SCC Denies Leave to Appeal Issue of Vicarious Liability in WCB Vehicle Collision Claim

February 26, 2019

On February 14, 2019, the Supreme Court of Canada denied leave to appeal the Alberta Court of Appeal's decision in *McIver v McIntyre,*2018 ABCA 151 (*McIver*).

The defendant Mr. McIntyre (Owner), was a vehicle owner who had taken his vehicle to a mechanic for repairs. Mr. Morgan, an employee of the repair shop, took the Owner's vehicle out for a test drive. While driving the Owner's vehicle, Mr. Morgan collided with a vehicle driven by Mr. McIver (Plaintiff). At the time of the accident, both Mr. Morgan and the Plaintiff were driving in the course and scope of their employment and were covered under the *Workers' Compensation Act* 1(WCA). It was undisputed that Mr. Morgan's negligence caused the collision.

As a result of the accident, the Plaintiff made a claim under the WCA and received workers' compensation benefits. In turn, the Workers' Compensation Board (WCB) commenced legal action against the Owner in the Plaintiff's name to recover the benefits paid.

Judicial History

The WCB's claim against the Owner was based on s. 187(2) of the *Traffic Safety Act* 2(TSA). This provision imposes vicarious liability on the owner of a vehicle for loss or damage caused by another person who drives the owner's vehicle with his or her consent.

At trial, a dispute arose between the parties regarding the interpretation and effect of s. 23(2) of the WCA on the Owner's liability. In traditional negligence claims in Alberta, a plaintiff is able to recover 100 per cent of their damages as against any defendant, provided they can establish one per cent liability as against that defendant. It is then up to the defendants to recover the percentage of damages they are actually responsible for as between themselves. Section 23 of the WCA severs the liability which is normally joint and several as amongst the defendants, limiting a plaintiff's recovery of damages to the actual amount of liability found against the defendant who is not protected by the WCA.

The trial judge held that s. 23(2) of the WCA limited the Owner's liability (including his vicarious liability as a vehicle owner under the TSA) to the portion of the Plaintiff's loss caused by the Owner's own fault or negligence. Notably, any liability apportioned to the repair shop was purely notional, as claims against both Mr. Morgan and his employer were statute-barred by virtue of s. 23(1) of the WCA.

Ultimately, the trial judge held the Owner was not liable for any portion of the Plaintiff's loss. The repair shop had full custody and control over the Owner's vehicle at the time of the loss. It was also in a better position than the Owner to supervise Mr. Morgan and prevent the loss. As such, the trial judge notionally apportioned 100 per cent of the Plaintiff's loss to the repair shop.

The Court of Appeal upheld the trial judge's decision. The repair shop's notional vicarious liability constituted "fault" within the meaning of s. 23(2) of the WCA. This section operated to limit the Owner's vicarious liability as a vehicle owner to only that portion of the loss caused by his own fault or negligence. Comparing the level of supervision and direct contact that the Owner and the repair shop had with Mr. Morgan, the Court of Appeal upheld the trial judge's decision to apportion no liability to the Owner.

Implications

As leave to appeal to the Supreme Court was denied, the Court of Appeal's decision remains the law in Alberta. This decision confirms that, in certain circumstances, a vehicle owner who is not insured under the WCA may be protected from liability for loss caused by "the fault or negligence" of a WCA-insured worker or employer. However, as the Court of Appeal warned, the decision should not be understood to mean that a vehicle owner will be absolved of all liability in circumstances where their vehicle is driven by another person with their consent. Alberta courts will apportion liability after considering the respective levels of supervision over, and contact with, the negligent driver and will consider each case on its facts.

1 *Workers' Compensation Act*, RSA 2000, c W-15

2 *Traffic Safety Act*, RSA 2000, c T-6

By

Justine Blanchet, Sarah Makson, Amal Jabar

Expertise

Appellate Advocacy, Insurance Claim Defence

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.