

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Johansson v. General Motors of Canada Ltd.*, 2012 NSCA 120

**Date:** 20121204

**Docket:** CA 357820

**Registry:** Halifax

**Between:**

Maria Johansson, Steven Johansson and Jody Johansson

Appellants

v.

General Motors of Canada Limited

Respondent

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**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** September 12, 2012, in Halifax, Nova Scotia

**Subject:** Non-suits - Negligence - Jury's role of drawing inferences

**Summary:** While steering around a left bend in the road, Mrs. Johansson's GM Lumina swerved off the right side of the road, causing her a brain injury. General Motors later issued a Recall Notice for the Lumina. The Recall Notice stated that the steering mechanism was defective in that, during a left turn, the vehicle may "assist" to the right. Mrs. Johansson sued General Motors Canada. After she presented her case, the trial judge granted GMC's motion for a non-suit. The judge said there was a *prima facie* case that GMC owed a duty to use reasonable care, that "the plaintiff's Lumina was defective and that the defect caused the accident", resulting in Mrs. Johansson's injury. But he held that there was no *prima facie* case to define GMC's standard of care or its breach. Mrs. Johansson appealed to the Court of Appeal.

**Issue:** Did the judge err in his application of the non-suit test?

**Result:**

The Court of Appeal allowed the appeal. The judge erred by misinterpreting the effect of the Supreme Court of Canada's treatment of *res ipsa loquitur* in *Fontaine v. British Columbia (Official Administrator)*, [1998] 1 S.C.R. 424. The judge erred by failing to recognize that a jury is entitled to consider whether or not to infer negligence from evidence surrounding a defect that existed in the vehicle when it left GMC's plant. The judge erred by confusing the jury's function to consider whether or not to infer negligence with strict liability. The judge erred by stating that evidence of a "regulatory benchmark" or expert evidence is a mandatory prerequisite for Mrs. Johansson's *prima facie* case. The judge erred by not analyzing the evidence that was on this record to determine whether or not a jury reasonably could draw an inference of negligence. On reviewing that evidence, the Court of Appeal held that a jury reasonably could draw an inference of negligence.

**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 53 pages.**