

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Lavaute v. The Attorney General of Canada - 2004 NSSC171

Date: 20040909
Docket: S.H. No.144354
Registry: Halifax

Between:

Harvey Lavaute

Plaintiff

-and-

The Attorney General of Canada

Defendant

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Judge: The Honourable Justice Robert W. Wright

Heard: April 28, 2004 at Halifax, Nova Scotia

Written

Decision: September 9, 2004

Subject: Collateral benefits - deductibility in a tort action of workers' compensation benefits paid in a foreign jurisdiction - Third Party Settlement Agreement between the plaintiff and the subrogating authority.

Summary: The parties filed an Agreed Statement of Facts establishing that the plaintiff, a resident of the United States, had been paid workers' compensation benefits under Pennsylvania legislation in respect of a slip and fall accident which occurred in Nova Scotia in the course of his employment. In receiving those benefits, the plaintiff entered into a Third Party Settlement Agreement with the subrogating authority by virtue of which he became obligated to repay the workers' compensation benefits out of any damages recovered from the tortfeasor. The question put to the court for a preliminary determination of law under Civil Procedure Rule 25 was whether the plaintiff's claim for damages in the present tort action is subject to

reduction by reason of his receipt of benefits under the *Workers' Compensation Act* (Pennsylvania) and if so, what the amount of the reduction ought to be.

Issues: Deductibility in the tort action of the benefits received under the *Workers' Compensation Act* (Pennsylvania).

Result: The workers' compensation benefits in issue should not be deducted from the plaintiff's claim in the present tort action. Even though there was no enforceable right of subrogation in Nova Scotia, either at common law or by foreign statute, the Third Party Settlement Agreement operated as an adjustment mechanism which would prevent double recovery, and should be treated in the same vein as the subrogation exception to the general rule against double recovery.

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