

Setting Aside a Jury's Verdict – A Heavy Burden



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“Author of his/her own misfortune” is a common defence in personal injury cases and in *Hamilton v. Bluewater Recycling Association*, the jury reached this determination when it found that the appellant/plaintiff was 100% responsible for the injuries he sustained when his motorcycle collided with a recycling truck driven and owned by the respondents/defendants. Nevertheless, the plaintiff appealed this decision to the Court of Appeal, which dismissed the appeal in November 2016.

The facts of the case were that the appellant was operating his motorcycle on a foggy day, with a rising sun, which was affecting visibility. The respondent's recycling truck had its caution lights, headlights and a strobe light. It was the driver of the recycling truck's intention to make a left turn and the driver indicated that his left-turn signal was on. However, the appellant/plaintiff driver believed the recycling truck was pulling over to the right and therefore, attempted to pass the truck. The driver of the truck did not see the appellant/plaintiff motorcycle driver, nor did his truck alert him through

the camera and sonar device that there was someone approaching on the left side of the truck. As a result of the collision, the appellant/plaintiff was rendered a paraplegic.

The jury found the appellant/plaintiff 100% at fault because:

- a reasonably prudent motorist would not have made the decision to overtake the recycling truck; and
- a reasonably prudent motorist should have had enough control to navigate an unexpected situation and come to a complete stop if necessary in this scenario.

The basis for the appellant's appeal was as follows:

- 1) *It was unreasonable;*

Was the conclusion reached by the jury “so plainly unreasonable and unjust that no jury reviewing the evidence as a whole and acting judicially could have reached it?” The Court of Appeal said that “it cannot be said that no jury, reviewing the evidence as a whole and acting judicially, could have reached the decision that this jury did”.

2) *Opinion evidence was improperly adduced by defence counsel during cross examination of the appellant's two expert witnesses*

The Court of Appeal responded by stating, "The failure to object to the admission of evidence at trial is not determinative on appeal. But even assuming that this evidence was wrongly admitted, it cannot be said that its admission occasioned a substantial wrong or a miscarriage of justice".

3) *The second question submitted to the jury "[a]reasonably prudent motorist should have had enough control to navigate an unexpected situation and come to a complete stop if necessary in this scenario" was not proper because the appellant/plaintiff's conduct after he made the decision to pass the recycling truck, was not part of the respondent's case.*

Again, the Court of Appeal found that this submission did not persuade the Court that the jury's conclusion was so plainly unreasonable and unjust. The jury already found that in response to the first question, that a reasonably prudent person would not have made the decision to overtake the recycling truck demonstrated that the jury understand the theory of the case.

Conclusion

There is a lot of deference given to jury verdicts and it is difficult to overturn a jury's verdict, because there is a high standard of review, as this case demonstrates. That should be taken in mind when proceeding with a jury trial.