Docket: CA 155594
Date: 20001011

NOVA SCOTIA COURT OF APPEAL

[Cite as: Lamont v. Moxon, 2000 NSCA 117]

Glube, C.J.N.S.; Flinn and Oland, JJ.A.

BETWEEN:

KELLY LAMONT

Appellant

- and -

ROY MOXON

Respondent

REASONS FOR JUDGMENT

Counsel: David A. Grant, for the appellant
A. Jean McKenna, for the respondent

Appeal Heard: October 11, 2000

Judgment Delivered: October 11, 2000

THE COURT: Appeal and cross appeal both dismissed without costs as per oral reasons for judgment of Flinn, J.A.; Glube, C.J.N.S. and Oland, J.A. concurring.

<u>FLINN, J.A. (Orally):</u>

[1] This appeal is from a decision of Justice Hamilton of the Supreme Court in an assessment of damages arising out of an automobile accident. The respondent admitted liability for driving his truck into the back of the appellant's motor vehicle. The trial judge described the accident as "a very mild rear end collision."

[2] At the heart of this appeal is the finding of the trial judge that the accident in question did not contribute materially to the appellant's present poor health, and that the accident caused only a mild aggravation of the appellant's pre-existing, and major, back problem. The trial judge found the appellant's evidence to be lacking in credibility. The medical evidence, she determined, did not support the appellant's position that there is no other reason for his present medical problems but the accident in question.

[3] The trial judge concluded:

> I am satisfied Mr. Lamont suffered pain in his neck and back for a relatively short period of time as a result of the 1992 accident, which because of his already existing condition may have caused him more pain and anxiety than it would to a person without an existing back problem. Accordingly, I award him $25,000.00 general damages for general pain and suffering.

[4] The appellant is, essentially, asking this court to set aside the trial judge's credibility findings against him, to take a different view of the medical evidence than did the trial judge, and, ultimately, to attribute a larger percentage of the appellant's present health problems to the accident in question, with a correspondingly higher assessment of damages against the respondent.

[5] This court has repeatedly stated that the credibility of witnesses is a matter peculiarly within the province of the trial judge. It would take strong and cogent reasons for this court to interfere with a trial judge's findings as to the credibility of a witness who testified before that trial judge (see **Travelers Indemnity Co. v. Kehoe** (1985), 66 N.S.R. (2d) 434 per Macdonald, J.A. at p. 437). No such reasons are advanced by the appellant in this case.

[6] The trial judge's conclusion, that the accident in question did not contribute materially to the appellant's poor health, is, largely, a factual determination involving, among other things, the weight which the trial judge gave to the medical evidence before her. This court will not interfere with that conclusion unless the trial judge has made a manifest error, has misunderstood the evidence, or drawn erroneous conclusions from it (see **Toneguzzo-Norvell (Guardian *ad litem* of) v. Burnaby Hospital,** [1994] 1 S.C.R. 114).

[7] There was ample medical evidence to support the trial judge's conclusion that the accident in question did not contribute, in a material way, to the appellant's present medical problems, and there is no basis, in law, upon which we can interfere with that conclusion. For the same reason, there is no basis in law upon which we should adjust, upwards, the trial judge's assessment of general damages of $25,000.00.

[8] The appellant also appeals the trial judge's assessment of costs. The trial

judge, in the exercise of her discretion, reduced the appellant's costs (exclusive of disbursements) from $3,750. to $2,750. The appellant had maintained a claim of damages at over $625,000.00 in the face of a formal offer to settle from the respondent for an amount slightly lower than what the appellant ultimately received. That offer was increased, before trial, to an amount which proved to be in excess of what the appellant ultimately received. The trial judge applied no wrong principle in the exercise of her discretion to reduce the appellant's costs, and this court will not interfere with her assessment of those costs.

[9] The respondent cross appeals claiming that the trial judge's award of $25,000.00, as general damages, is excessive and should be reduced. To sustain this cross appeal the respondent must demonstrate that the trial judge's assessment of general damages at $25,000.00 is "so inordinately high that it must be a wholly erroneous estimate of the damage" (see **Nance v. British Columbia Electric Railway Company Ld.**, [1951] A.C. 601 at p. 613).

[10] While recognizing the particular pain and anxiety which the respondent was found to have caused to the appellant, and, at the same time, recognizing that a pre-existing condition was the major cause of the appellant's present medical problems, the trial judge assessed the appellant's general damages at $25,000.000. In our opinion, and in the circumstances of this case, that award cannot be said to be so far outside the range of damages for like cases as to be considered a wholly erroneous estimate of

damages.

[11] The appeal and cross appeal are both dismissed. There will be no order for costs.

Flinn, J.A.

Concurred in:

Glube, C.J.N.S.

Oland, J.A.