

**CASE NO.****VOL. NO.****PAGE**

KELLY LAMONT

- and -

ROY MOXON

(Appellant)

(Respondent)

CA 155594

Halifax, N.S.

Flinn, J.A.

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

**APPEAL HEARD:**

October 11, 2000

**JUDGMENT DELIVERED:**

October 11, 2000

**WRITTEN RELEASE OF ORAL:**

October 13, 2000

**SUBJECT:****Assessment of damages - personal injuries - motor vehicle accident - appellate review - quantum - credibility****SUMMARY:**

The respondent admitted liability for driving his truck into the rear of the appellant's motor vehicle in what the trial judge referred to as "a very mild rear end collision." The trial judge found that the accident did not contribute materially to the appellant's poor health, and that the accident caused only a mild aggravation to the appellant's pre-existing, and major, back problem. She assessed general damages at \$25,000.00. Appellant appeals and respondent cross appeals.

**RESULT:**

Appeal and cross appeal dismissed.

No strong and cogent reasons advanced by the appellant to warrant interference by the Court of Appeal with the trial judge's findings as to credibility (see **Travelers Indemnity Co. v. Kehoe** (1985), 66 N.S.R. (2d) 434 per Macdonald, J.A. at p. 437.

There was ample evidence to support the trial judge's conclusion that the accident caused only a mild aggravation to the appellant's pre-existing, and major, back problem. There is no basis upon which the Court of Appeal may interfere with that conclusion nor adjust, upwards, her assessment of general damages (see **Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital**, [1994] 1 S.C.R. 114).

In the circumstances of this case the trial judge applied no wrong principle in the exercise of her discretion to reduce the appellant's

costs.

With respect to the cross appeal the award of \$25,000.00 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 (see **Nance v. British Columbia Electric Railway Company Ltd.**, [1951] A.C. 601 at p. 613).

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.**