
1953
 *Jun. 18, 19
 *Nov. 25

 MONTREAL TRAMWAYS COMPANY }
 (Defendant) } APPELLANT;

 AND
 GEORGE CAMPBELL DEEKS (Plain- }
 tiff) } RESPONDENT;

 AND
 JEAN McGUIRE MIS-EN-CAUSE.

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

*Automobile—Collision at intersection between street car and ambulance—
 Liability—Claim by husband for loss of wife's services and companion-
 ship.*

This was one of several appeals from decisions of the Court of Queen's Bench (Appeal Side) of the Province of Quebec (1) in actions arising out of a collision between a street car of Montreal Tramways Company and an ambulance conveying Mr. and Mrs. Deeks to a hospital. The Supreme Court restored the judgments of the trial judge by which responsibility for the collision was placed entirely

*PRESENT: Kerwin, Taschereau, Rand, Cartwright and Fauteux JJ.

(1) Q.R. [1951] K.B. 557.

on the Tramway Company by reason of the negligence of its motorman. However, the judgment of the Queen's Bench was affirmed as to the amount of damages to which the husband was entitled for loss of his wife's services and companionship as a result of the injuries sustained by her. The judgment of the Court was delivered by Kerwin J., who with reference to that point said:—

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A question arises as to the amount of damages to which Deeks is entitled. It is emphasized that we deal with this point as it was presented in argument. The trial judge fixed the damages at \$7,805.81, of which amount the Insurance Company was subrogated to his rights to the extent of \$1,000 and judgment was therefore given at the trial for \$6,805.81. Deeks admitted that \$360 should be deducted and on April 15, 1951, filed a partial desistment for that amount. In addition to reducing the trial judgment by that amount, the Court of Queen's Bench also deducted \$214. This was on the ground that "the (Deeks) children had been in the habit of going to summer camps and the disability of Mrs. Deeks in no way increased the expenses in that connection." With that we agree.

A further deduction by the Court of Queen's Bench of \$1,000 arose in this way. Deeks claimed damages for the loss of services and companionship of his wife during her period of total disability and also for loss of her services and companionship resulting from her permanent partial incapacity. The trial judge allowed \$3,000 in all to cover these claims. The Court of Queen's Bench reduced this to \$2,000 on the ground that there was no evidence in the record that a wife's obligations in Ontario extended to helping her husband in his business dealings. The evidence on the subject of the rights of a husband for the loss of consortium and servitium was given by a barrister and solicitor of the Province of Ontario, the domicile of Mr. and Mrs. Deeks. Nothing was asked that witness about this particular feature although Deeks claimed that before the accident his wife had assisted him by receiving his clients at their home and by joining him in outside entertainment, and that as a result of the accident she was unable to take her accustomed part in these activities.

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In *Best v. Samuel Fox and Co. Ltd.* [1952] A.C. 716, the House of Lords decided that a married woman whose husband has been injured by a negligent act or omission has no right of action against the negligent person in respect of loss or impairment of consortium consequential on the injury. However, considerable discussion occurred in the arguments of counsel as to the basis of a husband's claim in respect of the loss or impairment of the consortium and servitium of his wife where she had been injured by the negligence of a third party, and reference is made to the subject in some of the judgments. It is unnecessary to consider the basis of such an action because we agree with those who expressed the view that such an action should not be enlarged. Whatever be its foundation and justification, we agree with Mr. Justice MacDougal that there is nothing in the law to justify any allowance by way of damages for such a claim as is advanced by Deeks to cover the \$1,000.

APPEALS from the judgments of the Court of Queen's Bench, appeal side, province of Quebec (1) in several actions arising out of a collision in Montreal between a street car and an ambulance.

J. Letourneau Q.C. and G. Raymond for Montreal Tramways Co.

R. Walker Q.C., J. Bumbray Q.C. and J. P. Cardinal for McGuire.

J. P. Charbonneau Q.C., J. B. O'Conner and J. W. Hemens for Mr. and Mrs. Deeks.

F. Mercier for Yorkshire Insurance Co.