When determining the threshold for liability perhaps the best test is set out by Lambert J. A. in *Beecham* v. *Hughes* (1988) 45 C.C.L.T. 1 (B.C.C.A.) at 54 where he stated: "The borderline of liability lies where the good sense of the trier of fact puts it." With respect to Mr. Reyes' case, I hold it was foreseeable that personal injuries might arise as a result of a low-speed collision between two motor vehicles of approximately equal size even though the force of impact was quite small.

[12] I award general damages in the amount of $500 plus interest from November 20, 1995 to the date of the trial at the rate set from time to time pursuant to the *Court Order Interest Act*. Mr. Reyes will also be awarded Costs in an amount to be agreed upon by counsel. If an agreement cannot be reached with respect to Costs, either party is at liberty to apply for a further Order.

The Honourable Judge W. J. Rodgers

Provincial Court of British Columbia