1953

May 13

BETWEEN:

ADOLPHE GUILLET .....SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

Crown—Petition of Right—Negligence—Exchequer Court Act, R.S.C. 1927, c. 34, s. 19 (c)——Amount received by suppliant from insurance company not deductible from amount of award for damages.

The suppliant claimed damages for loss through a collision between his automobile and an army truck due to the negligence of the driver of the truck while acting within the scope of his employment. It was contended for the respondent that the amount which the suppliant had received from his insurance company which had insured his automobile against loss or damage through collision should be deducted from any award that the Court might make in his favour.

Held: That where a suppliant has suffered loss through a collision between his automobile and a Crown vehicle due to the negligence of a servant of the Crown while acting within the scope of his employment the amount which he has received from an insurance company which had insured his automobile against loss or damage through collision should not be deducted from the amount of his award for damages. *Hebert* v. *Rose* (1935) 58 B.R. 459 *followed.*

PETITION OF RIGHT for damages for loss or injury resulting from the negligence of a servant of the Crown while acting within the scope of his employment.

The action was tried before the President of the Court at Quebec.

A. Gagnon for suppliant.

J. Dumoulin Q.C. for respondent.

The facts and questions and law raised are stated in the reasons for judgment.

THE PRESIDENT on the conclusion of the trial (May 13, 1953) delivered the following judgment:

As in most cases of collision there is contradictory evidence. In this case the important fact to be determined is the position of the suppliant's car immediately before the collision and the speed at which it was going. The evidence for the suppliant shows that his car was proceeding as near to the right hand side of the travelled portion of the bridge as was reasonably safe. I am satisfied that it had come practically to a stop or, at any rate, that it was

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travelling at a very low rate of speed. I accept the evidence for the suppliant on this point and reject the contradictory evidence of the respondent's witnesses. In particular I do not believe the evidence of the witness Picard.

I am also satisfied that the military truck did not keep as close to its side of the travelled portion of the road as it could and should have done with the result that its driver did not give the suppliant's car sufficient room to pass in safety.

In my opinion, there is no evidence to warrant a finding of "faute commune". The collision was solely due to the failure of the driver of the military truck to keep as close to his right as he should have done. This failure was negligence on his part within the meaning of section 19 (*c*) of the Exchequer Court Act under which this claim is made.

I am unable to allow the item of $98.20 but, otherwise, I find that the amount of the suppliant's claim is sufficiently proved.

The evidence shows that the suppliant received the sum of $314 from his insurance company and counsel for the respondent contended that this amount should be deducted from any award that the Court might make in favour of the suppliant. The decision of the Quebec Court of King's Bench in *Hebert* v. *Rose* (1) is against this contention. There the head note reads as follows:

> Where a certain sum is found to be due for damages caused to an automobile through a collision, an amount received by the plaintiff from an insurance company which had insured his automobile against loss or damage through collision, cannot be deducted from the award.

The facts in that case were that the trial judge assessed the damages suffered by the plaintiff at $604.35 but deducted from this amount the sum of $400 which he had received from an insurance company which had insured his automobile against loss or damage through collision and awarded him only the sum of $204.35. On an appeal to the Court of King's Bench this deduction of $400 was disallowed and judgment given for the full amount of the damages.

(1) (1935) 58 B.R. 459

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I am unable to distinguish this case from that of *Hebert* v. *Rose*. There is thus no reason for deducting from the amount of the suppliant's claim the amount which he received from his insurance company.

After deducting the sum of $98.20 from the amount of the suppliant's claim there is a balance of $425.52. There will, therefore, be judgment that the suppliant is entitled to the sum of $425.52 and costs.

Judgment accordingly.