

ATHONAS v. THE OTTAWA ELECTRIC RAILWAY  
COMPANY

1930  
\*Nov. 4.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ONTARIO

*Negligence—Plaintiff struck by automobile which had collided with street car—Jury finding negligence in street car company, causing the accident—Reversal of finding by Appellate Division—Judgment at trial in plaintiff's favour against street car company restored by Supreme Court of Canada—Evidence to support jury's finding.*

APPEAL by the plaintiff from the judgment of the Appellate Division of the Supreme Court of Ontario (2) allowing the defendant company's appeal from the judgment of Kelly J. in plaintiff's favour against the defendant company on the findings of a jury.

There was a collision between the defendant company's street car and an automobile owned and driven by one Glover, and the automobile then struck and injured the plaintiff, who sued, for damages, the defendant company

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\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Lamont and Cannon JJ.

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and Glover. The jury found that there was no negligence in Glover causing plaintiff's injuries, but that there was negligence in defendant company's motorman causing plaintiff's injuries; and that there was no negligence on the part of the plaintiff. On the jury's findings, Kelly J. dismissed the action as against Glover, and gave judgment in plaintiff's favour against the defendant company for \$8,500, and ordered that defendant company pay the costs of plaintiff and of defendant Glover.

The defendant company appealed to the Appellate Division. The plaintiff did not appeal from the dismissal of the action against Glover.

The Appellate Division (1) held, on the evidence, that the sole and effective cause of the accident was due to the gross negligence of the defendant Glover; that, while fully recognizing that a jury's findings on the facts are not to be lightly interfered with, the jury's findings in this case could not be supported on the evidence; and it allowed the defendant company's appeal and dismissed the action as against it, with costs.

The plaintiff appealed to the Supreme Court of Canada.

After hearing counsel for the appellant (plaintiff) and for the respondent (defendant company), and without calling on counsel for the appellant in reply, the Court delivered judgment orally, allowing the appeal with costs, on the ground that there was evidence to support the jury's finding of negligence by the respondent causing the appellant's injuries, in the respondent's motorman not bringing his car to a stop; that, on the evidence, the motorman must have realized the danger of a collision, and he should have brought the speed of his car down to such a rate as would have enabled him to stop in time to avoid the accident. The appeal was allowed with costs and the judgment of the trial judge restored, except that portion thereof dealing with the Glover costs, there being no appeal in this Court by Glover against the judgment of the Appellate Division which denied him his costs as against defendant company.

*Appeal allowed with costs.*

*J. A. Ritchie K.C. and H. J. Burns* for the appellant.  
*Redmond Quain and J. T. Wilson* for the respondent.