
LA CITE DE MONTREAL (DEFENDANT) . . APPELLANT;

1927

AND

*Feb. 14.

DAME ANNY BRADLEY (PLAINTIFF) . . . RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUÉBEC

Municipal corporation—Negligence—Street accident—Charter of the city of Montreal—Notice under section 536—Insufficiency—Failure to indicate place—Acknowledgment of notice and promise of attention—Silence of city's officers—Prejudice to city—Opportunity to obtain further information.

Where the conduct of the city officials, on the receipt of an incomplete notice of an accident under section 536 of the charter of the city of Montreal, was such as to lull the victim into a sense of security and to give him cause to believe that his notice was accepted as sufficient, the trial court, under the third paragraph of section 536, could come to the conclusion that the conduct of the city officials had prevented the victim from giving a more explicit notice.

But the default of such notice cannot be remedied by the absence of prejudice to the city or by the fact that the city, having been placed in a position to receive information as to the accident, has refused to take advantage of its opportunities.

Judgment of the Court of King's Bench (Q.R. 41 K.B. 529) aff.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

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APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1) affirming the judgment of the Superior Court, Surveyer J., and maintaining the respondent's action in damages.

On the 17th March, 1925, the respondent fell on the sidewalk in the city of Montreal and suffered severe injuries, consisting chiefly in a fracture of the femur, as a result of which she suffered permanent partial disability. Her husband immediately gave notice to the city by addressing the following letter to the mayor:—

"To comply with the law, I beg to inform you that my wife, Mrs. Anny Vincent has been the victim of an accident on St. Catherine street, due to the bad condition of the sidewalk. This accident resulted in a broken thigh and Mrs. Vincent is at present in the General Hospital, Ward "K", for treatment.

"Regarding the intention on my part of taking advantage of the situation, I beg to inform you that I feel quite justified in asking for compensation and will be much obliged if you will have the proper authorities make an investigation.

"My address is 180 St. Denis street, Montreal."

This notice was acknowledged on the 21st of March by the mayor in the following terms:—

"Yours of the 19th instant received, in which you claim damages for the accident that happened to Mrs. Vincent on the sidewalk on St. Catherine street.

"I am referring your letter immediately to Mr. Jules Crépeau, director of departments, with a request to give to that question his immediate attention."

This notice fails to comply with section 536 of the city charter in that it does not sufficiently specify the place where the accident occurred.

The respondent's husband waited until the 30th of March, when he wrote to Mr. Crépeau as follows:

"Please find enclosed copy of a letter just received from Mr. Mayor. I will be grateful if you will be kind enough to let me know what steps you are taking in the matter."

He waited for an answer until the 16th May, and receiving none, he wrote again to Mr. Crépeau and to the mayor including a copy of the letter to Crépeau.

On the 20th of the same month, the mayor wrote to respondent's husband as follows:

"Yours of the 16th instant received together with copy of letter mentioned. I referred your letter to Mr. Jules Crépeau, director of departments to be submitted to the executive committee."

Crépeau paid no attention, either to the mayor's letters or to the letters of the respondent. Nowhere was any objection raised to the sufficiency of the notice.

Sometime previous to the 10th of June following, the respondent's husband put the matter in the hands of his solicitors, who, unaware that a previous notice had been given, caused to be prepared a formal notice which was served on the city. This notice is dated the first of June and contains full details of the accident in compliance with the charter, with the exception of the delay from the date of the accident.

The trial judge maintained the respondent's action and gave judgment for \$5,000 damages.

Amongst the *considérants* in the judgment of the trial judge were the following:

"Considering that plaintiff's original notice of suit was received by the mayor of the city defendant, and that the said mayor handed same, or at least left plaintiff under the impression that he had handed it to the officer of the defendant whom he as mayor looked upon as the party empowered to deal with it, namely the director of departments;

"Considering that within the thirty days of the said accident, namely on March 30, 1925, plaintiff's husband wrote to the said director of departments referring him to the mayor's reply, and asking him what steps he was taking in the matter;

"Considering that all the said letters were duly forwarded to the city clerk's office, but appear to have remained unanswered, according to the admissions in defendant's discovery;

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"Considering that under the circumstances, the said letters constitute a valid notice to the city defendant;

"Considering that it is true that the said notice did not specify the place where the said accident occurred, but that plaintiff, in the Montreal General Hospital, and her husband, either at his domicile or at his place of business indicated in the notices, were at all times ready to give information to the city defendant; that in any event two of the city defendant's constables were made aware of the accident shortly after it took place, and arrived at the Montreal General Hospital shortly after the plaintiff and her husband; that they may have secured all requisite information had they persisted in their inquiries;

"Considering that if defendant, having been placed in a position to receive information as to the said accident, refused to take advantage of its opportunities, it cannot set up ignorance as an excuse;

* * *

"Considering that in any event, a perfectly valid notice was served on the defendant by plaintiff's attorneys on the 10th day of June, 1925; that the said notice was just as effective and useful as if it had been served on the 30th day following plaintiff's accident; that the court, under section 536 of the charter of the city defendant, as amended, has discretionary power to decide whether or not in the special circumstances of each case, the default or *a fortiori*, the tardiness of a notice deprives a plaintiff of his right of action; that under the circumstances of the present case, plaintiff should not be deprived of her right of action for any irregularity in her notice of suit;

Chs. Laurendeau K.C. and G. St. Pierre K.C. for the appellant.

O. S. Tyndale K.C. for the respondent.

The judgment of the court was delivered by

MIGNAULT J.—The only question submitted by the appellant on this appeal is whether the notice which the respondent gave to the city of the accident for which she recovered damages, complied with the requirements of section 536 of the Monteval city charter. The appellant did

not otherwise, before this court, question its liability for the accident.

The contention of the appellant is that the letter written to the mayor of Montreal by the respondent's husband, on March 19, 1925, two days after the accident, did not sufficiently specify the place where the accident occurred, when it stated that the respondent had been the victim of an accident on St. Catherine street, which is a street several miles long.

The mayor answered this letter on March 21, saying that he was referring the letter immediately to Mr. Jules Crépeau, director of departments, with a request to give to the question his immediate attention. And on March 30, the respondent's husband wrote to Mr. Crépeau, enclosing a copy of the mayor's letter. He added that he would be grateful if Mr. Crépeau would be kind enough to let him know what steps he was taking in the matter. This letter was never answered.

In our opinion the learned trial judge could find on this correspondence that the conduct of the city authorities, and especially the letter of the mayor, were of a nature to lull the respondent into a sense of security and to give her cause to believe that the notice of her claim for damages was accepted as sufficient by the city. Under these circumstances and for this reason, the learned judge could come to the conclusion that the respondent was entitled to the benefit of the third paragraph of section 536 which states that

the default of such notice, however, shall not deprive the victims of an accident of their right of action, if they prove that they were prevented from giving such notice by irresistible force, or for any other reason deemed valid by the judge or court.

The respondent was prevented from giving a more explicit notice by the conduct of the city officials, and this is a reason which we deem valid.

The appeal should be dismissed with costs, but the *considérants* of the judgment of the Superior Court based on the absence of prejudice to the city, on its having been placed in a position to receive information as to the accident, and having refused to take advantage of its opportunities, and on the notice served on the city by the re-

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Appeal dismissed with costs.

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BRADLEY. Solicitors for the appellant: *Damphousse, Butler & St. Pierre.*

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Solicitors for the respondent: *Brown Montgomery & McMichael.*
