Municipality found 20% responsible for collision where public transit bus had right of way

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On January 26, 2016, Madame Justice Roccamo released her reasons for judgment in *Gardiner v. MacDonald*, 2016 ONSC 602.

The case arose from a collision between a public transit bus and an SUV in an intersection. The collision resulted in the death of three of the SUV's occupants including its operator. The operator of the SUV had been drinking and entered the intersection on a red light. The bus entered the intersection on a green light just moments later and struck the SUV from the side. The case proceeded to trial solely on the degree, if any, to which the bus operator and the municipality were liable for the accident.

Upon considering the evidence of the bus operator and a number of accident-reconstruction experts, the court made the following findings of fact:

1. The bus operator was likely speeding just before he entered the intersection;
2. A lower rate of speed would have given the bus operator time to evade the SUV;
3. The prevailing weather conditions decreased the ability to avoid a collision; and
4. The bus operator looked away from the road as he approached and entered the intersection.

Justice Roccamo concluded that the bus operator had been negligent in his operation of the bus and apportioned 20% of the liability for the accident to the municipality. In doing so, the court laid out the following principles:

1. Speeding does not, in itself, constitute negligence as the question of whether a vehicle's speed is reasonable turns on the factual circumstances, including the traffic and road conditions.
2. Although drivers may assume that other drivers will obey the applicable traffic signs and signals, drivers with the right of way must still exercise proper care and determine whether it is safe to proceed.
3. Professional drivers may be held to a higher standard of care than the general public which, in the case of bus drivers, is that of a "reasonable bus driver in like circumstances."

Justice Roccamo concluded that the bus operator had been travelling in excess of the speed limit along its route, despite poor weather and road conditions. As a result, although the bus operator had the right of way upon entering the intersection, his speed was unreasonable in the circumstances as it prevented him from recognizing and reacting to the hazard posed by the SUV.

This case affirms that liability in motor-vehicle accidents occurring in intersections is rarely clear-cut, even in cases where the right of way is undisputed. In apportioning liability for an accident, the court will assess the reasonableness of each drivers' actions in all the circumstances.

As a final note, this case is of particular importance to municipalities operating public transit services. The court's finding that the bus operator was a professional driver means that they will be held to a higher standard of care than ordinary drivers in similar situations.

By

David Elman, Jeremy Ablaza

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Calgary
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100 Queen Street
Ottawa, ON, Canada
K1P 1J9

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F 604.687.1415

Montréal
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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

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