

IN THE SUPERIOR COURT OF JUSTICE

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BETWEEN:

ELAINE LAMMIE

Plaintiff

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- and -

MARIO GIZZARELLI

Defendant

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TRANSCRIPT OF RULING (THRESHOLD MOTION)

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BEFORE THE HONOURABLE MR. JUSTICE D. CRANE
on the 12th day of April, 2006, at HAMILTON, Ontario

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APPEARANCES:

R.J. Hooper

Counsel for the Plaintiff

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S.H. Fay

Counsel for Defendant

2.
Ruling - Crane, J.

Wednesday, April 12, 2006

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R U L I N G

CRANE, J:

The test is impairment and in my view motor vehicle driving is impaired. I find that it met the three-fold test on the evidence.

I have made the following endorsement:

Motion of defendant for judgment on the basis that the plaintiff has not met the exception to bring this action in tort pursuant to section 265.5(5) of the *Insurance Act*.

I find the plaintiff,

- 1) has sustained impairment of a psychological function of the mental and psychological process to drive a motor vehicle; and
- 2) I find the impairment of function is permanent and important; and
- 3) I find the impairment of this important function to be serious to the plaintiff in general and in special damages (see *Meyer, Ahmed and Sasso*).

That is my ruling, gentlemen. I think, Mr. Fay, that I had the opportunity to think about this matter because you were gracious enough to tell me it was coming at the beginning of the trial and that was very helpful to me as trial judge. I think the driving is where it lies. In my view of the evidence

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Ruling - Crane, J.

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this is new. It is not inherent in a pre-existing condition, though I can see an argument either way. There is a mental and psychological process in driving which is impaired seriously and permanently and I think it is important and so on. I think it meets the three tests and therefore I will deny the motion, respectfully. We shall wait to see what the jury thinks. They may think I am totally wrong on this, Mr. Fay, and give you a bunch of zeros - who knows. Anyway, now we shall wait.

4.
Certification

Form 2
Certificate of Transcript
Evidence Act, subsection 5(2)

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I, Tricia Reed, certify that this document is a true and accurate transcript of the recording of Lammie v. Gizzarelli, in the Superior Court of Justice held at 45 Main Street East, Hamilton, Ontario taken from Recording No. 81/06, which has been certified in Form 1.

May 3, 2006 *T. Reed*
(Signature of Authorized Person)