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\*April 29  
April 29FREDERICK JAMES BAKER (*Plaintiff*) . . APPELLANT;

AND

TERRY AUSTIN (*Defendant*) . . . . . RESPONDENT.ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA*Negligence—Collision of automobile and motorcycle at intersection—Right of way—Apportionment of degrees of blame by jury—Damages—Motor-vehicle Act, R.S.B.C. 1960, c. 253, s. 164.*

An action arising out of a collision between the defendant's automobile and the plaintiff's motorcycle in an area constituting an intersection within the meaning of the *Motor-vehicle Act*, R.S.B.C. 1960, c. 253, was tried by a judge and jury. The principal issue was which party had the right of way under s. 164 of the Act. The defendant was travelling in a southerly direction when, after signalling a left turn with his turn signal, he turned left across the centre line into the path of the plaintiff, who was half a block from the intersection, proceeding towards the north. When the plaintiff realized that the defendant was not going to stop he swerved to his right in an attempt to avoid the defendant's car. However, the two vehicles collided in the curb lane northbound and as a result of the collision the plaintiff was injured.

In answer to questions the jury found both parties negligent, the defendant in the degree of 75 per cent and the plaintiff in the degree of 25 per cent. The defendant was found to have been negligent in that he did not exercise due care and attention and the plaintiff in that he assumed he had the right of way and in so doing failed to take the proper action at an early stage. The plaintiff's general damages were assessed at \$35,000 and the special damages were agreed in the amount of \$1,209.

As a result of the jury's verdict judgment was entered for 75 per cent of the general damages awarded and the agreed special damages. On appeal, the Court of Appeal allowed the defendant's appeal and dismissed the action. An appeal by the plaintiff was then brought to this Court.

*Held:* The appeal should be allowed and the judgment at trial restored.

APPEAL from a judgment of the Court of Appeal for British Columbia, allowing an appeal from a judgment of Verchere J. sitting with a jury. Appeal allowed and judgment at trial restored.

*James L. Barrett*, for the plaintiff, appellant.

*A. W. Mercer* and *J. L. Woodley*, for the defendant, respondent.

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\* PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Hall JJ.

At the conclusion of the argument of counsel for the respondent, the Court retired and on returning the following judgment was delivered:

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THE CHIEF JUSTICE (*orally for the Court*):—Mr. Barrett we do not find it necessary to hear you in reply.

We are all of opinion that there was ample evidence to support the findings of the jury including their apportionment of the degrees of blame. The answers of the jury must be read as a whole and in the light of the charge of the learned trial judge. We are unable to agree with the view of the Court of Appeal that it was implicit in the answers of the jury that they found that the defendant had the right of way. We find no error in the charge to the jury either on the question of liability or as to the assessment of damages. We cannot say that the amount at which the jury assessed the damages was inordinately high.

The appeal is allowed with costs in this Court and in the Court of Appeal, the judgment of the Court of Appeal is set aside and that at the trial is restored.

*Appeal allowed with costs.*

*Solicitors for the plaintiff, appellant: Mussallem, Lakes & Co., Vancouver.*

*Solicitors for the defendant, respondent: Paine, Edmonds, Mercer & Co., Vancouver.*

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