

SUPREME COURT OF NOVA SCOTIA
Citation: *Tibbetts v. Murphy*, 2015 NSSC 280

Date: 20151007
Docket: Pic No. 390520
Registry: Pictou

Between:

Shirley Tibbetts

Plaintiff

v.

Reginald Greg Murphy

Defendant

v.

Joseph George Joyce

Third Party

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Judge: The Honourable Justice A. David MacAdam

Heard: May 1, 4, 5, 6, 7, 8, 11 and 12, 2015, in Pictou, Nova Scotia

Final Written Submissions: July 7, 2015

Decision: October 7, 2015

Subject: Negligence; motor vehicle accident; evidence; cross-examination

Summary: The plaintiff and her then fiancé (later spouse), the third party, were travelling on a gravel road on motorcycles, with the third party in the lead. At a bend in the road, he met the defendant's truck, and they nearly collided. The defendant went partly off

the road, recovered onto the road, and collided with the plaintiff's motorcycle. Both the plaintiff and defendant testified that they did not see one another until the moment of the accident. The plaintiff was injured, and brought an action for damages. There was a preliminary issue arising out of plaintiff's counsel's calling and examination of the third party, who then sought to be cross-examined by his own counsel, over the defendant's objections.

Issues: (1) Did Civil Procedure Rule 54.06 permit the third party to be cross-examined by his own counsel in the circumstances? (2) Liability. (3) Damages.

Result: (1) What the plaintiff had conducted was not, in substance, a cross-examination. As such Rule 54.06 was not engaged. (2) There was no adequate explanation for why the plaintiff and the defendant did not see one another until the instant of the collision. The defendant did not suggest in his evidence that the near-miss with the third party had caused him to lose control such that the collision with the plaintiff became unavoidable. However, the plaintiff was better positioned to see the defendant than he was to see the plaintiff. Accordingly, the court apportioned liability two-thirds to the plaintiff and one-third to the defendant. (3) While the plaintiff was capable of returning to her pre-accident employment, she did have some on-going limitation of her ability to take on heavier work. The damages issues addressed by the court included lost earning capacity, lost housekeeping capacity, and general damages. The court also considered the issue of deductibility of CPP disability benefits.

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