
MARY MURDOCK (PLAINTIFF)..... APPELLANT;

1944

AND

*Feb. 4.

JAMES O'SULLIVAN AND AGNES }
O'SULLIVAN (DEFENDANTS) } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA

Motor vehicles—Negligence—Action by gratuitous passenger in motor car against owner and driver thereof for damages for personal injuries sustained in accident—Whether “gross negligence” by driver contributing to injury (s. 74B of Motor Vehicle Act, R.S.B.C., 1936, c. 195, as amended by Statutes of 1938, c. 42, s. 3, and of 1941-42, c. 25, s. 4).

APPEAL by the plaintiff from the judgment of the Court of Appeal for British Columbia (2) which reversed the judgment of Farris C.J.S.C. for the plaintiff. The action was for damages against the defendant James O'Sullivan as the owner and the defendant Agnes O'Sul-

*PRESENT:—Rinfret C.J. and Davis, Kerwin, Hudson and Rand JJ.

(1) (1877) 3 App. Cas. 279, at 284.

(2) [1943] 3 W.W.R. 162; [1943] 3 D.L.R. 773.

1944
MURDOCK
v.
O'SULLIVAN.
Rinfret J.

livan as the driver of a motor car, for personal injuries sustained by the plaintiff in an accident which occurred while the plaintiff was a gratuitous passenger in the motor car. The plaintiff alleged that the accident was caused by gross negligence of the defendant driver. For an action to lie against the defendants by the plaintiff, it was required, under s. 74B of the *Motor Vehicle Act* of British Columbia (R.S.B.C. 1936, c. 195, as amended by the statutes of 1938, c. 42, s. 3, and of 1941-42, c. 25, s. 4), that there had been "gross negligence" on the part of the driver which contributed to the injury. The Court of Appeal held that no case of gross negligence had been made out. (As the amount in controversy in the appeal to this Court did not exceed the sum of \$2,000, special leave to appeal was granted by the Court of Appeal for British Columbia.)

J. W. deB. Farris K.C. for the appellant.

C. H. Locke K.C. for the respondents.

At the conclusion of the argument of counsel for the appellant, and without calling on counsel for the respondents, judgment was given orally by the Chief Justice for the Court, dismissing the appeal with costs and confirming the Court of Appeal on the ground that, on the record, no gross negligence had been established.

Appeal dismissed with costs.

Solicitors for the appellant: *Crux & Kennedy.*

Solicitor for the respondents: *W. S. Lane.*
