IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Millard v. Singleton,* 2015 BCSC 1015

Date: 20150609
Docket: M113130
Registry: Vancouver

Between:

Karen Joy Millard

Plaintiff

And

Claire Heather Singleton

Defendant

Docket: M111796
Registry: Vancouver

Between:

Rheann Armes, by her Litigation Guardian, Peter Armes

Plaintiff

And

Karen Millard and Claire Singleton

Defendants

Docket: M111797
Registry: Vancouver

Between:

Celin Armes, by her Litigation Guardian, Peter Armes

Plaintiff

And

Karen Millard and Claire Singleton

Defendants

Corrected Judgment: The second page of the judgment was corrected on June 16, 2015 to show Counsel for the Plaintiffs, Rheann Armes and Celin Armes as B. Souza

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

Counsel for the Plaintiff, Karen Millard, Action No. M113130:	D.H. Doig
Counsel for the Defendant, Claire Singleton:	S.B. Stewart
Counsel for the Plaintiffs, Rheann Armes and Celin Armes:	J.S. Stanley B. Souza
Counsel for the Defendant, Karen Millard, Action No. M111796 & M111797:	S.M. Katalinic
Place and Date of Trial:	Vancouver, B.C. May 27-28, 2015
Place and Date of Judgment:	Vancouver, B.C. June 9, 2015

[1] This trial consisted of three actions heard together regarding a motor vehicle accident that occurred November 15, 2010. The trial was restricted to liability and the Court did not hear or consider damages. All parties agreed that the findings of fact and conclusions about liability would apply to all three actions.

[2] The plaintiffs in actions Vancouver Registry number M111796 and M111797 are the daughters of Karen Millard, one of the defendants in the same two actions. They were all riding in the same vehicle being driven by Ms. Millard at the time of the accident. I will refer to them as the plaintiffs throughout these Reasons. They were represented by the same counsel. In those two actions Karen Millard had counsel separate from the other defendant, Claire Singleton.

[3] The third action [Vancouver Registry Number M113130] was brought by Ms. Millard as plaintiff against Ms. Singleton. Ms. Millard’s counsel in this action was different than her counsel in the other two actions where she was the defendant. Ms. Singleton is represented by the same counsel throughout all three actions.

[4] An agreed statement of facts was entered into evidence for all three actions. The parties agreed that the accident happened on November 15, 2010, at about 7:00 p.m. on Highway 16 between Prince George and Vanderhoof, near Telachick Road. At the time of the accident it was dark and snow was falling.

[5] Ms. Millard was the owner and operator of a 2009 Chevrolet Cobalt, which is a four door sedan and she was travelling eastbound on Highway 16. The plaintiff, Ms. Celin Armes, was sitting in the front passenger seat and her sister, Ms. Rheann Armes, was sitting in the rear passenger seat, behind her sister, in the Cobalt driven by their mother.

[6] At the time of the accident, the defendant, Ms. Singleton was the owner and operator of a 1995 Dodge Grand Caravan and she was driving it westbound on Highway 16, which had a single lane going each direction at that point. Also travelling at some unknown distance behind Ms. Singleton was Mr. Chamberlain who was the operator of a 2010 Freightliner Lowmak Chip truck pulling two trailers.

[7] Most of the evidence in this case was uncontroverted. Ms. Millard was driving with her daughters on the way to the coast. They were heading to Vancouver. Her eldest daughter Rheann had an appointment at BC Children's Hospital about her food allergies for which they had been waiting a long time. They planned on visiting family on Vancouver Island after the appointment. They left their home in Terrace, stopped in Smithers for Ms. Rheann Armes' singing lesson and stopping briefly in Vanderhoof at a gas station. The accident happened approximately 30 minutes after they left Vanderhoof.

[8] Ms. Millard and her daughters were all wearing their seatbelts at the time of the accident; all of them were lap and shoulder belts. Ms. Celin Armes was asleep in the front passenger seat of the car. Prior to the trip, Ms. Millard had ensured that snow tires were installed on all four wheels of her vehicle. Only the front tires of Ms. Singleton's vehicle were snow tires.

[9] It had not been snowing in Terrace when they left. Ms. Millard testified that it started snowing on the journey when she was at about Burn's Lake, which was about 2 l/2 to 3 hours before the accident. Conditions continued to deteriorate and snow was accumulating on the ground. Around the time of the accident, it was snowing heavily and Ms. Rheann Armes testified that she noticed a lot of snow on the windshield. The parties accepted that Ms. Singleton had been driving in snow for about 10 minutes at the time of the accident.

[10] Mr. Millard slowed her speed in order to respond to the worsening road conditions. She recalls that she did not drive beyond third gear (her vehicle had manual transmission) and by that measure she estimated her speed at no more than 60 km/h.

[11] A controversy exists about what happened when Ms. Millard first noticed Ms. Singleton's vehicle, and the significance, if any, of what she saw; I address that controversy below. But at a minimum, Ms. Millard saw movement in the headlights of an oncoming vehicle on two occasions, just seconds apart. The second incident of headlight movement was only seconds before the impact.

[12] Ms. Millard did not slow down or consider pulling over onto the shoulder or stopping her vehicle after seeing the headlight movement. She testified that in her mind, she was already going slowly enough.

[13] The court also heard testimony from Cst. Hanson who had been with the R.C.M.P. for 25 years. He was dispatched to attend the motor vehicle accident along with two other officers. He drove to the scene as quickly as he could with lights and sirens but because of conditions, his speed was limited to between 50 to 60 km/h. It took him between 50-60 minutes to arrive at the accident scene. He recalls that as he left Prince George and got onto Highway 16, conditions deteriorated dramatically. There was one to two inches of snow, sleet and snow on the road and it was freezing temperatures. The highway was slippery. He said that the visibility was low and it was very dark.

[14] When he got to the scene of the accident there was a long line of vehicles lined up both ways. He arrived at the scene and took a series of photographs, which were admitted into evidence with the consent of all parties.

[15] Ms. Singleton did not testify but some of her examination for discovery evidence was read into the record. It confirmed she crossed over into Ms. Millard's lane just prior to impact.

The Accident

[16] It is obvious from the photographs that this was a serious accident. Ms. Rheann Armes testified at trial, providing some information about road conditions which was consistent with her mother's evidence. Unfortunately, she was rendered a paraplegic by the accident.

[17] Just seconds after seeing the second instance of headlight movement of the oncoming vehicle, Ms. Singleton's vehicle abruptly came into Ms. Millard's lane. The van was sliding sideways so that the Cobalt had a head-on collision with the broad side of the van. Ms. Millard slammed her brakes hard enough that she probably

stalled her engine. The parties agree that she had no opportunity to avoid the impact. The Cobalt's entire front end was hit by Ms. Singleton's vehicle.

[18] The vehicles both travelled some distance after impact. When the vehicles came to a rest, Ms. Millard's car was completely off the highway, mostly on the shoulder but leaning a bit into the ditch.

[19] Mr. Chamberlain came upon the accident shortly after impact. He had to "shoot through the two vehicles" to avoid a collision. In doing so, his truck scraped the side of the van which caused it to move further. It came to rest in the eastbound ditch, pointing north and slightly west.

[20] The truck ended up west of the impact site. Its right front corner and wheel straddled the centre line into the westbound lane. The first trailer had roughly the same orientation as the truck, and its back half was on the shoulder but the second trailer was angled a bit towards the truck. It was mostly in the ditch and at a somewhat steep angle.

The Expert Evidence about Accident Reconstruction

[21] Ms. Millard, as both defendant in the first two actions and plaintiff in the third, adduced evidence from an accident reconstruction expert (Mr. Sdoutz) and submitted his report which was entered as an exhibit. The parties did not object to his qualifications or report. I accepted Mr. Sdoutz as an expert in mechanical engineering with expertise in motor vehicle accident reconstruction.

[22] Mr. Sdoutz produced a report dated January 15, 2015. He was retained immediately after the accident by plaintiffs' counsel in the two actions in which Ms. Millard is a defendant. Counsel provided verbal instructions for the preparation of the report. However, counsel informs me the day before trial the plaintiffs opted not to put the expert report forward or call him as a witness which is when Ms. Millard decided to do so.

[23] I found Mr. Sdoutz to be a credible and reliable witness; his testimony was fair and measured and assisted the Court. His report was based on his inspection of the vehicles at the ICBC impound, including measurements of the damage on the vehicles, and the report from the R.C.M.P. including the photographs entered as evidence into the trial. He extrapolated from those photographs (especially the skid marks) the positions of the vehicles at impact. Lastly, he analysed the data from the Cobalt's airbag control mechanism, which is a type of "black box" (there was no such mechanism in the van). His instructions were to "comment on the overall incident dynamics, as well as the impact speeds and positions of the Dodge Grand Caravan and Chevrolet Cobalt".

[24] Based on his analysis of all information, Mr. Sdoutz came to a number of conclusions, including the cause of the accident. In his opinion, just prior to impact "the Dodge Grand Caravan most likely swerved hard to the left resulting in the vehicle entering a counter clockwise yaw and travelling in such a yaw across the roadway into the oncoming eastbound lane where it collided with the Chevrolet Cobalt". Some of his other conclusions are:

a. Just before impact, Ms. Millard was driving at a speed of 50km/h in the eastbound lane;

b. Prior to losing control of the van, Ms. Singleton was driving in the westbound lane at a speed greater than 90km/h.

c. At impact, the van was facing mostly south but also a bit east. It had slid sideways mostly towards the west but also slightly south at about 90 km/h.

d. The collision caused the Cobalt to be pushed rearward and sideways onto the shoulder of the eastbound lane.

e. The initial collision increased the rotational spin of the van in a counter clockwise direction causing a second collision between the vehicles.

f. Following the second impact, the van continued rotating a full 180 degrees while travelling westward across the westbound lane.

g. To avoid the van, Mr. Chamberlin most likely swerved into the eastbound lane, scraping the left front corner of the van with the side of

> the front trailer causing the van to spin clockwise coming to its rest position in the ditch next to the westbound lane.

[25] During cross examination Mr. Sdoutz was asked to calculate the distance Ms. Millard would have needed to bring her vehicle to a stop. He did so (on the stand using his calculator). His estimate is that she would have needed a distance of between 160 metres and 200 metres to come to a full stop.

[26] He was also asked to estimate how far apart the two vehicles would have been at various time intervals <u>before</u> the second instance of headlight movement; he was asked to do these calculations assuming that at the instant of the second headlight movement, the vehicles were 100 metres apart. His estimates were: for five seconds before the second headlight movement, the vehicles would have been 295 metres apart; for four seconds, 256 metres; for three seconds 217 metres; and with two seconds 175 metres.

[27] The plaintiffs and Ms. Singleton rely on these estimates to support their position that if Ms. Millard had either stopped or slowed down after witnessing the second headlight movement, she would have had enough room to avoid the collision, or reduce the severity of the impact.

Issue

[28] The only issue before me is whether Ms. Millard should be found contributorily negligent for the accident and if so, to what degree. All parties agree that the majority of fault for the accident lies with Ms. Singleton. Ms. Singleton submits Ms. Millard should be found 25% liable.

[29] The plaintiffs' and Ms. Singleton's position depend upon on three propositions being accepted:

a. The second headlight movement indicated there was a hazard on the highway;

b. Having perceived that hazard, Ms. Millard had a duty to take action in response to it. The plaintiffs say she should have stopped, pulled over and stopped or slowed her vehicle;

c. Had she slowed her vehicle, the severity of the injuries caused by the impact would have been reduced.

ANALYSIS

[30] There was no disagreement among counsel about the applicable legal principles. Rather than repeat those here, I will restrict my comments to what is controversial. Before turning to the specific issues, there are a few general matters to identify.

[31] I found Ms. Millard to be a credible witness. Taking into account the accident was 4 1/2 years ago and must have had a devastating impact on her and her family for obvious reasons, she was composed on the stand and clearly did her best to answer questions as accurately as she could.

[32] Although everyone described three “events”, the accident occurred over a period of mere seconds. It would be very difficult for anyone to accurately estimate distance or time given that it was dark, visibility was low and it was snowing heavily. Ms. Millard emphasized during her cross examination that she is not comfortable estimating the distance or timing of the events seconds before the accident. Of course that is probably true for most serious accidents, but I find that the particular circumstances of this case do justify the Court being vigilant about the inherent uncertainty of estimates of timing and distance.

[33] With those contextual factors in mind, I turn to the three propositions proffered by the plaintiffs and Ms. Singleton. For ease of reference I will refer to these as the plaintiffs’ propositions although they also represent Ms. Singleton’s position at trial.

Did the headlight movement signal a hazard on the highway?

[34] The plaintiffs say after seeing the second movement of headlights, Ms. Millard should have perceived that as a potential hazard and reacted. In effect, they are asking that I draw an inference that Ms. Millard is *prima facie* negligent for failing to alter her driving behaviour in response to the headlight movement.

[35] I was referred to *Singleton v. Morris*, 2010 BCCA 48. That case stands for the proposition that a trial judge may, but is not required to, draw an inference of negligence in certain cases (in that case, a rear-end collision). The defence is allowed to rebut that inference. As applied to this case, I understand the plaintiffs to argue that once she saw headlight movement, given the road conditions, she should have assumed a potential hazard existed. Ms. Millard says the fact that there was headlight movement was insufficient to draw an inference of negligence.

[36] One problem with the plaintiffs' position is that throughout the trial, different words and phrases were used by Ms. Millard, counsel and the expert to describe exactly what Ms. Millard saw which included the vehicle: swerving, weaving, veering seeming to or fishtailing; losing control or losing some control and then correcting itself, going back into its lane, straightening out or seeming fine, and having its headlights wiggle.

[37] Ms. Millard was asked if she saw "the vehicle" during these events and she said no. She saw headlights in the opposing lane. It was very dark and snowing heavily. During her examination for discovery she was asked to confirm the distance of her vehicle from the oncoming one with reference to a "football field". She agreed with counsel's statement that first headlight movement was "more than a football field" away and the second one was about or a bit less than a football field. During the trial, she emphasized that she did not feel confident in the description because she is not good at distances or time estimates. She suggested she could do not much better than guess.

[38] Counsel and Mr. Sdoutz seemed to agree a football field is “100 yards”, which is about 90 metres. However, there is no evidence on the record as to what exactly Ms. Millard understood the term to mean. The length of a football field is an imprecise description for distance. Among other things, one could ask whether the reference means a Canadian or American field, whether it includes end zones or the entire floor of a stadium. I point these questions out simply to emphasize the difficulty in making firm conclusions about distance when recollecting a traumatic event that lasted only a few seconds.

[39] I emphasize, however, that I do not find Ms. Millard’s uncertainty about distance or any differences between her trial testimony and examination for discovery to impair her credibility. In my view, she was completely honest in admitting it was difficult for her to be precise.

[40] Ms. Millard is the only one who gave direct evidence about the distance of the vehicles before impact. Whatever movement there was, Ms. Millard testified the oncoming vehicle recovered and “seemed fine” in the seconds before the accident. An important factor in my mind is that she had already altered her behaviour in reaction to the road conditions and was driving well below the speed limit. Clearly, she was paying close attention to the road conditions and her driving. Whatever she saw in the seconds before the impact, when she was asked if she slowed down because of it, she testified that she was “already going slow enough”. I infer from her statement and behaviour just prior to the accident, that she did not perceive the headlight movement to be indicative of any oncoming danger to her vehicle. Given she was driving prudently and was alert, I have no reason to conclude her judgment was unreasonable.

[41] I conclude on a balance of probabilities that the movement of headlights Ms. Millard witnessed was not something a reasonable person would view as a hazard.

If there was a hazard, did Ms. Millard breach the duty of care?

[42] Even if the oncoming headlight movement ought to have alerted Ms. Millard of a potential hazard, I would not have found that she breached her duty of care. The plaintiffs submit that once she perceived the headlight movement, she had a duty to react to it by taking some positive action. They rely heavily on the case of *Gill Estate v. Greyhound Lines of Canada Ltd.* [December 10, 1987], V852775 (SC). The *Gill Estate* case is distinguishable. It involved a collision between a car and a passenger bus that, ironically, occurred on the same highway but about 56 km west of Prince George. The accident happened at 7:30 in the morning and snowfall covered the highway. At the point of impact there was about a 4.5% grade uphill for the passenger car and downhill for the bus. The roadway had become extremely icy and according to the bus driver the road surface was “well-packed wet snow” and “as close to glare ice as you could get”. Because of that, the bus lowered its speed into third gear and was traveling at about 35 to 40 m/hr (this converts to about 56-65 km/h). The speed limit was 90 km/h.

[43] The trial judge had evidence that the defendant company provided guidance to its drivers to slow down to a maximum of 2/3 of the posted speed when there was snow on the road, and to 1/3 when there was ice. Notably, the trial judge did not accept the defendant’s submission that the conditions of the road at the time of the accident fit into the “snow” category. Instead he found that the road condition was “lubricated ice”. He therefore concluded that a safe speed was about 18 m/hr, or just under 30 km/h.

[44] The trial judge described events leading up to the accident in paragraph 2:

> As the bus crested a hill at the start of the downgrade, the driver saw the Gill vehicle completing a left hand curve, about to enter the 800 metre straight stretch of highway. The bus driver observed the Gill vehicle in difficulty. He saw it fishtail “a couple of times”. The bus continued at its speed which was approximately 35-40 miles per hour. The driver watched the Gill vehicle carefully and concluded that it’s had driver regained control as it proceeded up the 800 metre stretch of highway. When the car and the bus were about

> 40 to 50 metres apart, the car again fishtailed, coming partially onto the side of the road which was occupied by the bus.

[45] Tragically, the driver of the car and his daughter were killed as a result of the accident. The plaintiff estate alleged the bus driver was driving too fast and failed to move the bus as far as reasonably possible to the right to give a wider birth to the passage of the oncoming vehicle.

[46] At paragraph 8 the trial judge describes on the common approach to such cases:

> The particular facts are critical to the outcome of the issues of liability. Generally speaking, drivers on public highways are entitled to proceed in the expectation that other drivers will obey the rules of the road. That is not, however, absolute rule. Situations can occur whether the possibility of danger becomes reasonably apparent and as such cases a duty to take special precautions can arise.

[47] The trial judge discussed the duty of care that was owed in these circumstances and relied on the following passage from *Fardon v. Harcourt-Rivington* (1932), 48 T.L.R. 215 at 216 (H.L.), which was adopted by the Supreme Court of Canada in *Johnston National Storage Ltd. v. Mathieson*, [1953] 2 D.L.R. 604:

> The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal. If the possibility of the danger emerging is reasonably apparent then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.

[48] This is consistent with the majority's ruling in *Haase v. Pedro*, 1970 CanLi 205 (BCCA) where it stated that "there is no obligation on a driver to keep himself specially prepared for unseen emergencies".

[49] Applying those rules to the case in front of him, the trial judge concluded that the bus driver was negligent. He referred with approval to *Tonell-Greenfield v. Maximchuk*, [1983] B.C.W.L.D. 171 (BCCA) where Justice Esson held it was easily foreseeable that a car going up the hill in wet snow and ice conditions could go out

of control. He concluded that it should have been reasonably apparent to the bus driver that because of the wet icy road there was a real possibility of the Gill vehicle fishtailing as it came up the hill.

[50] The trial judge concluded that the bus driver ought to have slowed down to a lower speed and given the Gill vehicle as wide a birth as he could on the road. The trial judge also found that the bus driver could have gently eased the bus at least a metre to the right and still have been far away enough from the gravel edge of the paved shoulder. Because the bus driver took neither of those precautions he was found to be negligent.

[51] A significant difference between this case and the *Gill* case is that the bus driver admitted he witnessed a dangerous situation when he saw the passenger vehicle fishtail out of control at the bottom of the hill. He testified if the vehicles had been closer it would have been a "very dangerous" situation.

[52] There were other important differences. In *Gill Estate*, the road was clearly very icy. The bus driver could not tell which side of the highway the car was travelling on as it fishtailed. There was no evidence at trial about the speed of the Gill vehicle. Instead, the trial judge made his own calculations and drew an inference about its speed. The judge found the shoulder was wide enough to safely accommodate the bus. A critical factor was the different road conditions, especially the accident happening on a hill. Most importantly, the trial judge found the bus driver was driving too fast given the road conditions at the time.

[53] In contrast, Ms. Millard had reduced her speed and no one suggested she was going too fast. Her speed was verified by objective evidence from the black box. I find she was driving at an appropriate speed given the road conditions. It was snowing heavily and very dark but no one suggested the road was icy. This was a rural stretch of road so it is highly unlikely it would have been possible in heavy snow to determine how wide the shoulder was at night.

[54] I also do not agree that *Gill Estate* stands for a general proposition that it is always necessary for a driver who perceives a hazard to take positive action to avoid negligence. It is heavily dependent on the road conditions, the nature of the hazard and what the driver is doing at the time the hazard is noticed.

[55] The over-arching responsibility of every driver is to drive in a reasonably prudent and safe manner. Ms. Millard determined that she was already going slowly enough given road conditions and what she saw. In contrast, the bus driver in *Gill Estate* admitted he had witnessed a dangerous situation. In my view, nothing about the circumstances of this case undermines Ms. Millard's judgment that her speed was safe.

[56] The plaintiffs argued she could have stopped, pulled over or slowed down. The first two options were not viable, nor wise options. Coming to a full stop on a rural highway at night when it is snowing heavily and there is low visibility, would have created a dangerous situation. The facts of this case actually illustrate that danger. Mr. Chamberlain had to take evasive action to avoid colliding with the van as he came upon the stopped vehicles. It is irrelevant whether Ms. Millard knew or checked for traffic behind her; stopping in those conditions does not become safer just because you cannot see a vehicle behind you.

[57] Similarly, pulling off to the shoulder was not a safe option in those conditions. How could she be sure she could see where the shoulder ended and the incline of the ditch started? In the pictures, the shoulder appears to me to be somewhat narrow although it is difficult to tell. But the important point is those photographs were taken with a flash and, in the case of those included in Mr. Sdoutz's report, digitally lightened. Ms. Millard was driving at night in heavy snow. Taking her eyes off the road to assess the width of a shoulder that is covered in snow, would have been imprudent. I find pulling over was not a safe option in those road conditions. Moreover, being stopped on the shoulder or highway is not necessarily safer than continuing to drive. You cannot take evasive action in a split second when you are stopped.

[58] As to slowing down, as noted above at paragraphs 38 and 52, she concluded she was already going slowly enough in response to seeing the headlight movement. I find her decision reasonable in the circumstances. I address below other issues that arise in relation to whether she should have slowed the speed of her vehicle.

Would slowing her vehicle have reduced the injuries suffered?

[59] Even if I am wrong and her failure to drive more slowly was negligent, I am not satisfied that her negligence would have avoided the collision or reduced the severity of injuries.

[60] I do not have any evidence that establishes that slowing her vehicle would likely have avoided the collision. If she had slowed down, that would alter the position of the vehicles on the highway relative to another. I have no evidence about the consequences of those differences. The van was spinning and I cannot rely on common sense to draw any conclusion about whether the accident would have still occurred. Among other things, I am sure that would depend in part on how much slower she was driving and the plaintiffs did not offer a speed at which the accident would have, more likely than not, been avoided.

[61] These same difficulties plague the plaintiffs' suggestion that slowing down would have reduced the injuries suffered. In *Gill Estate*, Justice Shaw considered the causal connection between the bus driver's negligence and the accident. He concluded at p. 34 that "with the combination of reduced speed and more room made for the Gill vehicle to pass by, I find it probable that either the accident would have been avoided or, if it did occur, the severity of the collision would have been significantly reduced." In the end the trial judge assigned the bus driver as 1/3 contributory negligent to the accident.

[62] I agree the evidence at trial did establish that the force of the impact would have been reduced if Ms. Millard had been travelling more slowly. However, I cannot infer from that evidence that the injuries caused would likely have been less severe.

Both Ms. Singleton and the plaintiffs say it is “common sense” that a less forceful impact results in less severe injuries. I do not agree.

[63] The injuries caused by an accident depend not just upon the force of the collision but also the particular mechanics of the accident, including what part of the vehicle is hit. In this case the mechanics of this accident were complex because the van was spinning. Moreover, as noted above, slowing her vehicle means the vehicles would have had a different point of impact and probably a different point of rest.

[64] A number of possibilities come to mind. If she was going slower, would that mean the van would have made proportionately, even a greater contribution to the force of the impact? Would that mean the Cobalt would have been pushed further, possibly into the ditch? Or, would it mean the Cobalt was not pushed as far, leaving it more vulnerable to Mr. Chamberlain’s truck? These questions illustrate why I cannot draw any inferences or conclusions about what would have happened if Ms. Millard had slowed down.

[65] The plaintiffs and Ms. Singleton emphasize Mr. Sdoutz’s estimates of stopping distances according to certain time intervals between the first and second instance of headlight movement (above at paragraph 26) . They say those estimates provide support for a conclusion that the accident probably could have been avoided or less severe if Ms. Millard had slowed her vehicle upon seeing the second instance of headlight movement.

[66] The mathematical logic of the plaintiffs’ position is, generally, sound. In my view, however, those estimates would only be one of several variables that contributed to the accident. The rotational movement of the van certainly complicates the predictability of events. More importantly, the base distance for the estimates (100 metres) is based on a vague measure, the length of a football field. Also, there was no evidence about what other consequences would flow from any of the hypothetical scenarios. This diminishes the reliability of the estimates given to the issue of causation.

[67] Moreover, Mr. Sdoutz testified that a slight reduction in the speed of Ms. Millard’s vehicle probably would have had a negligible effect on the overall collision. That is because the van was the main contributor to the force of the collision due to its size, weight and speed of travel. This raises the question as to whether any speed under 50 km/h could be both safe (as in not too slow) and have had a noticeable impact on the collision.

[68] For those reasons, the evidence does not support a conclusion that the injuries would have been reduced if Ms. Millard had slowed her vehicle. This is compounded by the lack of evidence as to how much she would have needed to slow her vehicle to effect a reduction in injuries.

[69] It would be pure speculation for me to draw any inferences about the nature of injuries what would have occurred if Ms. Millard had slowed down.

CONCLUSION

[70] For all those reasons, I find that Ms. Millard is not at fault for the accident. Ms. Singleton is 100% liable.

Sharma J.