

[Cite as: *Leddicote v. Attorney General (Nova Scotia)*, 2002 NSCA 47]

CA170962
Halifax, N.S.

ELIZABETH KATHLEEN LEDDICOTE

(Appellant)

- and -

ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the
Queen in right of the Province of Nova Scotia, and JOCELYN PATTERSON
(Respondents)

Cromwell, J.A.

Saunders, J.A.(Dissenting on liability)

APPEAL HEARD: January 21, 2002

JUDGMENT DELIVERED: April 5, 2002

SUBJECT:

Motor Vehicles. Highways. Negligence. Apportionment of Liability. Standard of Appellate Review. Loss of Valuable Services. Loss of Earning Capacity. Linking the “Amount Involved” to the Amount Claimed in Fixing Party-and-Party Costs. Pre-judgment interest - Simple or Compounded.

SUMMARY:

The appellant was injured when her car went out of control in slush and was struck by another vehicle travelling behind her. She sued both the other motorist and the Department of Highways. After a 10-day trial by judge alone, the trial judge dismissed the appellant’s action against the province and divided liability between the appellant and the respondent Patterson, 90/10 in favour of Patterson. Leddicote appealed, alleging error on the part of the trial judge in apportioning liability; in dismissing the action against the province; in denying her claim for loss of housekeeping services; in rejecting her claim for loss of income and lost earning

capacity; and on costs for basing the “amount involved” on the damages claimed as opposed to the compensation actually awarded.

The respondent cross-appealed, arguing that the trial judge erred in ordering pre-judgment interest compounded annually on the general damages awarded to the appellant.

HELD:

The majority (Cromwell, J.A., with Glube, C.J.N.S. concurring) concluded that the trial judge’s 90/10 apportionment was clearly unreasonable and that he failed to give appropriate weight to the comparative blameworthiness of the conduct of each of the appellant and the respondent Patterson. The trial judge’s failure to refer to important evidence, coupled with the absence of reasons to support his apportionment of liability, justified a reconsideration of the trial judge’s conclusions. After review, the majority substituted its own apportionment of liability, 60% against the appellant Leddicote and 40% against the respondent Patterson. The majority also awarded costs of \$1,000.00 inclusive of disbursements payable by the appellant to the Attorney General.

In all other respects, the court for the reasons given by Saunders, J.A. dismissed the other grounds of appeal and the cross-appeal.

In dissenting reasons on the question of liability Saunders, J.A. was not persuaded that the appellant had demonstrated any palpable or overriding error, or that the trial judge had ignored conclusive or relevant evidence, or misunderstood the evidence, or had drawn erroneous conclusions from it. In the absence of such error, his apportionment of liability should not be disturbed. Accordingly, as success was divided, Saunders, J.A. declined to make any order for costs.

On the evidence, the appellant had failed to prove an entitlement to compensation for loss of housekeeping capacity, or lost income, or diminished earning capacity.

There was no basis for interfering with the trial judge’s exercise of his discretion when in fixing party-and-party costs he decided, in the circumstances of this particular case, to base the “amount involved” upon the damages claimed by the appellant.

As the question of the quality or type of proof required to justify a compounding of

pre-judgment interest was neither raised nor argued at trial, the court declined to decide the issue on appeal or otherwise interfere with the trial judge's award. Before embarking upon such an enquiry, in an appropriate case, the court ought to have the benefit of a detailed record, comprehensive arguments and a thorough analysis of the authorities.

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 46 pages.