

SUPREME COURT OF NOVA SCOTIA

Citation: *Brocke Estate v. Crowell*, 2014 NSSC 269

Date: 2014-07-14

Docket: Ken No. 310335

Registry: Kentville

Between:

Anna Gardner, Administrator of the Estate of
John Gary Joseph Brocke

Plaintiff

v.

Arthur Crowell and Gaye Crowell

Defendants

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Judge: The Honourable Justice Pierre L. Muise, J

Heard: October 16, 2013, in Windsor, Nova Scotia

**Supplemental
Written
Submissions:** October 31, 2013

Summary: This is the Court's decision on prejudgment interest, costs and disbursements following a jury trial on damages for wrongful death arising from a motor vehicle accident.

Issues:

1. What is the proper amount of pre-judgment interest?
2. What, if any, Tariff amount is appropriate or an appropriate

starting point?

3. What, if any, amount should be deducted for the manner in which the Plaintiff conducted her case?

4. What, if any, amount should be set-off against the costs award?

5. Should HST be added to the costs award?

6. What, if any, disbursements should be awarded?

Result:

1. Inflation adjustment of the award was considered and the pre-judgment interest rate adjusted accordingly. The period was adjusted to account for the fact that the past loss of support and valuable services did not all occur as of the date of the accident. Pre-judgment interest of \$6,805.15 was awarded.

2. Tariff A, Scale 3, using an amount involved of \$798,319.39, being the amount awarded less statutory deductions, with the addition of \$35,000 for the 17.5 days of trial, resulting in \$116,000, was used as the starting point and represented a substantial contribution.

3. \$9,500 was deducted for the 4.5 to 5 days of trial time wasted by or because of the Plaintiff. The costs award was further reduced by 45% to account for the Plaintiff's: unnecessary motions or being the cause of otherwise unnecessary motions; unnecessary or problematic witnesses; wasted trial time; and, improper actions or tactics; as well as the prejudice and unnecessary expenses they caused to the Defendants.

4. \$7,000 in costs of the largely successful pre-trial motion by the Defendants to exclude expert evidence was set off against

the costs award, resulting in net costs to be paid to the Plaintiff of \$40,925.

5. No HST was to be added to the costs award.

6. The court disallowed: travel expenses for unnecessary witness, as well as for the Plaintiff and the children for which she was claiming; portions of expert fees found to be not reasonably necessary; amounts not properly supported; and, fax, postage and law search expenses. Other expenses, such as photocopying expenses, were reduced. A total of \$77,997.14 in disbursements was awarded, inclusive of HST.

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