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R. v. Cherif

Between
Her Majesty the Queen, and
Karima A. Cherif

[1995] O.J. No. 4363

Ontario Court of Justice (Provincial Division)
Milton, Ontario
Ross J.P.

Oral judgment: January 3, 1995.
(3 pp.)

Charge: S. 130 Highway Traffic Act - Careless Driving

Counsel:

K. Bonham, prosecutor for the Crown.
L. Carter, for the accused.

¶ 1 **ROSS J.P.** (orally):— The charge of careless driving under Section 130 of the Highway Traffic Act, every person is guilty of an offence of driving carelessly who drives a vehicle or a streetcar on a highway without due care and attention or without reasonable consideration for other persons using the highway, and on conviction is liable to a fine of not less than $200, not more than $1,000, or to imprisonment for a term of not more than six months, or to both, and in addition, his or her license or permit may be suspended for a period of not more than two years.

¶ 2 The Court has to rely on the facts of the driver of the vehicle that was struck, and the driver of that truck, that large truck, was struck from behind. He did not observe what the vehicle was doing that hit him. We do know that there was traffic, that he had to stop for the traffic because he was going to make his turn and cross the roadway. We do know that he was stopped for approximately five to ten seconds. There were some questions that the defendant was not able to answer, and that was he did not know how to pronounce the defendant's last name. His lights were working properly at the rear of his vehicle. There was not severe damage to the vehicle that was hit. Now, the Court will take note of the fact that when you are driving a large vehicle with a steel bumper, obviously a car which would be smaller is probably going to sustain the damages more so than the steel bumper of a large vehicle. So the only thing that we have is the observations of the driver of the vehicle, the truck, and I find his evidence quite credible, but how is it to show that what this vehicle -- we do know that the road was wet. It was conceded it was wet. There was no skid marks. The officer, the investigating officer was able to determine at that time because both the vehicles were removed. However, I did note that, if I remember correctly, that the vehicle, the officer said that it would not be able to be moved, but yet we find them off to the side of the roadway. So how did they get there?

¶ 3 It is the opinion of this Court that a prima facie case has not been made out. There is not sufficient evidence to show that the driver of this vehicle, the defendant who is not before the Court was driving carelessly. There will be a dismissal in this matter.

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