



The Educator



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Motor vehicle negligence principles

In this issue of *the Educator*, we look at a situation that is ever so common on the roads in the Caribbean and revisit the motor vehicle negligence principles.

Victoria Mayers was driving her vehicle eastbound on Queen Street at the intersection with King Street and was in the intersection ahead of the stop line so that she could make a left turn northbound onto King Street. Ammar Khan was driving an armored (money) lorry westbound on Queen Street, between 60 to 70 kilometres per hour, in a designated 60km speed limit. The Mayers vehicle turned left and collided with the money lorry. Mayers' vehicle then spun out in a clockwise direction, hitting another car driven by Rolando Areglado and a City traffic sign. Areglado had a clear and unobstructed view of the intersection because his vehicle was facing it and there was no vehicle in front of him; he was familiar with the area as he travelled it frequently both because it was on the route back from his church and was near his workplace.

Contested facts

Mayers' evidence which is not accepted by either the Khan or the independent witness Areglado, is summarized as follows:

- I. Mayers made her left turn on an "advance (flashing) green" light while in the eastbound left turning lane on Queen Street; and
- II. Khan struck Mayers' vehicle as he drove through a red light going westbound on Queen Street, while Mayers turned on the advance green light.

Mayers was interviewed by the traffic police constable after the Accident. She did not advise the investigating officer that she turned left on an advance green light. The investigating officer noted "[Mayers] advises she was eastbound on Queen Street and made a left to go northbound on King Street. She did not see the lorry westbound when she turned".

Areglado's unequivocally states that "I disagree" with Mayers that she turned left on an advance green light. He said that the traffic light was yellow when Mayers turned left, but he could not say how long the traffic light had been yellow before impact or the colour of the light when the lorry entered into the intersection.

Khan's evidence which is not accepted by Mayers, may be summarized as follows:

- i. Khan approached the intersection driving westbound and observed that the traffic light for east-west vehicular traffic on Queen Street was green;

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- ii. Khan further observed that north-south vehicular traffic was stopped at the intersection, while east-west vehicular traffic was moving through the intersection;
- iii. As Khan entered the intersection, he was looking "straight on the road" when he saw the traffic light turn yellow while he was in the middle of the intersection. It was at that point when Mayers made a left turn in front of Khan; and
- iv. Khan immediately slammed on the brakes but was unable to stop the lorry in time to avoid hitting the passenger's side of Mayers' vehicle.

While Areglado's evidence is that he did not hear Khan put on the brakes, the issue of whether Khan put on the brakes is not relevant to liability, since by both Areglado and Khan's evidence, there was no time for Khan to avoid the Accident as Mayers turned directly in front of Khan in the intersection.

Applicable law

Motor vehicle negligence cases may often raise credibility issues with respect to liability, particularly relating to conflicting evidence. However, such conflicting evidence can be addressed with fairness and confidence under the *negligence* principles.

Mayers' "advance green light" theory is contradicted not only by Khan, but most importantly by the independent witness Areglado. His evidence is clear and unchallenged. He was stopped at the red light going southbound on King Street, a route with which he was extremely familiar. He always checked the lights on Queen Street and the pedestrian countdown lights at that intersection so that he could decide whether to turn left or go straight.

There is no reason not to accept Areglado's evidence as confirmed by Khan. Areglado is an independent witness who does not know Mayers, and regularly travels the route:

- (i) to go back from church and
- (ii) since it is close to his workplace.

Areglado had a clear and unobstructed view of the intersection just behind the stop line. He has a practice of checking both the Queen Street lights and the pedestrian crossing lights as he approaches that intersection.

Similarly, Khan's evidence is fully consistent with the rejection of an "advance green light" theory.

Mayers must put her best foot forward and submit cogent and compelling evidence to support or oppose the claim, so that the court can take a hard look at the evidence. Further, Mayers did not tell the investigating officer that she had turned on an advance green light. There is no reference to an "advance green light" anywhere in the police report.

One is entitled to assume that there will be no other evidence on this issue. There is no "dash-cam" or other video evidence, nor is there any expert accident reconstruction or other expert evidence (if such evidence could be obtained on the issue of the colour of the light). Consequently, on the balance of probabilities, a Court can make the factual findings that:

- i) the traffic light was not an "advance green" for Mayers and
- ii) as such, Khan did not go through a red light while Mayers had an advance green light.

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Students may summarize the applicable motor vehicle negligence principles as follows:

1. The law is well settled that a very heavy onus is placed upon a driver making a left-hand turn. He may turn into the path of approaching traffic only after having assured himself that he can do so in safety.
2. The onus set out at subparagraph (1) above may also exist under the *Road Traffic Act*. In particular, legislation generally provides that no driver or operator of a motor vehicle in an intersection shall turn left across the path of a vehicle approaching from the opposite direction unless he or she has afforded a reasonable opportunity to the driver or operator of the approaching vehicle to avoid a collision.
3. If there is evidence of negligence on the part of a driver going through an intersection, that driver may be contributorily liable for the accident. An oncoming driver must take reasonable care to avoid an accident.
4. A defendant may be found partly liable for making a turn without a proper lookout even when the plaintiff drove through a red light. In such case, a court will likely find that both drivers committed major blunders that led directly to the accident.
5. Even if a driver drives through a red light, the other driver with a right of way still has a duty to exercise reasonable care to avoid a collision:
 - a) if the driver becomes aware or should become aware that the driver without the right of way is going to go through the intersection and
 - b) if the circumstances are such that the driver with the right of way had the opportunity to avoid the collision.
6. Similarly, the court will likely find that a defendant bus driver who had a green light was 20 percent at fault for an accident in which the other driver drove through a red light. The trial judge may rely on evidence that the bus driver was a professional with control of a vehicle that weighed in excess of 12,000 kg, and had admitted:
 - a) he had an obligation to adjust his driving since the road surface was affected by the weather conditions and
 - b) it was prudent in the circumstances to go slower.

Consequently, the theory is that the bus driver "ought to have been traveling with greater caution with due regard for the weather and road conditions", particularly if there is expert evidence that "a wet and slushy road surface would have resulted in a reduced co-efficient of friction between bus tires and road surface, a factor which, coupled with excessive speed, would have compounded the challenge faced by [the bus driver] in driving defensively and eventually facing the hazard posed by the other driver's vehicle as it entered the intersection".

7. A driver travelling in excess of the posted speed limit will not *per se* be found negligent. The rate of speed which may be considered excessive and thereby constitute negligent driving will vary depending on the nature and condition of the particular road travelled upon and the traffic faced by the driver. The speed of the dominant driver exercising reasonable prudence is a question of fact that turns on the circumstances of each case (*Gardiner*, at paras. 160-61); and

8. A “but for” causation test “must be applied in a robust common sense fashion. There is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury.

The “contributory negligence” theory

The factual finding that must be made in order for Khan to be liable is that he had the opportunity to avoid (at least in part) the Accident. Further, a causal finding would have to be made that “but for” his conduct, he would have been able to avoid (at least in part) the Accident.

The factual finding that must be made at trial in order for Khan to be liable is that he had the opportunity to avoid (at least in part) the Accident. Further, a causal finding would have to be made that “but for” his conduct, he would have been able to avoid (at least in part) the Accident.

However, regardless of whether the light was yellow or green as Khan entered into the intersection, Khan and Areglado both provide the same evidence relevant to his ability to avoid the Accident.

There is no evidence that Khan saw the yellow light within any reasonable period of time before entering the intersection (if the light was not green when Khan entered the intersection, as Khan sets out in his evidence). Even if the light was yellow when Khan entered the intersection as Mayers made her left turn, Areglado's evidence is that the Accident happened “too fast”, leading to a reasonable inference that the Accident was unavoidable as the lorry was already in or immediately entering the intersection when the Mayers vehicle turned as the light turned yellow, without Mayers noticing the lorry.

Mayers provided no evidence on the timing in relation to Khan's conduct. She did not see the lorry, as she was “busy” getting ready for her turn.

Khan met his evidentiary burden by leading his evidence and that of Areglado that the Accident happened while Mayers was turning on a yellow light with no reasonable time to stop.

Accepting that Khan saw the Mayers vehicle waiting to turn and that the Mayers vehicle was in the intersection ahead of the stop line but not blocking westbound traffic as Khan approached the intersection, there is no evidence that Khan ought to have anticipated that Mayers would make a turn in front of him, when Khan either was driving through a green light or came up on the intersection if it had just changed to yellow as he entered into the intersection. There is no evidence that Khan had sufficient notice of a yellow light or of Mayers turning in front of him so that he could have avoided the Accident.

The evidence as to when Khan became aware of the risk of an accident is that it was only after he entered or immediately approached the intersection driving at or up to ten kilometres per hour above the speed limit, when the Mayers vehicle turned immediately in front of him on a yellow light. That evidence does not raise a genuine issue requiring a trial that Khan could have avoided the Accident.

It cannot be said that just because Khan was travelling between 60 to 70 kilometres per hour on a main artery, he could have avoided the Accident when it is acknowledged that there were no visibility problems and the road was not slippery.

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Whether an armoured lorry can safely travel on clear roads with good visibility at 60 to 70 kilometres an hour is not a matter of "robust common sense" that a court can determine. The onus was on Mayers to lead evidence that the speed was not appropriate given the weight of the lorry and she did not do so.

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