



Claim Case Studies & Legislation: Johnson et al. v. The Corporation of the Town of Milton et al, 2006 CanLII 27234 ONSC, 2008 ONCA 440 (CanLII)

Facts

On the afternoon of September 13, 1992, Robert and Nelly Johnson were riding their tandem bicycle northbound along a scenic stretch of Fourth Line in the Town of Oakville. This particular road had a steep descent before it crosses the Glenorchey Bridge at the Sixteen Mile Creek. It then turns sharply to the right in front of a rock embankment. A witness standing on the side of the road just south of the bridge saw the riders and thought that they were going very fast, also the man in the front of the bike was seen looking downward instead forward to the distance. He saw the tandem bike lose control just south of the bridge, the rear brakes locked. The riders crossed the bridge and hit an upslope where they became airborne and struck the embankment.

The plaintiff brought an action against the Town of Milton, the Region of Halton and the Town of Oakville. The Town of Oakville had jurisdiction over this section of road including its design, maintenance and signage.

As a result of the collision the plaintiff, Nelly Johnson, aged 40, sustained several injuries including a fracture pelvis and her husband Robert Johnson, age 51, died of his injuries. The plaintiff alleged that the road was in a state of disrepair at the time of the accident.

Issues

1. Was the road in a state of disrepair?
2. Was the Town liable for the plaintiff's damages?

Legislation

At the time of the collision, Section 284 (1) of the Municipal Act provided for a cause of action against a municipality that failed to keep its highways (including roads) and bridges in a reasonable state of repair. It reads as follows:

“Every highway and every bridge shall be kept in repair by the corporation the counsel of which has jurisdiction over it or upon which the duty of repairing it is imposed by this Act and, in case of default, the corporation, subject to the Negligence Act, is liable for all damages sustained by any person by reason of such default.”

The trial judge noted that “the onus is on the plaintiff to prove, on a balance of probabilities, the state of disrepair of the road. The plaintiff is also required to prove, on a balance of probabilities, that the non-repair of the roadway was the cause of the accident in question”.

Findings

This section of Fourth Line in the Town of Oakville was considered a secondary road at the time of the loss and it had also been closed during the winter months. It was closed permanently around the year 2000, due to the construction of Highway 407.

The Glenorchey Bridge was a one lane bridge constructed around 1965, only 8 weeks after the collapse of the previous bridge (which was located at a higher elevation).

For northbound traffic approaching the bridge there is a sign reducing the maximum speed (from 60 km/hr) to 50 km/hr at about 560 metres south. Approximately 410 metres south of the bridge a “Winding Road Ahead” sign is found and then there is a sign showing a gentle curve to the right. At 285 metres before the bridge there is a steep road sign (picture of a car heading down a steep slope) but there is no tab showing any further speed reduction. At 42 metres before the bridge there is a sign stating “One Lane Bridge”. The only indication of the sharp right turn after the bridge was a Checkerboard sign with an arrow to the right placed on the rock face. The road itself was tar and chip but was in a washboard-like state.

The Town confirmed that this was not a designed road with drawings that were stamped by an engineer rather it was designed and built in the field. They also acknowledged that there were 14 accidents occurring at the bridge between Oct 31, 1985 and July 18, 1992. Of those 14 accidents, 9 involved northbound vehicles striking the rock embankment while failing to make the right turn after the bridge.

The police that attended the scene of this collision noted that the tandem bike was in “good working order” and there were a couple of skid marks just before the rock embankment. They calculated the bike’s speed at around 28 km/hr just before impact.

The plaintiff’s engineer investigated the scene in 1994. The traffic counts were about 600 vehicles a day and the slope of the road to the bridge was calculated at 17.6%. The maximum slope permitted was 12% for secondary roads like this one. There is also an upward slope of 11.6% on the other side of the bridge before the sharp curve.

The Court’s Ruling

The Court found that the “Town of Oakville was willfully blind to the condition of the road.” The Town was intending to close this road and therefore was not prepared to invest in its maintenance as evidence of the replacement bridge itself. The Court also determined that the Town “failed to meet the standard with respect to signage.” They should have posted a sharp right sign with an appropriate advisory speed sign.

The Court disagreed that the plaintiff’s husband was the author of his own misfortune by travelling too fast and failing to use care while operating the tandem bike. The cyclists were found to be riding within the posted speed limit and were given no warning of this steep elevation change and sharp turn on the other side of the bridge. Therefore the Court found no contributory negligence on the plaintiff. Damages of over \$1.5 million were awarded to the plaintiff.

The Town appealed the liability decision. The Court of Appeal did find that the road was in a state of non-repair due to the signage and road conditions as per the Trial Judge’s decision. They also believed that Mr. Johnson was travelling too fast and not keeping a proper lookout. The Johnson’s were not experienced riders and they were travelling down a road not familiar to them. The Court of Appeal concluded that “...Oakville’s failure to keep the road in proper repair was a substantial contributing factor to the accident, I believe that Oakville should bear 60 percent of the liability and the respondents 40 per cent.”

Lessons Learned

This claim happened in 1992, before the initial version of the Minimum Maintenance Standards was implemented and did not address the specific requirement for regular patrolling and sign inspection.

This ruling does remind us of the importance of performing the following road maintenance tasks:

- Inspect all road signage, at least annually, to make sure they are visible and meet the requirements.
- Make sure that all signage is in conformance with the Ontario Traffic Manual.
- Document all inspections that have been performed.
- Meet the patrolling obligations as per the MMS.
- Keep all records of maintenance and patrolling.
- Review your Roads Maintenance Policy and update any changes.
- Train staff and third party contractors in your road maintenance policies/procedures and required documentation.