

1945
 *May 2, 3
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CANADIAN PACIFIC EXPRESS COMPANY AND NOVA SCOTIA LIGHT AND POWER COMPANY LIMITED (DEFENDANTS)	}	APPELLANTS;
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AND

JAMES A. LEVY AND LILLIAN LEVY (PLAINTIFFS)	}	RESPONDENTS.
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ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA
IN BANCO

Damages—Personal injury—Amount awarded by jury held to be so large that a jury appreciating the evidence could not reasonably have awarded it—New assessment ordered.

APPEALS by the defendants from the judgment of the Supreme Court of Nova Scotia *in banco* (1) dismissing (Graham J. dissenting) their appeals from the judgment of Smiley J., given at trial on the findings of a jury in answer to questions put to them. The action was for damages by reason of personal injury to the plaintiff Lillian Levy caused by a collision between a tram car of the defendant Nova Scotia Light and Power Co. Ltd., in which she was a passenger, and a truck of the defendant Canadian Pacific Express Company. By the accident a leg of the said plaintiff was practically severed near the foot. The jury found that there was negligence on the part of each defendant which caused or contributed to the accident, and awarded damages, to the plaintiff James A. Levy (husband of the said plaintiff Lillian Levy) special damages \$3,270.35 and general damages \$2,500, and to the said Lillian Levy general damages \$37,500; on which verdict the trial Judge made an order for judgment against both defendants for \$5,770.36 in favour of the plaintiff James A. Levy and for \$37,500 in favour of the plaintiff Lillian Levy. In the Supreme Court of Nova Scotia *in banco*, which court dismissed the defendants' appeals, Graham J. dissented, holding that in the circumstances the damages awarded were so excessive that the jury's findings as to the amounts should be

*PRESENT:—Kerwin, Hudson, Taschereau, Rand and Estey JJ.

(1) [1945] 1 D.L.R. 322.

set aside "because the jury must have taken into account matters which they ought not to have considered and measures of damages which they applied erroneously", and that the case should be sent back to be heard again.

The defendants' appeals to this Court were confined to the question of the quantum of damages.

H. P. MacKeen K.C. for the appellant Canadian Pacific Express Company.

J. E. Rutledge K.C. for the appellant Nova Scotia Light and Power Co. Ltd.

Russell McInnes K.C. and *N. Green* for the respondents.

The judgment of the Court was delivered by

KERWIN J.—We are all of opinion that there must be a new assessment of the general damages of the plaintiff Lillian Levy. The amount awarded under this head, \$37,500, is so large that a jury appreciating the evidence could not reasonably have awarded that sum. Whatever the evidence, if any, in the new assessment may be as to another operation, any expenses in connection therewith have been included in the award of \$2,500 to the plaintiff James A. Levy, so that, in any event, the plaintiff Lillian Levy would be entitled in that connection only to an allowance for pain and suffering.

The appellants are entitled to their costs in this Court. The respondents are entitled to their costs up to and including the trial, and two-thirds of the costs of the appeal to the Supreme Court of Nova Scotia *in banco*. The costs of the new assessment may be dealt with by the judge presiding thereat.

Appeals allowed with costs, and new assessment of the general damages of the plaintiff Lillian Levy ordered.

Solicitor for the appellant Canadian Pacific Express Company: *C. B. Smith*.

Solicitor for the appellant Nova Scotia Light and Power Co. Ltd.: *J. E. Rutledge*.

Solicitor for the respondents: *Russell McInnes*.

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