

**CASE NO.**

**VOL. NO.**

**PAGE**

Cite as: Exide Electronics Ltd. v. Webb, 1999 NSCA 102

EXIDE ELECTRONICS LIMITED  
and BERNARD JOSEPH WHITE

- and -

DAVID LEIGH WEBB

(Appellants)

(Respondent)

CA 153477

Halifax, N.S.

**FREEMAN, J.A.**

**APPEAL HEARD:**

June 10, 1999

**JUDGMENT DELIVERED:**

June 30, 1999

**SUBJECT:**

**Torts; Damages; Motor Vehicle Accident; Disability; Untruthful Plaintiff; Expert Evidence**

**SUMMARY:**

Respondent suffered a broken kneecap and soft tissue injuries, principally to his back and shoulder, that disabled him from his occupation as carpenter when his vehicle was struck by the appellant's in September, 1993. Liability was admitted and the appellants take issue with the respondent's credibility on the assessment of damages and awards of \$90,000 for lost earning capacity and \$58,772 damages for lost wages. The appellants entered surveillance photos which they alleged showed the respondent engaged in activities he had said he could not do. The only medical expert called by the appellants was of the opinion that the respondent had recovered from his injuries and that most of his remaining complaints were related to the litigation. The trial judge preferred the evidence of a number of caregivers who had long-term experience with the respondent and found some objective evidence in support of the respondent's claims. He considered that the respondent had made statements going beyond the "natural tendency of coloring events in one's own favour" but nevertheless found him credible. There was no finding that the respondent was lying in a manner that was a fraud on the court.

**ISSUE:**

Was the trial judge's self-direction as to the respondent's credibility a misdirection and perverse? In assessing damages for lost income at the equivalent of two years income, did the trial judge fail to consider that the

respondent was unemployed at the time? Was \$90,000 for lost earning capacity inordinately high?

**RESULT:**

The appeal was dismissed with costs fixed at 40 per cent of costs at trial. The trial judge did not ignore or disregard critical evidence, but rather weighed all of the evidence before him. The respondent was in his mid-fifties with a grade eight education. His only occupation had been as a carpenter; loss of his ability to work as a carpenter was significant, and the award of \$90,000 for lost earning capacity was not inordinately high. The award for lost wages factored in a significant portion of his income based on Employment Insurance.

**This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.**