Posted on: November 10, 2009

DOOR PRIZE – PAST, PRESENT, FUTURE

November 10, 2009

David Hay

Originally published in Momentum Magazine, BC Edition

Commuter cycling in North America generally follows the pattern of being on a road moving past parked motor vehicles. The absence of dedicated cycling infrastructure alongside roads creates ever present risk of every cyclist's nightmare coming true. Of course, I am speaking of the beastly occurrence colloquially known as the "door prize".

Collisions which occur between bicycles and car doors represent a large part of my practice. I am happy to have been asked to participate on the research team assembled by the University of British Columbia to study bicyclist injuries and the cycling environment. The results of that study are due out next year. I am quite confident the studies' findings will conform to my own experience with car doors and bicycles – i.e., proximate to parked cars inevitably increases risk of injury.

Fortunately, the law relating to fault for negligently opening doors is well settled. This may in part be a result of a very clear rule codified in the Motor Vehicle Act, s. 318(1):

"a person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so."

Mr. Hagreen was riding his bicycle to work as he did everyday when Mr. Su opened his door and struck Mr. Hagreen's bicycle. Mr. Su and his insurers denied fault for the accident. Perhaps ceasing on a recent trend in door cases, Mr. Su suggested, through his counsel, that his door had been opened long enough for Mr. Hagreen to see it and, as the theory, avoid it. Mr. Su acknowledged in his evidence that he had seem the approaching cyclist before he opened his door, but felt he had enough time to get out. Indeed, said Mr. Su, he had moved both his legs out of the car and turned to see the cyclist approaching "really fast" before the collision occurred. Mr. Su's evidence suggested, to the suggestible listener, was that the cyclist ignored the presence of an open door, proceeded at his peril, and caused the accident.

The Trial Judge, Mr. Justice Brooke would have none of this. In a very short analysis on liability, Mr. Justice

700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA
TELEPHONE
604 682 3664
FAX
604 688 3830
RBS.CA

Brooke cited the aforementioned section of the Motor Vehicle Act and found Mr. Su 100% liable for the collision. He placed specific emphasis on Mr. Su's admission in cross examination that he did not see the bicycle until the door was opened, despite having given the earlier and inconsistent information relating to his observations.

In final analysis, the cyclist in these circumstances will not be held to a standard of perfection. The test is whether or not the cyclist became aware, or by exercise of reasonable care should have become aware, or the driver's own disregard of the law, and had sufficient opportunity to avoid the accident, of which a reasonably careful and skilful cyclist would have availed himself or herself. In such, a circumstance, any doubt should be and is resolved in favour of the cyclist.

From a strictly legal perspective, the existence of a driver inside a parked car should not matter because there is no general duty to anticipate that the driver might negligently open the his/her door into the path of the cyclist. However, from a practical perspective it is always prudent to have the sceptre of negligence in one's contemplation but this does not translate to a legal duty to anticipate every eventuality.

Fortunately, despite a denial of liability being increasingly common in "door" cases, the clarity of the legislation is such that that liability is typically not hotly disputed.

David Hay is a litigation lawyer and partner at Richards Buell Sutton, LLP. He has a special interest in bike injury and can be contacted directly at 604.661.9250 or by email.

700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA
TELEPHONE
604 682 3664
FAX
604 688 3830
RBS.CA