

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOAN CLEMENTS, BY HER LITIGATION GUARDIAN, DONNA JARDINE

PLAINTIFFS

AND:

JOSEPH CLEMENTS

DEFENDANT

STATEMENT OF DEFENCE


1. The Defendant denies each and every allegation of fact contained in the Statement of Claim herein except for those which are expressly admitted herein.
2. The Defendant admits that on or about the 4th day of August, 2004, a single motorcycle accident occurred on Highway 16 near the Village of McBride, while he was operating his motorcycle and the plaintiff was riding as a passenger.
3. The Defendant denies that he was negligent and puts the Plaintiff to the strict proof thereof.
4. In further answer to the whole of the Statement of Claim, the Defendant says that he took all reasonable and proper precautions in the circumstances and pleads that the loss of control of the motorcycle was due to an inevitable or unavoidable accident, particulars of which include:
  - a. the Defendant driver was in the act of passing another vehicle when he experienced a tire blow-out causing the motorcycle to suddenly and unexpectedly go out of control;
  - b. the tires on the bike were relatively new and the blow-out was caused by a foreign object being repelled from the tire as the defendant accelerated to pass, causing the motorcycle to suddenly and unexpectedly loose control;

- c. this unexpected tire blow-out occurred without negligence of the Defendant, and made it impossible for the defendant to control the vehicle.
  
5. In the alternative and in further answer to the whole of the Statement of Claim herein, if the Defendant was negligent which is not admitted but specifically denied, and if the plaintiff suffered the injury, loss, damage and expense as alleged in the Statement of Claim herein, or at all, all of which is not admitted but specifically denied, then the Defendant says that such injury, loss, damage and expense was contributed to by the fault and negligence of the Plaintiff, particulars of which said negligence include:
  - a. in failing to wear proper protective clothing and equipment, including the use of a "beanie" helmet;
  - b. in failing to take any steps or alternatively any reasonable steps to protect herself when she knew or ought to have known that an accident was about to occur;
  - c. in failing to take reasonable care in all circumstances of the case.
  
6. The Defendant pleads and relies upon the provisions of the *Negligence Act*, R.S.B.C. 1996, Chapter 333 and amendments thereto.
  
7. In the alternative and in further answer to the whole of the Statement of Claim herein, if the Defendant was negligent, which is not admitted but specifically denied, and if such negligence contributed to any injury, loss, damage or expense to the Plaintiff, which is also not admitted but specifically denied, then the Defendant says that any injury, loss, damage or expense to the Plaintiff resulted in whole or in part due to the Plaintiff's pre-existing and/or subsequent condition and/or disability.
  
8. In further answer to the whole of the Statement of Claim herein, the Defendant says that the Plaintiff failed to mitigate her damages to the detriment of the Defendant, particulars of which include the following:
  - a. in failing to undertake appropriate medical treatment as directed by her medical advisors;

- b. in failing to take all proper precautions to avoid further injuries;
  - c. in failing to take all proper precautions to avoid aggravating her injuries.
9. In further answer to the whole of the Statement of Claim herein, the Defendant pleads and relies on the provisions of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, Chapter 231 and amendments thereto and says that the Plaintiff has received, or is entitled to receive, benefits pursuant to that Act, which said benefits the Defendant is entitled to deduct from and set off against any judgment for the Plaintiff herein.
10. In further answer to the whole of the Statement of Claim, the Defendant says that he is a designated Defendant pursuant to the provisions of s.52 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c.231, and the Plaintiff's entitlement to recovery for loss of income is limited by the provisions s.54 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c.231, and the Regulations thereto, and the Defendant specifically pleads and rely upon ss. 52 and 54 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c.231, and the Regulations thereto.
11. In further answer to the whole of the Statement of Claim, the Defendant pleads and relies on s. 55 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c.231.

WHEREFORE the Defendant prays that the action be dismissed with costs to the Defendant.

DATED this 13<sup>TH</sup> day of October, 2006.

  
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LORNE A.J. DUNN,  
Solicitor for the Defendant

This STATEMENT OF DEFENCE is filed by LORNE A.J. DUNN, ESQ. of the law firm of HEATHER SADLER JENKINS LLP, whose place of business and address for delivery is 700 - 550 Victoria Street, Prince George, British Columbia V2L 2K1