

CASE NO.

VOLUME

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Cite as: Herman v. Woodworth, 1998 NSCA 34

RICKY NOBLE HERMAN

MARLON WOODWORTH

- and -

(Appellant)

(Respondent)

C.A. No. 138655

Halifax, N.S.

FLINN, J.A.

APPEAL HEARD:

February 2, 1998

JUDGMENT DELIVERED:

February 4, 1998

SUBJECT:

Non-suit motion - Civil Procedure Rule 30.08 - Appellate Review

SUMMARY:

The appellant brought proceedings for damages for personal injuries suffered in a motor vehicle collision. At trial, following the appellant's case, the trial judge granted the respondent's motion for non-suit and dismissed the appellant's action.

ISSUE:

Appellate Review

RESULT:

Appeal allowed - new trial ordered before a different judge.

1. On a motion for a non-suit, the question as to whether a plaintiff has established a prima facie case is a question of law. As such, it is reviewable by the Court of appeal.
2. On the evidence before the trial judge - if believed - a reasonable jury could find some negligence on the part of the respondent which caused, or contributed to, the appellant's injuries. The non-suit motion should not have been granted.
3. In this case, which was not a lengthy trial, since the trial judge assessed the weight and believability of the evidence, a new trial should be ordered before a different judge.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 11 PAGES.