

NAMIC CLAIM ARBITRATION COMMITTEE
Case # 00-00

Petitioning Company Name)
)
) Petitioner
Claim No.: 098-765-432-1)

vs.

Respondent Company Name)
)
) Respondent
Claim No.: 1111-2222-3333)

The Petitioner submits a collision subrogation claim in the amount of \$1,111.14. This does not include a \$500.00 deductible.

The accident occurred in the State of Kansas. Kansas has adopted a "Not As Great As" or "Less Than" form of comparative negligence. This form states Plaintiff cannot recover if his negligence exceeds 49 percent. In the event the court finds both parties equally at-fault, Plaintiff cannot recover.

FACTS

The accident occurred on August 26, 1999, at 4:50 p.m., on 9th Avenue and North Avenue. It occurred in the City of WaKeeney, Kansas. The weather conditions were dry, and the asphalt surface on 9th Avenue and gravel surface on North Avenue was dry.

PETITIONER'S CASE

The Petitioner has submitted the following evidence:

1. Denial
2. Evidence of Payment
3. Police Report
4. Diagram
5. Photos of Scene
6. Photos of Damage
7. Petitioner's Statement

The Petitioner states that the accident occurred on North 9th at an intersection with a dirt pathway, which connects 8th and 9th Street before arriving at a triangle type intersection further south. 9th is an asphalt paved road, one lane in each direction, and runs north and south. The dirt path runs east and west, but is only wide enough for one way traffic. Scene photographs, along with a diagram are provided (Exhibit 1).

Petitioner driver was traveling southbound on 9th Street, which is the paved street. Respondent was traveling eastbound on the intersecting dirt road. When Petitioner reached the dirt road, Respondent attempted a left turn to travel northbound on 9th Street. The right front of

Petitioner's 1988 Chevrolet pickup truck was struck by the left front of Respondent's 1988 Pontiac (Exhibit 2) (Exhibit 3).

A copy of the WaKeeney Police Department report is provided (Exhibit 3). The officer verifies the street Petitioner was traveling on as blacktop and the street that Respondent was traveling on was gravel (Exhibit 3, Page 2). Both drivers were listed with inattention. There were no tickets issued (Exhibit 3).

Petitioner contends the majority of negligence rests on Respondent, who failed to yield. Petitioner was on the paved, main traveled roadway, and Respondent was on a gravel road. Further, Respondent was attempting a left turn and Petitioner was traveling straight through.

The scene photographs verify that Petitioner was on the main traveled roadway and Respondent was on a secondary road (Exhibit 1). Petitioner contends Respondent had the duty to yield the right of way.

Petitioner intended to continue traveling straight, to the south. Respondent was attempting to make a left turn, to travel northbound on 9th Street. Petitioner described Respondent's maneuver as being basically a U-turn, as this is not a straight 90 degree type intersection (Exhibit 2). Petitioner contends Respondent also had the duty to yield the right of way, as she was not traveling straight across the intersection but attempting a left turn.

Petitioner stated she was traveling approximately 15-20 mph and Respondent was traveling 20-25 mph (Exhibit 2), Page 3). Petitioner contends Respondent's speed was excessive due to the circumstances.

Petitioner concludes Respondent failed to yield the right of way. Petitioner requests the committee to determine the majority of negligence rests on the Respondent.

RESPONDENT'S CASE

The Respondent submits the following items for evidence:

1. Police Report
2. Diagram
3. Photos of Scene
4. Respondent's Statement
5. Legal Items

The Respondent contends the accident occurred on August 26, 1999 at approximately 4:50 P.M. in the City of WaKeeney, Kansas. The specific location was the corner of North Ave. and North 9th Street. The Petitioner was traveling south on 9th Street and the Respondent was traveling east on North Avenue. Both roads are marked as streets in WaKeeney with no traffic control devices at the intersection. The Respondent was to the right of the Petitioner at this open intersection. The road construction of 9th is blacktop and the construction of North Avenue is considered gravel. Both streets are within the city limits of WaKeeney. The Petitioner and

Respondent struck within the intersection. There were no adverse weather or lighting conditions. The point of impact was within the intersection with both parties hitting front corner to front corner.

The Respondent contends the evidence will establish the Petitioner, (1) failed to maintain a proper lookout, (2) failed to maintain proper control, (3) failed to yield the right of way. The Respondent contends the evidence will establish responsibility for this loss rests with the Petitioner when legal authority is considered.

Even though PIK (Pattern Instructions for Kansas) is not statute, the Respondent contends PIK is a good explanation of the requirement for exercising ordinary care while driving an automobile when considering civil law.

PIK 8.03 provides it is the duty of the driver of a motor vehicle on a public highway to keep a proper lookout for vehicles and objects in his line of vision which may effect his use of the highway. The law also presumes the driver will see those things which a person would or could see in the exercise of ordinary care under like or similar circumstances. The Petitioner and Respondent failed to see each other when approaching this intersection.

PIK 8.02 provides it is the duty of the driver on a public highway to keep his vehicle under such control as will enable him to regulate his speeds and the ability to stop or turn aside within the range of his vision provided by the headlights of his automobile and thus avoid colliding with any other vehicle lawfully using the highway. The Petitioner and Respondent failed to maintain proper control of their vehicle.

The State of Kansas Motor Vehicle Accident Report confirms there is no stop sign at this intersection and thus the accident occurred at an "open intersection." The laws of Kansas provide in KSA 8-1526 Section A., when two vehicles approach or enter an intersection from different highways approximately at the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. The Petitioner contends they were on a paved road, which gave unconditional right-of-way and attempts to imply this condition supersedes KSA 8-1526. This contention is without merit. KSA 8-1424 defines a highway as, "... the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." The statute KSA 8-1526 or the definition KSA 8-1424 does not limit or restrict the construction type. Kansas statutes do cover accidents like this, providing directional right of way to the vehicle on the right regardless of road construction.

It has been shown the Respondent was on the right in this accident and had the directional right-of-way. When all facts and questions of law are considered regarding the accident, the Respondent requests the committee considers the comparative negligence law of Kansas when reaching a decision. The Respondent contends the Petitioner is more than 50% responsible for this accident which would bar any recovery from the Respondent. The Respondent vehicle did not cover physical damage therefore a counter claim has not been presented.

The Respondent respectfully submits this case for the Committee's consideration and prays for a favorable ruling.

REMARKS

The Petitioner contends the majority of negligence rests with the Respondent and feels the Respondent failed to yield the right-of-way. Petitioner further contends that Petitioner was on the paved, main travel roadway, and Respondent was on a gravel road. Petitioner further contends that Respondent had the duty to yield the right-of-way as Respondent was not traveling straight across the intersection but attempting a left turn.

Respondent contends that the evidence will establish that the Petitioner failed to maintain a proper lookout, failed to maintain proper control, and failed to yield the right-of-way. The Respondent bases their contentions that the Respondent was on the right in this accident and had the directional right-of-way. The Respondent submitted the Kansas Motor Vehicle Accident Report confirming that this was an open intersection. Respondent feels that this was a regular open intersection and they were on the right which would allowed them the right-of-way causing the Petitioner to have to yield to them. Petitioner does not feel that the gravel road should be considered as a road within the intersection that would supersede the paved roadway, thus providing right-of-way to the Petitioner.

The Respondent submitted legal items showing that the road that the Respondent was on was a gravel road, however, should be considered as a regular highway. The Petitioner contends that they were on the paved road, which gave unconditional right-of-way and attempts to imply this condition supersedes the KSA8-1526. This contention is without merit, as stated by the Respondent in their contentions.

The Committee finds that the gravel road is a regular road and should be considered as part of the intersection, therefore, allowing the Respondent to be on the right of the Petitioner. The Committee finds that the Respondent has proven their contention that the gravel road is a regular road to be traveled on as supported by the legal items presented. The Petitioner did not submit any evidence to show that the road the Respondent was on, which the Petitioner considered a secondary road, was a road that could not be considered a main roadway. In view of this evidence, the Committee finds that the Petitioner should have yielded to the Respondent vehicle which was to the Petitioner's right.

DECISION

The Petitioner's claim is denied.

Decision: 3 to 0