

SUPREME COURT OF NOVA SCOTIA

Citation: McKeough v. Miller, 2009 NSSC 394

Date: 20091217

Docket: Pic. No. 261422

Registry: Pictou

Between:

Francis Bernard McKeough

Plaintiff

-and-

Doreen Miller

Defendant

-and-

Daniel Bowie

Third Party

JUDGE: The Honourable Justice N.M. Scaravelli

HEARD: October 23, 26, 27, 28, 29, 2009 in Pictou, Nova Scotia

SUBJECT: Motor Vehicle/Pedestrian Accident

SUMMARY: Accident scene involving six motor vehicles occurred in whiteout conditions. The plaintiff was operator of the fifth vehicle into the whiteout and managed to stop his vehicle without incident. He proceeded to walk back along the edge of the road in the lane of oncoming traffic to warn approaching vehicles. As the plaintiff was exiting the whiteout he was struck by the defendant's vehicle.

ISSUE: (1) Liability and contributory negligence;
(2) General Damages;
(3) Past and Future Loss of Income, Loss of Valuable Services
Whether CPP Disability Benefits are deductible from a loss of income claim as a result of amendments to the **Insurance Act** Nova Scotia Section 113A?

RESULT: Defendant materially responsible for the plaintiff's injury. Contributory negligence on the part of the plaintiff. Apportionment of liability 80 percent defendant, 20 percent plaintiff. No third party liability as third party's action not connected to injury suffered by the plaintiff. General damage award \$85,000.00. Plaintiff suffered permanent partial disability. Operations on both legs. External rotation deformity in right foot causing plaintiff to walk with limp using a cane. Plaintiff unable to squat, kneel, climb. Unable to sit or walk for extended periods of time. Post-traumatic osteoarthritis in left knee eventually requiring knee replacement. Award for past and future loss of income and loss of valuable services. CPP disability benefits are deductible from claim for past and future loss of income under Section 113A of the ***Nova Scotia Insurance Act.***

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 44 pages.