

Date: 20020910  
Docket: CA 175975

**NOVA SCOTIA COURT OF APPEAL**  
[Cite as: **Hillier v. Mann, 2002 NSCA 109**]

**Glube, C.J.N.S.; Chipman and Hamilton, J.J.A.**

**BETWEEN:**

GARY HILLIER  
Appellant

- and -

ELEANOR B. MANN  
Respondent

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REASONS FOR JUDGMENT

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Counsel: Hugh R. McLeod for the appellant  
C. Patricia Mitchell and Ian C. Pickard for the respondent

Appeal Heard: September 10, 2002

Judgment Delivered: September 10, 2002

THE COURT: Appeal dismissed per oral reasons for judgment of Hamilton,  
J.A.; Glube, C.J.N.S. and Chipman, J.A. concurring.

**HAMILTON, J.A.:** (Orally)

[1] This appeal arises from a motor vehicle accident that occurred on October 2, 1997. The respondent admitted liability. By agreement the jury determined the amount of general damages, loss of past income and loss of future income payable to the appellant by the respondent, and the judge who presided over the trial, Justice John M. Davison, determined the amount of past special damages and how Section B benefits should be handled.

[2] The jury awarded the appellant \$30,000 for general damages, \$59,873 for past loss of income from the date of the accident to trial, and \$28,126 for future loss of income.

[3] The issues raised by the appellant on this appeal can generally be stated as follows:

- (1) The appellant alleges that the trial judge failed to instruct the jury in a fair and impartial manner. This included emphasizing the Respondent's position repeatedly, while minimizing the appellant's arguments. The appellant also alleges that the trial judge created an air of animosity and hostility against the appellant by making disparaging comments to appellant's counsel and raising objections that were not raised by respondent's counsel;
- (2) The jury's award was inordinately low;
- (3) The trial judge should have used his discretion and determined that the respondent should pay an amount to the appellant for future care costs; and
- (4) The trial judge erred in awarding party and party costs to the respondent from August 30, 2001, the date of the formal offer, to the end of the trial.

[4] At the hearing appellant's counsel indicated his main argument relates to the first two issues. He argued that the trial judge's personal view of the evidence influenced the facts he included in his charge to the jury. He argued that the evidence referred to in the charge favoured the respondent over the appellant, and that this caused the jury to make an inordinately low award of damages.

[5] The court is satisfied the trial judge instructed the jury in a fair and impartial manner.

[6] Considering the evidence and the damages awarded by the jury, the court is not satisfied the jury's award was inordinately low.

[7] Having considered the applicable standard of review, reviewed the evidence, including the significant medical evidence, and reviewed the law, we are satisfied that the trial judge did not err on any of the grounds of appeal raised by the appellant. Accordingly we dismiss the appeal and order the appellant to pay costs to the respondent in the amount of \$4,000 plus disbursements relating to the appeal.

Hamilton, J.A.

Concurred in:

Glube, C.J.N.S.  
Chipman, J.A.