

IN THE COURT OF SESSION

2013

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R E C O R D

In the cause

SUSAN ROSS

against

JOHN WILSON

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Donaghue LLP  
Solicitors for Pursuer

Stephenson & Co  
Solicitors for Defender

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R E C O R D

in the action at the instance of

**SUSAN ROSS**, residing at Strochan Croft, Meikle, Tain, Ross-shire

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PURSUER

against

**SKY MASTERTON**, 17 High Street, Tain, IV23 6RH

DEFENDER

**ELIZABETH II**, by the Grace of God, of the United Kingdom of Great  
Britain and Northern Ireland and of Her other Realms and Territories,  
Queen, Head of the Commonwealth, Defender of the Faith,. By this

**Summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the Conclusions appended to this Summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh, EH1 1RQ, within three days after the date of the calling of the Summons in Court. The Summons shall not call in Court earlier than 21 days after the date of service on you of this Summons. Be warned that, if appearance is not entered on your behalf, the pursuer may obtain decree against you in your absence.**

Given under our Signet at Edinburgh, on Sixth August Two Thousand and Twelve.

Solicitor

#### CONCLUSIONS

1. For payment by the defender to the pursuer of the sum of ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000) STERLING
2. For the expenses of the action

II – STATEMENT of FACTS for PURSUER No. 1  
of Pro.

and

ANSWERS thereto for the DEFENDERS No. 9  
of Pro.

Stat 1. The pursuer is Susan Ross who resides at Strochan Croft, Meikle, Tain, Ross-shire. Her date of birth is 2<sup>nd</sup> July 1969. The pursuer works as a pharmacist.

Ans. 1. Admitted that the pursuer is Susan Ross who resides at Strochan Croft, Meikle, Tain, Ross-shire. *Quoad ultra* not known and not admitted.

Stat 2. The defender is John Wilson. He resides at 17 High Street, Tain Meikle, Tain, IV23 6RH. He is domiciled there. He is believed to be a retired farmer.

Ans. 2. Admitted.

Stat 3. The Court has jurisdiction to hear this claim against the defender because the claim is for damages arising from harmful events caused by fault of the defender, which harmful events occurred in Scotland and because the defender is domiciled in Scotland. The defenders' averments in so far as not coinciding herewith are denied.

Ans.3. Admitted that this court has jurisdiction.

Stat 4. On or about 14th March 2011 at or about 5.15 pm the pursuer was driving her Honda RT 500 motorcycle in a westerly direction along the B465

Tain to Edderton road. It was getting dark. The pursuer had her headlight on the “dipped” setting. As the pursuer approached the junction with Skoal Farm, Edderton she noticed a gold coloured four wheel drive motor car stationary at the farm entrance. She subsequently discovered that this vehicle was a Lexus 300RX motor car, registration number NS 4050 being driven by the defender at the material time. As the pursuer approached the junction the defender’s vehicle suddenly pulled straight out onto the main road into the path of her motorcycle. The pursuer attempted to brake and steer around the car but was unable to do so and her motorcycle was struck by the car. As a consequence of the collision the pursuer suffered the loss, injury and damage hereinafter condescended upon. With reference to the defender’s averments in answer it is admitted that there is no street lighting at the locus. Admitted that following the accident the headlight on the pursuer’s motorcycle was found to be broken under explanation that the damage to the headlight was sustained in the collision. The pursuer had used the headlight without difficulty prior to the collision. She frequently required to drive the motorcycle at night in particular whilst tending livestock. Admitted that the speed limit on that section of the B465 is 60 mph. The pursuer was travelling at approximately 55 mph at the material time. She was not driving at an excessive speed. *Quoad ultra* the defender’s averments in answer are denied except insofar as coinciding herewith.

Ans. 4. Admitted that on or about 14<sup>th</sup> March 2011 at or about 5.15 pm the pursuer was driving her Honda RT 500 motorcycle in a westerly direction along the B465 Tain to Edderton road. Admitted that it was dark. Admitted that the defender was driving a bronze coloured Lexus 300RX motor car registration number NS 4050. Admitted, under reference to the explanation following, that as the pursuer approached the said junction the defender’s vehicle pulled out onto the main road. Not known and not admitted that the pursuer attempted to brake and steer around the car but was unable to do so. Admitted that there was a collision between the pursuer’s motorcycle and the defender’s car. Not known and not admitted that as the pursuer approached the junction with Skoal Farm, Edderton she noticed a gold coloured four wheel drive motor car sitting stationary at the farm entrance. *Quoad ultra* denied.

Explained and averred that the headlight on the pursuer's motorcycle was not illuminated as the pursuer's motorcycle approached the junction. There is no street lighting at the locus. The defender was not aware of the presence of the pursuer's motorcycle on the road. He carefully checked that the road was clear before pulling out from the junction into the road. Further explained that the pursuer had been driving her motorcycle at an excessive speed. It is reasonably estimated that she was travelling at a speed of between 70 and 85 mph at the material time. The speed limit on that section of the B465 is 60 mph. With reference to the pursuer's averments regarding damage to the headlight admitted that the headlight sustained damage in the accident under explanation that the damage sustained to it in the accident was reported to be restricted to a broken headlight lense. Following the accident inspection of the headlight unit revealed a wiring fault that was considered to have pre-dated the accident. The neutral wire to the headlight was defective. It was found to be heavily corroded and incapable of operating correctly.

Stat 5. As a consequence of the accident the pursuer sustained a fractured to her right ulna; a left sided peri-orbital haematoma and multiple cuts and bruises to her face, neck and right arm and leg. Following the accident she was taken by ambulance to Raigmore Hospital, Inverness where her wrist was placed in plaster and she was prescribed painkillers. The pursuer has continued to suffer problems with pain and weakness in her wrist since removal of her plaster cast. She is at risk of suffering osteoarthritis in the future. She required to undergo private physiotherapy sessions at Dornoch Physiotherapy, 12 Castle Street, Dornoch. The pursuer suffered headaches for a period of six months or so following the accident. She became increasingly anxious recalling the accident and required to seek treatment her GP, Dr Jan Kralowski, Tain Medical Centre, 60 Strathmore Drive, Tain. As a consequence of the accident the pursuer developed PTSD. She continues to suffer from this condition albeit her symptoms appear to be resolving. She has required psychological treatment in the form of attending counselling sessions at Golspie Health Centre, 131 High Street, Golspie. With continued treatment the pursuer's psychological condition is considered likely to resolve within a period of approximately 12 months. As a consequence of her injuries the

pursuer has been unable to return to her work as a qualified pharmacist. Prior to the accident the pursuer was regularly employed as a locum pharmacist in pharmacies in Ross-shire and Sutherland. She earned an average of about £1350 net per month from this work. In addition, she assisted a neighbouring farmer with feeding livestock at weekends for which she was paid £25 each week. As a consequence of her injuries she has been unable to return to work. She is presently unfit for any type of employment and is unlikely to be fit for work until her PTSD condition has resolved. As a consequence the pursuer has lost, and continue to lose, earnings. As a consequence of her wrist fracture she is likely to be permanently disadvantaged on the labour market, particularly if she were to develop arthritis in her wrist. The pursuer was provided with assistance following the accident by her husband, David Dodds and her son, Jamie Dodds. Services provided in the past included personal care, assistance with dressing and washing, cooking and driving. Jamie assisted his mother with heavier household tasks such as carrying shopping. The pursuer's husband now requires to do all the gardening. Reference is made to Section 8 of the Administration of Justice (Scotland) Act 1982. In addition, the pursuer has been unable to assist her husband with feeding livestock on their croft. Reference is made to Section 9 of the Administration of Justice (Scotland) Act 1982. The pursuer has incurred expenses in relation to private physiotherapy costs; purchasing prescription and non-prescription drugs and taxi fares and additional motoring costs attending medical appointments. The pursuer claims for solatium (past and future); loss of earnings (past and future); disadvantage on the labour market; section 8 & 9 services and pecuniary losses. The defender's averments in answer, except insofar as coinciding herewith, are denied.

Ans. 5. The nature and extent of any loss, injury or damage sustained by the pursuer as a consequence of the accident is not known and not admitted. *Quoad ultra* denied. Explained and averred that the pursuer suffered from anxiety problems prior to the accident. In or about 2009 she had required treatment in the form of prescribed medication and attended counselling. Further explained that she is unlikely to develop arthritis as a consequence of the accident. The pursuer had fractured her right wrist when she was fourteen years old. That fracture involved the joint. In the event that the pursuer

develops osteoarthritis in her right wrist it is likely to be caused by the original fracture. The pursuer is fit to return to work as a locum pharmacist but is unwilling to do so. Explained and averred that the pursuer's tax returns for the three years prior to the accident disclose average net earnings of around £6,500. There is no record of any payments in respect to maintaining livestock. The pursuer is called upon to specify the name and address of the farmer who she avers employed her. She is also called upon to produce vouching in respect to her claims for pecuniary loss. Her failure to answer these calls will be founded upon.

Stat 6. The pursuer makes her claim at common law. With reference to the defender's averment in answer it is explained and averred that the pursuer fulfilled all duties of care incumbent upon her in the circumstances. *Quoad ultra* the defender's averments in answer are denied.

Ans. 5. Admitted that certain duties of reasonable care were incumbent upon the defender under explanation that he duly fulfilled all such duties of reasonable care incumbent upon him in the circumstances. The pursuer was driving in the dark without her headlight on. Reference is made to Answer 4. *Quoad ultra* denied. Explained and averred that the accident was caused or in any event contributed to by the fault and negligence of the pursuer. As condescended, the headlight on the pursuer's motorcycle was not illuminated at the material time. She was travelling at an excessive speed.