

Citation: *Patel v. Anderson*, 2023 YKSM 5

Date: 20230721
Docket: 22-S0026
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Chief Judge Cozens

VIPULKUMAR JAYANTILAL PATEL and
BHAVIKKUMAR JAYANTILAL PATEL

Plaintiffs

v.

SCOTT ALLAN ANDERSON

Defendant

Appearances:

Vipulkumar Patel and

Bhavikkumar Patel

Scott Allan Anderson

Appearing on their own behalf

Appearing on his own behalf

REASONS FOR JUDGMENT

[1] On May 24, 2022, there was a motor vehicle accident involving a 2007 Toyota Yaris (the “Yaris”), and a Silverado Truck (the “Truck”). The Plaintiffs, Vipulkumar Patel, the registered owner of the Yaris (the “Owner”), and Bhavikkumar Patel, the driver of the Yaris at the time, (the “Driver”), have brought a Claim against the Defendant, Scott Anderson, the owner of the Truck, as a result the accident.

[2] Both Plaintiffs testified in support of the Claim. Also testifying was Cst. Miron. The Defendant testified on his own behalf.

[3] The accident occurred on 7th Avenue in the City of Whitehorse just south of Baxter Street. The Driver was heading in a southbound direction at the time of the

accident. There is some dispute as to whether the Truck was in motion at the time, and as to whether it was protruding into either or both of the north and southbound driving lanes at the time.

[4] In addition to court costs, the Plaintiffs are seeking the following damages:

- \$9,159 for the Yaris vehicle cost;
- \$3,380 for taxi fares from May 25, 2022, until July 19, 2022;
- \$300 for two towing bills;
- \$1,050 for three weeks miscellaneous transportation; and
- \$150 for miscellaneous costs (stationary).

[5] The total damages sought in the Claim are \$14,039.

[6] The Defendant denies responsibility for the accident, and has filed a Counterclaim seeking \$10,911 in damages for parts and labour to repair the Truck, as well as \$411 in lost wages.

[7] The Driver testified that as he was driving southbound on 7th Avenue, after rounding the corner from traveling westbound on Baxter Street, the Defendant backed the Truck into the southbound driving lane, striking the front left bumper of the Yaris. The Driver denies that he was speeding at the time of the accident, stating that he was travelling less than 40 km/hr.

[8] The Driver testified that he attempted to move the Yaris to the right in order to avoid the accident, but that it was too late to do so and avoid the accident. He said that the Defendant wanted them to move both vehicles before the RCMP arrived. The

Driver said that he did not move the Yaris, but that the Defendant moved the Truck back into the driveway, even though the Driver did not want him to. The Driver was unsure whether he moved the Yaris back a small distance from where the accident occurred.

[9] The Defendant states that he was sitting in the driver's seat of the Truck, which was protruding slightly from the parking stall into the northbound lane so that he could work on a steering issue, when he felt the Yaris strike his left rear bumper. He denies that his vehicle was moving at the time of the accident. He states that after the accident he moved the Truck fully back into the driveway parking stall, and that the Yaris was driven from the point of impact into the southbound lane. The Defendant expressed a concern that the Driver was using the Yaris for commercial purposes, as he had a Skip the Dishes carry bag in the back seat of the Yaris (photograph provided).

[10] The damage to the Yaris is considerable, as the Truck was higher than normal as a result of having a lift kit installed, and the Yaris had clearly travelled some distance under the box of the Truck.

[11] Cst. Miron attended the scene and spoke to the Driver and the Defendant. She provided a Motor Vehicle Traffic Incident Investigation Report (the "Report"). In the Report, Cst. Miron circled "Parked" with respect to the Direction of Travel entry. She had also noted the Defendant as being the Possible Offender. In the comment section, Cst. Miron noted as follows:

Veh 1 [Yaris] heading southbound on 7th Avenue near the intersection of Baxter Street.

Veh 2 [Truck] parked in driveway on east side of 7th Avenue and backing up on 7th Avenue.

Veh 2 failed to yield at Veh 1 coming on 7th Avenue.

Veh 2 backed up [into] Veh 1 – causing damages to front bumper/hood of Veh 1 and damages to left rear bumper of Veh 2.

[12] The photographs taken by Cst. Miron show the Yaris in the southbound lane at an angle, with the front of the Yaris situated on the shoulder of the road. The Truck is facing east with its rear bumper and trailer hitch protruding across the shoulder to the edge of the northbound driving lane.

[13] Cst. Miron stated that she prepared the Report based upon her observations at the scene and oral statements from the drivers. Both the Driver and the Defendant provided their driver's licence, proof of registration, and proof of insurance.

[14] Cst. Miron, in response to a question from the Defendant, said she did not know whether the Defendant's Truck was in motion at the time of the accident, and that it was possible that it was not. She was unable to provide an estimate as to the speed that the Yaris would have been travelling.

[15] Cst. Miron said that she offered to the Plaintiffs to have the Yaris towed for them.

[16] The Owner had only the required liability insurance for the Yaris. He did not have collision insurance. He is unable to recover any compensation for loss from his insurer.

[17] The Owner testified that, when he arrived at the scene of the accident, the Defendant said that they should move their vehicles so as not to stop traffic. He said that the Defendant moved the Truck forward into the parking stall.

[18] In cross-examination, the Owner said that he is now driving the Yaris, and that it was not destroyed. He said that it still needs work, however.

[19] He agreed that he had lent the Yaris to the Driver so that he could do Door Dash deliveries.

Analysis

[20] The aerial photographs show that the location of the accident is at least one city block past the turn onto 7th Avenue from Baxter Street. While it is difficult to say with certainty, it appears that, at most, the Yaris would have been backed up a couple of feet from where the accident occurred, looking at the location of the parked Truck and the damage to the Yaris. I am also able to observe some debris and oil at the location where the Yaris is parked in the southbound lane following the accident, which is consistent with the Yaris having been moved a minimal distance, if moved at all.

[21] It is clear from the photographs that the accident could not have occurred while the Truck was in the driveway. There were trucks parked on either side of the Truck. It must have been in the roadway to some extent in order for the damage to have occurred as it did.

[22] I also am satisfied that the accident occurred while the Truck had crossed the northbound lane and was in, or entering, into the southbound lane. I would certainly think that if the Yaris had been travelling in the wrong northbound lane, that the Defendant would have taken steps to either photograph the vehicles before they were moved, and/or not moved the Truck, and taken steps to dissuade the Driver from doing

so with respect to the Yaris. The location of the Yaris, the angle at which it is parked, and the noted debris, is consistent with the accident occurring as the Driver testified it did.

[23] There is no evidence that would point to the Yaris travelling at a high rate of speed rounding the corner and thus causing or being partially responsible for the accident occurring.

[24] I have also considered the possibility that the Driver could have been distracted and did not notice the Truck in the roadway until either the last moment before the accident or until the accident occurred. Again, there is no evidence that this occurred, other than perhaps an inference to be drawn from the evidence of the Plaintiff that the Truck was not moving at the time of the accident, and therefore the Driver must not have been paying attention to the roadway at the time of, or just prior to, the accident.

[25] Regardless, the Defendant had the Truck in the roadway at a time when the Truck was uninsured and not allowed to be there. The Truck was clearly in the northbound traffic lane, and in all likelihood to some extent in the southbound lane. This creates a liability issue for the Defendant.

[26] It appears to me from the evidence that the testimony of the Driver that the Truck was backing into the lane that he was travelling in is most likely what occurred. It is possible that the Defendant had just finished backing the Truck as well and now had it in park, which could potentially reconcile the testimony of the two witnesses.

[27] However, in my opinion it was the action of the Defendant in putting the Truck into the southbound lane at a time when it was unsafe to do so that caused the accident, and I find him liable. As I am not finding the Driver to have been responsible for the accident or contributorily negligent, I dismiss the Counterclaim.

Damages

[28] The Defendant did not have any liability insurance coverage for the Truck at the time of the accident, as he was not driving it. He had minimal insurance for the truck while it was parked.

[29] The Defendant said that his insurance had denied any coverage on the basis that it was a “no fault” accident.

[30] Correspondence from the Owner’s insurer dated July 6, 2022, informed the Plaintiffs that:

As per our conversation and my conversation with the third party claims advisor, they have advised me that their insured (Scott Allen Anderson) did not carry third party liability coverage and therefore you will need to seek coverage from the third party directly.

[31] Correspondence from the Defendant’s insurer dated July 7, 2022, stated that the Defendant:

...does not have any collision or liability coverage. Therefore, if our insured was at fault, you would need to subrogate directly to Mr. Scott Anderson.

...The vehicle should not have been driven when the accident occurred.

[32] The Owner testified that the Yaris was not drivable after the accident. He paid to have the Yaris towed to CarStar, and then again to have it towed to his residence. The Plaintiffs have provided a towing receipt for \$187.50 from AJ-AJ Towing for towing from the scene of the accident to CarStar. I have no other towing receipt before me.

[33] The Owner said that he has done or attempted to do, some of the repairs himself, indicating the hood, the battery, the body, and the windshield. He has since purchased a hood for the Yaris and a windshield. He provided a receipt dated September 8, 2022, for the hood panel from Auto Parts Plus in the amount of \$357.91, and a receipt dated September 30, 2022, for the windshield from All West Glass in the amount of \$605.12.

[34] I have before me an estimate from CarStar Whitehorse created February 2, 2023 (printed March 9, 2023), that indicates a total amount of \$11,242.64, inclusive of parts, labour, and GST. The CarStar estimate for the hood panel was \$415.80, and for the windshield was \$641.03.

[35] I note that the CarStar estimate inclusion of the hood panel and windshield is obviously after-the-fact of the hood panel already having been purchased elsewhere and the windshield repair having been done.

[36] The CarStar estimate notes that the km reading on the Yaris is 140,311 km.

[37] The Plaintiffs provided an Internet Kelley Blue Book valuation for the Yaris dated July 21, 2022, that placed a Private Party Value of \$9,159 for a Yaris with 90,000 km in good condition, as situated between a range of \$8,520 and \$9,798.

[38] I have some concerns about the reliability of the Kelley Blue Book valuation for the Yaris. It is hard for me to accept that the Plaintiffs have put 50,000 km on the Yaris since the earliest likely date that it was again drivable, which would have been after the hood panel purchase on September 8 (assuming that was the date of delivery and not the ordering of the hood panel, and assuming that it could be installed quickly by the Plaintiffs, and further assuming that the windshield was still in good enough condition that it could allow the Yaris to be driven, before it was repaired on September 30, 2022), and the CarStar estimate from early February 2023. Approximately 12,500 km per month in the fall/winter in the Yukon is a lot of driving.

[39] In the Claim, the Owner Plaintiff states that he had purchased the Yaris in Vancouver for \$8,000 and brought it to the Yukon for a further \$800. There is no information before me as to when the Yaris had been purchased.

[40] The CarStar estimate to repair the Yaris exceeds by far what the market value of the Yaris was. The market value as per the Kelley Blue Book also seems excessive to me, firstly, because it exceeds what the Plaintiff says he paid for the Yaris, and, secondly, because I have some concerns about this valuation being on a 90,000 km basis, and that this is, in fact, what the km on the Yaris were at the time of the accident. I have no direct evidence on this point as to what the kilometres were at the time. The best evidence as to the value of the Yaris at the time of the accident is what the Owner says he paid for it, adjusted somewhat due to not knowing when this purchase was made. It could have been recently or years before.

[41] A further complicating issue, is the lack of information as to what the value of the Yaris is now, given that it is operational, yet still needing repairs. It obviously still has some value, however, any value has to be assessed in the context of further repairs needing to be done. However, the Plaintiffs should be placed somewhat close to the position they would have been in had the accident not occurred. This requires that some damages to go towards the cost of repairs is required.

[42] I am prepared to award the Plaintiffs damages associated with the harm to the Yaris as follows:

- \$963.03 for the out-of-pocket costs of the hood panel and the windshield repair;
- \$6,500 for any further repairs of the Yaris that need to be completed.

[43] The Plaintiffs have also claimed for taxi fare while deprived of the use of the Yaris.

[44] The Plaintiffs provided taxi receipts as follows:

- 40 return trip taxi rides from 19 Roundel Rd. to Wann Rd. using Car 38 (Abate) from May 25, 2022, to July 19, 2022, at \$30 each way. This amount is \$2,400;
- 10 return trip taxi rides from 19 Roundel Rd. to the downtown area of Whitehorse, using Car 38 (Abate), from May 28, 2022, to July 17, 2022, at \$25 each way. This amount is \$500;

- Eight return trip taxi rides from 19 Roundel Rd. to Whitehorse General Hospital, using Car 38 (Abate), from June 2, 2022, to July 18, 2022, at \$30 each way. This amount is \$480.

[45] The total for cab fare based upon these receipts is \$3,380.

[46] I have no evidence before me as to what other options the Plaintiffs may have explored, or been able or expected to explore, to lessen or avoid these costs. I have no evidence as to what the reasonable and regularly charged taxi fare in Whitehorse was at that time for the trips that occurred. I note that the same taxi and driver were used on each occasion, and that the driver was a friend of the Plaintiffs. I note that the trips seemed to be connected to legitimate and regular occurrences and did not appear to be frivolous.

[47] Certainly, the law is clear that there is an obligation on a plaintiff to mitigate the damages that the plaintiff has suffered. This said, it is also reasonable to expect that a plaintiff who has suffered the loss of his or her mode of transportation may incur some increased costs, at least in the short term.

[48] There is no mathematical certainty as to what is an appropriate amount of damages. This is particularly the case where the evidence is somewhat sparse as to the particular means by which the damage could have been mitigated.

[49] I find that an amount of \$1,200 is appropriate.

[50] I do not have sufficient evidence to award any damages for miscellaneous transportation, or stationery costs.

[51] I further find that one towing expense is appropriate and allow \$187.50 for this.

[52] The total awarded for damages is \$8,850.03.

[53] I further award costs in the amount of \$100 for the filing of the Claim, \$52.50 for Service of documents, and \$50.00 for the filing of the Notice of Trial.

[54] Therefore, the total amount of the Judgment is \$9,053.03.

[55] I award post-judgment interest from August 1, 2023, pursuant to the *Judicature Act*, RSY 2002, c. 128.

COZENS C.J.T.C.