
CANADA / JUDGMENT

Mussens Ltd. v. Verhaaf

[1973] SCR 621

COURT

Supreme Court of Canada

DECIDED

1 May 1972

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Mussens Ltd. v. Verhaaf

Collection

Supreme Court Judgments

Date

1972-05-01

Report

[1973] SCR 621

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Judson, Wilfred; Spence, Wishart Flett;
Pigeon, Louis-Philippe

On appeal from

Quebec

Subjects

Motor vehicles

Decision Content

Supreme Court of Canada

Mussens Ltd. v. Verhaaf, [1973] S.C.R. 621

Date: 1972-05-01

Mussens Limited (Defendant) Appellant;

and

Gerrit Pieter Carolus Verhaaf (Plaintiff) Respondent.

and

Mussens Limited (Defendant) Appellant;

and

Dame Marie Imelda Côté et al. (Plaintiffs) Respondents.

1972: March 3; 1972: May 1.

Present: Fauteux C.J. and Abbott, Judson, Spence and Pigeon JJ.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Motor vehicle—Highway accident—Death—Employee injured—Motor grader leased—Negligence on part of the driver—Owner's liability—Workmen's Compensation Act, R.S.Q. 1964, c. 159—Highway Victims Indemnity Act, R.S.Q. 1964, c. 232—Future medical expenses—Temporary incapacity—Award for funeral expenses.

The respondent's husband and his minor son D. were passengers on a motor grader in good condition, driven by O., which the appellant who was the registered owner had leased to their employer. The latter was conducting a business subject to the provisions of the Workmen's Compensation Act. As a result of the accident which was caused solely by the negligence of the driver O., the respondent's husband was killed and his son D. was injured. Two actions taken against the appellant under The Highway Victims Indemnity Act, one by the widow and the respondent V. in his quality of tutor to the minor children, and the other by the respondent as tutor to the son D., were allowed and affirmed by the Court of Appeal. The appellant contends that the respondents, who are entitled to the benefits of the Workmen's Compensation Act, are not entitled to claim damages under s. 3 of The Highway Victims Indemnity Act. Hence the appeals to this Court. The respondent cross-appealed as to the damages which have been reduced by the Court of Appeal. Held: Both appeals and both cross-appeals should be dismissed.

The provisions of s. 3 of the Workmen's Compensation Act impose a statutory liability upon the owner of a motor vehicle for damages caused by the vehicle or its use, unless he can bring himself within one of the specified exceptions. There is no doubt about the responsibility of the appellant since the accident was caused by the fault of the driver of the vehicle, even though the former had no control over the latter. The Highway Victims Indemnity Act as well as the Workmen's Compensation Act provides for responsibility without fault and the fact that the application of the latter may result in inequities is not a matter for the Courts but a matter for consideration by the Legislature.

With respect to the cross-appeals, the trial judge assessed damages for future medical expenses for improbable consequences of the accident. Besides, the amounts allowed for pain and suffering and for loss of enjoyment of life are excessive in view of the amount allowed for temporary incapacity of a school boy who would have not earned much at his summer job and

was afterwards able to successfully complete his school year in spite of the accident. The Court of Appeal was fully justified in saying that the incapacity was really nominal. Finally, the widow is not entitled to the award for funeral expenses in view of the sufficient assets left by the deceased to pay for those expenses.

APPEALS AND CROSS-APPEALS from judgments of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming the judgments of the Superior Court. Appeals and cross-appeals dismissed.

Louis-Philippe de Grandpré, Q.C., for the defendant, appellant.

D. Angus and P. O'Brien, for the plaintiffs, respondents.

The judgment of the Court was delivered by

ABBOTT J.—This litigation arose out of an accident which occurred August 19, 1965, on one of the access roads leading to the Eastern Townships Autoroute. Shortly stated the facts, which are not in dispute, are these. The late Joseph Emile Côté and his minor son, Damien Côté, were passengers on a motor grader driven by one Jacques Ouellette, who was then in the performance of the work for which he was employed by Desourdy Construction Limited. The appellant Mussels Limited was the registered owner of the grader which it had leased to Desourdy in May 1965.

It is admitted that the grader was in good condition and that the accident was caused solely by the negligence of the driver Ouellette. Joseph Emile Côté, his son Damien and Ouellette were all employees of Desourdy which was conducting a business subject to the provisions of the Workmen's Compensation Act, R.S.Q. 1964, c. 159.

As a result of the accident, Joseph Emile Côté was killed and his son Damien Côté was injured.

Two actions against Mussels Limited—which are the subject of the present appeals—were taken under s. 3 of The Highway Victims Indemnity Act, R.S.Q. 1964, c. 232, one by the widow and by the respondent Verhaaf in his quality of tutor to four minor children of the deceased and the other by Verhaaf as tutor to the said Damien Côté. In the action taken on behalf of Damien Côté, Mussels was condemned to pay \$10,508.50. In the action of the widow personally and on behalf of her four minor children, it was condemned to pay amounts totalling \$45,332. On appeal[2], by a majority judgment, the liability of Mussels in both actions was affirmed, but the amounts awarded as damages were reduced to \$6,358 in the case of Damien Côté, and to \$25,000 in the case of the widow. Turgeon J. dissenting would have dismissed both actions.

Mussels appealed to this Court on the question of its liability and the respondents cross-appealed as to the damages. In the Courts below and in this Court, Mussels took the position that an injured party who is entitled to the benefits of the Workmen's Compensation Act is not entitled to claim damages under s. 3 of the Highway Victims Indemnity Act which reads as follows:

3. The owner of an automobile is responsible for all damage caused by such automobile or the use thereof, unless he proves
 - (a) that the damage is not imputable to any fault on his part or on the part of a person in the automobile or of the driver thereof, or
 - (b) that at the time of the accident the automobile was being driven by a third person who obtained possession thereof by theft, or
 - (c) that at the time of an accident that occurred elsewhere than on a public highway the automobile was in possession of a third party for storage, repair or transportation.

The driver of an automobile is responsible in like manner unless he proves that the damage is not imputable to any fault on his part.

Damage caused, when the automobile is not in motion on a public highway, by apparatus incorporated therein that can be operated independently or by the use of such apparatus is not contemplated by this action.

Mussens also contended that it was not the “owner” of the grader within the definition of that term contained in s. 2(10) of the Indemnity Act. This contention was rejected in the Courts below and counsel for Mussens abandoned it at the opening of his argument before this Court.

The provisions of s. 3 are clear and explicit. It imposes a statutory liability upon the owner of a motor vehicle for damages caused by the vehicle or its use, unless he can bring himself within one of the specified exceptions.

In holding the appellants liable under the said section 3, Hyde J., speaking for himself and Montgomery J., said:

The two actions were taken under Section 3 of the Highway Victims Indemnity Act (R.S.Q. 1964—ch. 232) whereby “the owner of an automobile”, which includes the vehicle in question, “is responsible for all damages caused by such automobile or by the use thereof” unless he brings himself under certain exceptions, sub-paragraph (a) of which is the one applicable in this case and requires the owner to prove “(a) that the damage is not imputable to any fault on his part or on the part of a person in the automobile or of the driver thereof”.

In view of the admission that the accident was caused by the fault of the driver of the vehicle, if we consider only that statute there is no doubt of the responsibility of Mussens Limited.

It argues, however, that because of the provisions of The Workmen’s Compensation Act it has no recursory action against the driver or his employer and that to allow an action against it is establishing liability without fault and enabling the employee or his representatives to do indirectly what they cannot do directly, that is, base their claim on the fault of a co-employee.

With respect I cannot accept this argument. The Workmen's Compensation Act provides for responsibility without fault and so do the provisions of Section 3 of the Highway Victims Indemnity Act in certain cases.

It is perfectly true that Mussens Limited as owner had no control over the driver of the grader who was at fault but likewise it would have no control over a passenger in a car being driven by a person to whom it loaned or leased it and who was the cause of an accident involving it.

It is an established maxim that a law which speaks clearly, as does Section 3 of The Highway Victims Indemnity Act, requires no interpretation. The fact that the result of its application according to its clear terms may result in inequities is not a matter in my view for the Courts but a matter for consideration by the Legislature.

I agree with those statements and I adopt them.

I turn now to the cross-appeals. The question on each of them is whether the Court of Appeal correctly held that the trial judge erred in principle when assessing the damages or whether that Court erred in substituting its opinion for that of the trial judge. Counsel for Mussens submitted no new argument on the cross-appeals in his factum and relied on the reasons of Hyde J.

In the action instituted by the tutor of Damien Côté, the first item disallowed was \$150 for future medical expenses. There was clearly an error in principle on this item because the trial judge said:

there is always some possibility of such expenses consequent to an accident such as suffered by the minor Damien Côté. But, in the present case, it would appear that the change is remote, if not completely inconsiderable.

On this finding, nothing could be awarded because, in order to support a condemnation, there must be a probability. Here, what the trial judge found was that there was really no probability but he, nevertheless, allowed a sum because there is always some possibility, however remote. On that basis, damages would be assessed for improbable consequences.

The next two items dealt with by the Court of Appeal are \$1,500 for pain and suffering, and \$1,500 for loss of enjoyment of life. These were held to be excessive and reduced to \$500 under each head. In a case in which the trial judge has already allowed \$740 for temporary incapacity to a school boy who would have earned but \$140 at his summer job and was afterwards able to complete his school year successfully in spite of the accident, I cannot say that the Court of Appeal erred in considering that such an award was so high as to constitute a wholly erroneous estimate. This is not a case in which it can be said that the Court of Appeal had no valid reasons for substituting its opinion for that of the trial judge. With respect to the 3% partial permanent incapacity, the Court of Appeal reduced the award from \$5,000 to \$3,000. It said that the incapacity was really nominal. In my view, this is justified because the trial judge appears to have based his estimate on what the victim of the accident might expect to earn 38 years later.

Concerning the widow's action, the Court of Appeal was fully justified in denying the award of \$882 for funeral expenses on the basis that the proper inference from the facts found by the trial judge was that the deceased did leave assets sufficient to pay for those expenses. Respecting the award for loss of support, Hyde J. pointed out that the trial judge had misunderstood the meaning of a guaranteed ten-year annuity. There was, therefore, an error in principle which justified the intervention of the Court of Appeal.

In the circumstances of this case, the appellant Mussens incurred no additional expenses on the cross-appeals and I think they could well be dismissed without costs.

I would dismiss both appeals with costs and both cross-appeals without costs.

Appeals dismissed with costs. Cross-appeals dismissed without costs.

Solicitors for the defendant, appellant: Tansey, de Grandpré, Bergeron, Lavery, O'Donnell & Clark, Montreal.

Solicitors for the plaintiffs, respondents: Stikeman, Elliott, Tamaki, Mercier & Robb, Montreal.

[1] [1971] Que. A.C. 27.

[2] [1971] Que. A.C. 27.

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Prepared on 27 October 2026 · Esheria