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 BETWEEN:
 GEORGE NESRALLAH, ELAINE }
 NESRALLAH AND SANDRA NES- }
 RALLAH } SUPPLIANTS;

AND

HER MAJESTY THE QUEENRESPONDENT;

AND

GEORGE LAHAMTHIRD PARTY.

*Crown—Petition of Right—Motor vehicle colhsion—Negligence—Appor-
tionment of liability—Injury to passengers in motor vehicle—Assess-
ment of damages—Compensation for pain and suffering, inconvenience*

and loss of enjoyment of life, permanent incapacity, future medical expenses and disfigurement and scars—Claim over by respondent against third party—Apportionment of costs.

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The claims by the suppliants arise out of the collision of a motor vehicle owned and operated by the third party with one owned by the respondent. The circumstances surrounding the collision are described in detail in the reasons for judgment in *George Laham v. Her Majesty the Queen, ante*, p. . . . In that case the suppliant, who is the third party herein, was found to be one-third responsible for the collision and Her Majesty the Queen, the respondent in both cases, was held to be two-thirds responsible.

The suppliants' claims all arise out of personal injuries received by them while riding as passengers in the motor vehicle owned and operated by the third party herein at the time of the collision.

Held: That the suppliant, George Nesrallah, is entitled to, in addition to his special damages as proved, the sum of \$1,000 for pain and suffering and inconvenience and loss of enjoyment of life during total incapacity and convalescence, the sum of \$1,000 for possible permanent partial incapacity or continuing inconvenience and \$500 for future medical expenses.

- 2 That the suppliant, Elaine Nesrallah, is entitled to special damages as proved, and to \$3,000 for inconvenience and loss of enjoyment of life during total incapacity and convalescence, \$1,200 for disfigurement and scars and for loss of or damage to teeth, and \$1,000 for possible permanent partial incapacity.
3. That the suppliant, Sandra Nesrallah, is entitled to special damages as proved, and to the sum of \$2,500 for pain and suffering, inconvenience and loss of enjoyment of life during total incapacity and convalescence and \$1,000 for possible permanent partial incapacity.
4. That the third party will indemnify the respondent to the extent of one-third of the pecuniary damages accorded to the three suppliants.
5. That the suppliants are entitled to recover their costs after taxation from the respondent and the respondent will be allowed one-third of the costs after taxation as against the third party.

PETITION OF RIGHT to recover damages resulting from a collision.

The action was heard by the Honourable Mr. Justice Dumoulin at Ottawa.

C. B. Major, Q.C. and *Joseph Konst* for suppliants.

Paul Coderre and *Raymond Roger* for respondent.

L. Assaly, Q.C. for third party.

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

DUMOULIN J. now (December 9, 1964) delivered the following judgment:

On June 4, 1961, the three above suppliants were passengers in George Laham's automobile, at the latter's invitation, and were proceeding along the spur of road

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linking Wakefield with the other section of highway no. 11, leading from the city of Hull to Masham and Maniwaki in the Province of Quebec. A collision occurred about 8:00 p.m., between George Laham's vehicle and a car driven by R.C.M.P. Constable Robert Monier, then in the performance of his duties as a Police officer.

Bodily injuries to the claimants resulted, thence their joint petition of right.

It was agreed at trial that each and every fact adduced in evidence concerning the several incidents and circumstances leading up to the accident itself, as revealed at the hearing of George Laham's petition of right, *ante* p. 440 would form an integral part of the instant suit. The judgment rendered in the former petition of right found the respondent responsible in a proportion of two thirds and the suppliant for one third of the collision. This common fault, in the light of art. 1106 of the *Civil Code*, quoted hereunder, is joint and several between both tortfeasors:

1106. The obligation arising from the common offence or quasi-offence of two or more persons is joint and several.

Consequently, damages eventually allotted will be payable by the respondent who, having instituted third party proceedings against George Laham, held responsible for one third, will have the right to recover from the latter a corresponding proportion of all damages assessed.

GEORGE NESRALLAH:

This man suffered multiple injuries to the skull, body and limbs, from the head-on collision, and was rushed to the Gatineau Memorial Hospital the night of June 4, 1961, where Dr. David Conrad Geggie attended him. Nesrallah, according to the Doctor's evidence, was in a state of considerable distress, conscious but suffering from shock. A bone of his left hand was broken, bruises appeared about the head and neck and a contusion to the right temple extending over the right eye. He bled from the left ear, a result of the trauma of collision. X-rays immediately taken revealed an injury to the seventh cervical bone. A plastic cast was applied to the left arm and head. Transfer to Ottawa Civic Hospital ensued the same evening.

Dr. William H. Caven took charge of the case at Ottawa Civic and, in turn, diagnosed severe bruises to head, neck, chest, abdomen and also a broken finger. George Nesrallah remained in hospital for a week, the bruises and pains gradually diminishing and allowing his subsequent release.

Dr. Caven is of opinion that two complaints are still present: headaches in right temporal side of the forehead and soreness in the neck. This, explains Dr. Caven, may cause a "referred headache" of considerable severity as also neckaches, especially when the muscles and ligaments become tired. The doctor thinks those troubles result from the automobile accident of June 4, 1961. He also believes the painful spells may continue for several years and then decrease. He examined Nesrallah last on June 2, 1964, and had seen him frequently over the past three years.

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Dr. Huston Kellam, an orthopedic surgeon, sounds more optimistic. He checked Nesrallah's condition and studied X-rays of forehead and neck taken in May, 1964. This specialist can assign no clinical cause to the headaches as no head injury exists. Difficulty in moving the neck from side to side was observed and the X-rays reveal signs of "wear and tear" in the fourth and fifth neck vertebrae, with no traces whatsoever of ruptured muscles or ligaments. The soreness, testifies Dr. Kellam, may, within a year or two, settle down or disappear, especially if physiotherapy treatments are resorted to, which would considerably improve matters.

Nesrallah consulted also Dr. Courtney Evans, an Ottawa physician specializing in internal medicine, on October 25, 1963. The result of this check-up indicated headaches and a thickening of tissues consistent with a blow. There was a tender spot at base of skull on the right side, immediately remedied by an infiltration of cortisone bringing complete relief within two days. The headaches became less frequent and more tolerable after that. Unfortunately, continues Dr. Evans, a relapse occurred in January, 1964, with a return of the headaches and soreness in the neck. X-rays showed a flattening of the neck curve with too close a contact of vertebrae C-4 and C-5. Physiotherapy proved disappointing, the headaches and neck pains recurring to this day.

George Nesrallah, after describing the sufferings endured immediately and shortly after the accident, testifies he remained nine days in bed and that abdominal pain troubled him for a couple of months. He resumed work steadily after his release from hospital on or about June 13, 1961, but the headaches would come on every two to three weeks. The daily exercises recommended by Dr. Evans proved successful although the witness has spells of migraine two or three times a week.

<p>1964 NESRALLAH <i>et al.</i> <i>v.</i> THE QUEEN Dumoulin J.</p>	<p>The special damages sought by George Nesrallah, less \$400 to be dealt with later on, are as follows:</p>	
	Dr. Caven	\$250.00
	Ottawa Civic Hospital	211.20
	Dr. Courtney Evans	100.00
	Gatineau Memorial Hospital	11.50
	Dr. Charette	70.00
	Drs. Geggie & Thompson	30.00
	Mrs. H. Brottman	36.00
		\$708.70

This suppliant is a cook in his own restaurant. His working hours are 6:00 a.m. to 9:00 p.m. and he also attends at the counter and serves tables. Although a contradiction would appear in that Nesrallah says he spent no more than nine days in hospital and resumed his job at once, he further states that he was away from work for a month and a half. I believe he required this length of time to regain his usual condition. His absence from the restaurant entailed a loss of some \$400 for which he will be indemnified as also for \$708.70 expended on medical and hospital treatments.

The heading: general damages includes compensation of \$4,000 for pain and suffering and \$3,000 for inconvenience and loss of enjoyment of life during total incapacity and convalescence. I intend to link together these two claims, for which I would allow \$1,000.

Next, comes a demand of \$15,000 for permanent incapacity, of which absolutely no trace was proved beyond a recurrence of headaches and to a certain degree of soreness in the neck, that do not prevent Nesrallah from working "15 hours a day". Such inconveniences are bothersome and even painful, but cannot create a state of permanent incapacity, and an amount of \$1,000 is a fair and sufficient indemnity.

For future medical expenses, I would not go beyond the amount of \$500.

Consequently, the total indemnity granted to George Nesrallah adds up to \$3,608.70.

ELAINE NESRALLAH:

This petitioner has become, at an unspecified date since June 4, 1961, the wife of George Laham, the suppliant in

the cognate petition *ante* p. 440. She will be described, throughout, under the name assumed in this action, her maiden one of Elaine Nesrallah.

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The evidence adduced by Drs. David Conrad Geggie, William H. Caven, Lorne Burdett, and in Dr. Frederick Miles Woolhouse's affidavit, undeniably attests that Miss Elaine Nesrallah, as she then was, suffered severe facial lacerations.

Dr. Geggie, who attended her at the scene of the accident and at the Gatineau Memorial Hospital, noted lacerations, some of superficial extent, others very deep. Minor arteries were severed and a condition of shock existed. There also were jagged cuts in the patient's face with glass in them. Some teeth appeared loosened. Miss Nesrallah had bled profusely and the next morning a 10-gram blood transfusion was had. A facial operation, lasting 90 minutes, under local anaesthetics, became necessary. Six under-skin sutures were made to blood vessels and fifty sutures applied to the skin, each of these requiring two perforations of the jagged derm. The upper gum had to be sewed and also the inner tissue of the nose. The injured girl was removed to the Ottawa Civil Hospital, where she spent five days, under the professional care of Dr. William H. Caven and Dr. Lorne Burdett.

"After some time", says Dr. Caven, "the pain diminished but my patient remained considerably disfigured and I referred her to the plastic surgeon. These sequels were uncomfortable rather than excruciatingly painful."

One month after the accident, Dr. Lorne Burdett, an Ottawa plastic surgeon, examined Miss Nesrallah and could still find rather severe cuts, the major one extending on the left cheek. Stitch marks were apparent and severe disfigurement. Surgical treatment followed to excise the scars and close the wounds with eight inches of excising of $\frac{1}{4}$ inch in depth. Subsequent to healing, and to facilitate the planing down action of the skin, smoothing treatments were given. Freezing was applied to allay the pain. A scab developed lasting over a couple of weeks.

Dr. Burdett saw this patient on June 12, 1964, during the trial, and noticed a residual scar on the left cheek. He concludes with this remark: "The results are very satisfactory."

Dr. Frederick Miles Woolhouse, director of the traumatic and reparative unit at Montreal General Hospital, filed an affidavit, of record in the case, detailing at length the

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condition of Miss Nesrallah in the course of her several visits to his office and the treatment he applied from October 18, 1962 to September 12, 1963. In para. 6 of this affidavit, the results of Dr. Woolhouse's first examination, on October 18, 1962, are carefully mentioned. Para. 13 reads thus: "As a result of the surgery above described, I am of the opinion that the scarring of Mrs. Laham's face has been reduced and that the overall cosmetic result is better."

Petitioner's counsel requested me, as his client stood in the witness box, to attentively scan her face. I must say that I could not then detect any perceptible signs of former hurts. Miss Nesrallah had responded successfully to plastic surgery of great skill since the taking of two photographs, exhibits S-4(1) and S-4(2), on July 17, 1961.

Special damages, to which I join Dr. Woolhouse's account for \$600, reach a total of \$1,905.25 and are allowed.

There is a duplication of claim for loss of income in the special and general damages columns, totalizing in all \$800. It remained undisputed that Miss Elaine Nesrallah, and understandably so, did not resume her occupation as waitress until eight months after her injury. Her salary was \$30 a week. In the absence of evidence that her marriage to George Laham intervened during the period extending from June 4, 1961, to the probable resumption of her tasks early in February, 1962, I must grant her claim of \$800 for loss of income.

Next comes the chapter of general damages for which an aggregate total of \$50,500 is sought: \$17,500 for pain and suffering, for inconvenience and loss of enjoyment of life during incapacity and convalescence; \$32,000 for disfigurement and scars, for loss and damage to teeth; \$1,000 for permanent incapacity.

It may be appropriate to repeat a truism so often forgotten: an accident such as that suffered by the claimant, so long as common sense holds some sway in human affairs, is and will remain, objectively considered, an unfortunate hazard of the road and not a windfall. Doubtless, these misfortunes result from somebody's fault, and it is the Court's endeavour to impose upon the tortfeasor the legal redress of the prejudice resulting from his wantonness. But, beyond this tangible ground, caution is imperative in order to avoid changing a mishap into a roseate boon of Fortune.

For pain and suffering, for inconvenience and loss of enjoyment of life during total incapacity and convalescence, I would allow \$3,000 owing to the protracted duration of surgical treatment.

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For disfigurement and scars, hardly observable now, and for loss of and damage to teeth, \$1,200 seems to me an ample indemnity.

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Regarding the sixth listing "Permanent incapacity", no similar sequel was conclusively proved, save perhaps the difficulty in closing the right eyelid. For this, and to eliminate doubt, however remote, I will grant the entire amount of \$1,000.

The total indemnity extended to this claimant amounts to \$7,905.25.

SANDRA NESRALLAH:

The third petitioner is Miss Sandra Nesrallah, seriously hurt in the crash. Her case is outlined in Dr. D. C. Geggie's testimony, who states that: "The injured person appeared in great pain and distress immediately after the accident, suffering from a broken leg between knee and hip, with an obvious shortening and twisting of this limb. Hypodermic injections relieved the pain and a metal splint was applied. A fracture of this sort, that of the largest bone in the body, results only from a major trauma consequent to a violent impact. The left femur was fractured and, after insertion of the metal or 'Thomas' splint to straighten the fractured bone, limb traction was had. This inflicts great pain to a patient. The injured leg was twisted in $\frac{1}{4}$ deviation from its normal position." Later, on the night of June 4, 1961, Sandra was hospitalized in the Ottawa Civic.

Dr. Ross Craig operated on Miss Nesrallah, inserting a 15" steel nail in the bone. The surgical intervention lasted 1½ hours, and a second operation of an hour's duration was required to extract the steel prop. Sandra Nesrallah was confined to bed for ten weeks and subjected to daily physiotherapy. She endured suffering for at least two weeks, and her release from the hospital did not occur until August 17, 1961. She moved about on crutches until November, 1961, and could not rely on her injured leg until January of the next year. The petitioner now walks freely and suffers no limp.

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Exhibit S-3 details the special damages prayed for: \$2,596.90 for medical and hospital bills. I will grant the total of \$2,596.90.

This young woman, at the time of her injury, was doing secretarial work in a local office, at a monthly salary of \$245, paid for June 1961, but, on account of her disability, unpaid during the period July 1 to January 1, a loss of \$1,470, now allowed for compensation.

On the topic of general damages, I would grant \$2,500 for pain and suffering, inconvenience and loss of enjoyment of life during total incapacity and convalescence, keeping in mind that the excision of the steel nail, by means of another operation, intervened a year later.

Fortunately, no facial lacerations occurred in her case and, for obvious reasons, the scars, if any, on leg and thigh are not discreetly noticeable. Dr. Craig singled out a shortening of $\frac{1}{4}$ " of the injured leg explaining that this was not necessarily a sequel of the accident, but could be.

Due to this admissible conjecture, an indemnity of \$1,000 is included.

The total compensation extended to Sandra Nesrallah amounts to \$7,566.90.

To recapitulate the preceding allocations of damages:

George Nesrallah will receive	\$ 3,608.70
Elaine Nesrallah-Laham	7,905.25
Sandra Nesrallah	7,566.90

a grand total of\$19,080.85

The petitioners are entitled to recover their costs after taxation.

Her Majesty the Queen, respondent, as previously indicated, annexed to her defence a statement of claim against third party, in this instance George Laham, the suppliant in petition of right *ante* p. 440, who was held responsible of the automobile accident on June 4, 1961, in the proportion of one third. A similar conclusion follows in the matter of the third party proceedings and the Court, therefore, enacts that George Laham will indemnify Her Majesty the Queen to the extent of one third of the pecuniary damages accorded to the three claimants in petition of right no. A-714.

The respondent will be allowed one third of the costs after taxation.

Judgment accordingly.