

SUPREME COURT OF NOVA SCOTIA

Citation: Johansson v. General Motors of Canada Ltd., 2011 NSSC 352

Date: 20110511

Docket: Hfx No. 230488

Registry: Halifax

Between:

Maria Johansson, Steven Johansson and Jody Johansson

Plaintiffs

v.

General Motors of Canada Limited

Defendant

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Judge: The Honourable Justice John D. Murphy

Heard: April 26, 27, 28; May 2, 3, 4, 5; 9, 2011, in Halifax, Nova Scotia

Written Decision: September 23, 2011
{*Oral decision rendered May 11, 2011*}

Subject: Nonsuit motion, negligence claim, civil jury trial

Summary: Plaintiff driver, who was seriously injured, brought action only in negligence, alleging single-vehicle accident was caused by a defective part in an automobile provided by defendant. The vehicle became subject to a recall notice issued several years after the accident, when it had been written off and was not available to test for any potential defect. At the conclusion of the plaintiff's case, defendant brought a nonsuit motion pursuant to Rule 51.06 (1) seeking dismissal of the claim on the ground there was no evidence on which a properly-instructed jury could find that the claim should succeed.

Issue: Whether the plaintiff established a *prima facie* case that the vehicle was defective, that the defect caused the accident, and that defendant's negligence was responsible for the defect.

Result: Defendant's nonsuit motion succeeds and the plaintiff's action is dismissed.

The plaintiff established a *prima facie* case that the vehicle was defective, that the defect caused the accident, and that her injuries resulted from the accident. However, she provided no evidence respecting the appropriate standard of care or

the defendant's alleged breach of that standard. As the *res ipsa loquitur* doctrine has expired and Canadian courts do not impose strict liability upon manufacturers, the plaintiff in a products liability case must establish a breach of the relevant standard of care. Evidence of a defect and/or a product recall for safety reasons is not sufficient to establish the applicable standard of care or breach of that standard. As the plaintiff provided no evidence concerning the actions or omissions of the defendant, nor any evidence to establish the appropriate standard of care or a breach of that standard, she did not establish a *prima facie* case -- the plaintiff's evidence did not meet the test that the jury, properly instructed on the law, could on the facts adduced find in her favor.

The reasons include comment concerning: (1) piercing the corporate veil when the defendant assembled and distributed a product manufactured by a related corporate manufacturer which used a defective part supplied by another company related to the manufacturer; (2) the application of the *Motor Vehicle Safety Act* to an assembler/distributor; (3) possibility of action in contract.

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