IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Simpson Estate v. Cox, 2006 NSSC 84

Date: 20060317
Docket: SN 202431
Registry: Sydney

Between:

Walter Simpson, representative of the
Estate of Sayde Simpson

Plaintiff

v.

Carolyn Cox

Defendant

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Judge:	The Honourable Justice Frank Edwards
Heard:	February 20, 21, and March 10, 2006 in Sydney, Nova Scotia; and March 3, 2006, in Halifax, Nova Scotia
Subject:	Car pedestrian fatality, Fatal Injuries Act, R.S., c.163 s.163 s.5(2)(d); Motor Vehicle Act, R.S., c.293, ss. 125 and 248.
Facts:	Eighty-one year old pedestrian crossing two lane residential street at night; not in a crosswalk; Defendant driver travelling between 40 - 50 k/ph in a 50 k/ph zone. Claim made by 46 year old son and 6 year old granddaughter.
Issue:	Liability for collision; whether the Defendant has rebutted presumption created by s.248 of the *Motor Vehicle Act*; apportionment of liability; assessment of damages.

Result: Presumption rebutted; pedestrian 60 percent responsible for accident; Defendant driver 40 percent responsible. Damages: deceased's son entitled to $10,000.00 for loss of companionship; granddaughter entitled to $10,000.00 for loss of care, guidance and companionship – awards reduced in accord with apportionment of liability.

Cases: *Battiste v. Phelan and Briand* (1985), 66 N.S.R. (2d) 99 (S.C.A.D.)

Arab v. Demestihas [1989] 93 N.S.R. (2d)

Keating v Dorey, [1987] N.S.J. No. 327 (NSSC)

MacAskill v. Martell [1984] 66 N.S.R. (2d) 1 (N.S.S.C.)

Baines v. Chabot, [1984] B.C.J. No. 310 (B.C.S.C.)

Petis v Hamilton, [1971] O.J. No. 758 (Ont. S.C.)

Arab v Demestihas [1989] N.S.J. No. 457 (N.S.S.C.)

Downey v Jamine (1985) 68 NSR (2d) 275 (N.S.S.C.)

Guymer v. N.S. (Registrar of Motor vehicles) [1984] 61 N.S.R. (2d) 325 (N.S.S.C.)

Murray Estate et al v. Advocate Contracting Ltd. et al, (2001), 195 N.S.R. (2d) 313 (N.S.S.C.)

Riggs v. Toronto Hospital [1993] O.J. No. 1884 (O.C.J.)

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