1967

Beverly Howe v. Walter Jackson, Doing Business As Mercy Ambulance : Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

BEVERLY HOWE,

Plaintiff and Appellant,

vs.

WALTER JACKSON, Doing Business as MERCY AMBULANCE,

Defendant and Respondent.

Case No. 10570

APPELLANT'S BRIEF

APPEAL FROM JUDGMENT OF THE SECOND DISTRICT COURT FOR WEBER COUNTY, HONORABLE PARLEY E. NORSETH, JUDGE

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NATURE OF CASE

Plaintiff seeks damages for injuries received when a private ambulance, owned and operated by defendant, ran a red light at a traffic controlled intersection in Ogden, Weber County, Utah, and collided with the vehicle of plaintiff, which was proceeding through said intersection on the green light.

DISPOSITION IN LOWER COURT

The jury rendered a verdict in favor of the defendant, No Cause of Action.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks that the judgment be vacated and the cause be remanded and submitted to the jury on the issue of damages only.

STATEMENT OF FACTS

On September 6, 1964, at approximately 9:30 A.M., on a clear day, plaintiff was driving east on 12th Street, an east-west thoroughfare in Ogden, Weber County, Utah. She was approaching the intersection of 12th Street with Wall Avenue, a north-south four-lane highway. The intersection is controlled by an overhead semaphore signal which changes in sequence from green to amber to red. As plaintiff approached Wall Avenue, the light changed to green in her favor. At the same time, defendant, operating a private ambulance of which he was the owner, was proceeding south on Wall Avenue approaching the intersection at approximately 70 miles per hour (T. 130) against a red light, with siren and red dome light operating. Mr. Scivally, a witness called for defendant, testified that defendant did not diminish his speed when he first observed him, two-tenths of a mile away, until defendant was approximately 5 to 10 feet from the north cross-walk of the intersection (T. 108). A passenger in defendant's ambu-

lance said that the defendant was going 70 miles an hour approaching the red light (T. 130), and defendant himself estimates his speed as approximately 70 miles an hour at a point opposite Williamsen's Auto Body Shop on Wall Avenue, which is the same point he was first observed by Scivally (T. 7). The driver of the ambulance was proceeding from Harrisville, a Township several miles north of Ogden, to Ogden City to pick up a patient (T. 10). At the time plaintiff was proceeding into the intersection from the west and defendant was proceeding into the intersection from the north, a pick-up truck driven by one Martin, was proceeding into the intersection on the green light. Apparently, Martin did not see or hear the approaching ambulance as he was looking directly ahead (T. 101, 123). The plaintiff, Mrs. Howe, was observing Mr. Martin approaching from the east to determine whether or not Mr. Martin would attempt to make a left turn (T. 40) which he started to do and did not observe or hear the approaching ambulance although, she said that she had observed a white car approaching some distance from the north (T. 39). Defendant estimated his speed on entering the intersection at 40 miles per hour (T. 8). He had previously informed the investigating officer that he was going 50 miles per hour when he entered the intersection (T. 26). The witness, Scivally, estimated the ambulance speed as 50 to 55 miles per hour at 5 to 10 feet from the intersection (T. 108) and a passenger in the ambulance estimated the speed upon entering the intersection at 40 to 45 miles per hour (T. 133). Prior to entering the intersection, the ambulance had decelerated because the driver had observed the green pick-up truck driven by Martin proceeding into the intersection and heading west. The light had changed to red against the defendant approximately two-tenths of a mile to the north (T. 108, 109) and defendant entered the intersection against the red light and was struck by or struck the west-bound vehicle of Martin and careened to the west, out of control, and struck the vehicle in which plaintiff was seated

(T. 16, 17). The speed limit at the time and place of the accident for southbound vehicles was 40 miles per hour (plaintiff's Exhibit C). The motor vehicle which defendant was operating at the time and place of the accident was owned by defendant (Pretrial order, counterclaim). The defendant was not authorized by the Public Safety Commission of Utah, nor Ogden City to operate an "authorized emergency vehicle" (T. 137, T. 36). Defendant had obtained a certificate of registration from the Public Service Commission to operate as a motor carrier under the exempt provisions of Section 54-6-12 Utah Code Annotated 1953, as Amended, and was licensed to operate an ambulance in Roy City and Harrisville Township in Weber County (T. 139).

ARGUMENT

POINT 1. THE COURT ERRED IN REFUSING TO GIVE PLAINTIFF'S REQUESTED INSTRUCTION NO. 1, FOR THE REASON THAT THE DEFENDANT WAS NOT OPERATING AN "AUTHORIZED EMERGENCY VEHICLE", AND THEREFORE WAS NOT ENTITLED TO VIOLATE TRAFFIC REGULATIONS AND WAS THEREFORE NEGLIGENT AS A MATTER OF LAW.

The requested instruction is as follows: "Instruction No. 1. You are instructed that the defendant is negligent as a matter of law and that the only matter left for you to decide is the amount of damages to be awarded to the plaintiff."

It was admitted by the defendant, that as he was proceeding south on Wall Avenue, the light was red for north and south bound traffic and that he entered the intersection when the light was red against him, (T. 108, 109) and the evidence shows that his speed was from 40 to 55 miles an hour (T. 8, 26, 108, 133).

Defendants claims to be an "authorized emergency vehicle" and therefore entitled to the exemptions contained in Section 41-

6-14 Utah Code Annotated, As Amended, which reads as follows insofar as it applies to the facts of this case:

> "Applicability and exemptions.—(a) The provisions of this act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district, or any other political subdivision of the state, including authorized emergency vehicles; provided, however, that such authorized emergency vehicles shall be exempt from the driving restrictions imposed under sections 41-6-20 to and including 41-6-28, 41-6-46 to and including 41-6-82 and 41-6-106 of this act when driven under the following conditions:
>
> (1) Said exemption shall apply whenever any said vehicle is being driven in response to an emergency call or when used in the pursuit of an actual or suspected violator of the law, or when responding to but not returning from a fire alarm.
>
> (2) Said exemption herein granted to an authorized emergency vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle.
>
> (b) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of an arbitrary exercise of the privilege declared in this section."

It must be realized at this point that the statute in granting these exemptions does not concern itself with "ambulances" only or "emergency vehicles" only, but with "*authorized emergency vehicles*". (Italics ours.) An "authorized emergency vehicle" is defined for us in Section 41-6-3, Utah Code Annotated, 1953, as amended as follows: (a) "Authorized Emergency Vehicle. Ve-

hicles of the fire department, police vehicles, and such ambulance and emergency vehicles *of municipal departments or public servic corporations as are designated or authorized by the department o local authority*". (Italics ours.)

"Department" as referred to above is defined in Section 41-6-6, Sub-section (b), Utah Code Annotated, 1953, as follows: "Department of Public Safety of this state".

In order for a vehicle to be "an authorized emergency vehicle" it would have to be either (1) fire department vehicle (2) polic vehicle or (3) such ambulances and emergency vehicles of (a) municipal department, or (b) public service corporations, as are designated or authorized by the department or local authorities.

Thus the above statute is broken down into two main categories—the vehicles claiming to be authorized must be either fire department or police vehicles and in addition, to this category, if the vehicle falls within the category of "ambulance" or "emergency vehicle", it must be *of* or belong to such municipal departments or public service corporations as are designated by the department or local authorities (italics ours).

Inasmuch as it is admitted and the evidence clearly shows that the vehicle of defendant, Jackson, ran the red light (T. 8, 9) at an excessive speed (T. 8, 26, 108, 133) and without due care for others (T. 15, 26) in that defendant Jackson saw the vehicle of Martin moving into the intersection. It is incumbent upon the defendant to show that the defendant came within the exemptions of 41-6-14 Utah Code Annotated 1953 as Amended.

There is no claim that defendant's vehicle was of a fire department or was a police vehicle. There is no claim that defendant's vehicle was of or belonged to a municipal department or a public service corporation and in addition, as such was designated

or authorized by the Department of Public Safety or local authorities.

The only claim defendant has to a right to smash his way through a red light at a busy intersection at high rates of speed in Ogden City, is that he has a privately owned ambulance service, licensed by Harrisville Township and Roy City, and in addition is registered with the Public *Service Commission,* (Italics ours.) as follows, "is duly registered to operate as a motor carrier under the exempt provisions of Section 54-6-12 Utah Code Annotated 1953, as Amended. (Defendant's Exhibit 3).

The Public Service Commission is nowhere authorized to designate what vehicles shall be "authorized emergency vehicles", but only undertook in this matter to exempt the defendant from certain provisions such as obtaining licenses and certificates of convenience and necessity.

Counsel can find but two cases that define what an "authorized emergency vehicle" is. They are as follows: *Dallas Railway & Terminal Co., vs. Walsh* 156 S.W. 2d 320 (Tex.) is a case which is almost on all fours with the case at bar. The facts of the cited case are that an ambulance, owned and operated by a funeral home, ran a stop sign and crashed into a bus while the ambulance claimed to be on an emergency call. The facts do not reveal what type of an emergency call was involved, however the ambulance was proceding at a high rate of speed with a siren blowing.

The Court stated the issue was whether the driver of the ambulance at the time of the collision was under any duty imposed by statute or ordinance to stop at a stop-sign before proceeding into the intersection.

The plaintiff contended that the ambulance of the funeral home was an "authorized emergency vehicle" under the statutes

of Texas and the ordinances of Dallas. Ordinance No. 2808 which defines "authorized emergency vehicles" as follows:

> "Vehicles of the fire department, police vehicles and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the Chief of Police of the City of Dallas."

The Court here will note that this ordinance is identical with the statute of the State of Utah defining "authorized emergency vehicles" with the exception that in the quoted ordinance the authorization is by the Chief of Police of the City of Dallas rather than the Public Safety Department or local authorities. In the same ordinance authorized emergency vehicles were authorized to proceed past a stop sign or stop signal, but only after slowing down as may be necessary for safe operation, which is identical with the cited Utah Statute 41-6-14 Utah Code Annotated, 1953, as Amended.

The Court in the Texas case, held that the ambulance was not an "authorized emergency vehicle" which would entitle it to proceed past the stop sign and in so doing stated:

> "In our opinion, the ambulance of Weaver Funeral Home was not shown by any evidence to be an ambulance of a municipal department or a public service corporation and therefore was not shown to be an 'authorized emergency vehicle'."

The other case is *Levy Court of Newcastle County vs. Yellow Cab Taxi* 75 At. 2d., 421 (Del.), and the facts of this case are as follows: An ambulance owned by the county which was on an emergency call, ran a red light and collided in an intersection with a taxi cab that was proceeding against a green light. Upon suit being brought by the County, the defendant contended that the

ambulance was not an "authorized emergency vehicle" as defined by the city ordinance, Section 101, which reads as follows:

> "Authorized Emergency Vehicles. Vehicles of the fire and police bureaus and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the department of public safety."

Once again the Court's attention is called to the fact that the ordinance cited is almost identical to our statute defining "authorized emergency vehicles".

Further provisions of the ordinances provided that "authorized emergency vehicles" were exempt from regulations in regard to traffic regulations and speed.

The Court's holding was as follows:

> "It is my conclusion that New Castle County is not a municipality in the sense that its ambulancec could be designated by the Department of Public Safety as emergency vehicles under Section 101 of the City Ordinances. Therefore, the traffic exemptions set forth under Section 606 and Section 704 have no application in the present case. * * * Now, the question, Was the plaintiff's driver guilty of a negligent course of operation at the time of the collision which is constituted the sole or one of the proximate causes thereof? A careful consideration of all the evidence leads to but one conclusion; that is, he was. He was negligent per se in violating Section 203 (a) (3) of the municipal ordinances which constituted a contributing factor to the collision resulting in one of the proximate causes thereof."

Section 203 (a) (3) referred to in the Court's opinion reads as follows: " 'Red or Stop'—traffic facing the signal shall stop before entering the nearest cross-walk at the intersection or at such other point as may be plainly and efficiently designated by

authority of the street and sewer department and remain standing until green or 'go' is shown alone."

It is interesting to note that even though the defendant admitted approaching the red light at a high rate of speed (T. 8, 26) and that he saw the vehicle of Mr. Martin proceeding into the intersection (T. 15, 26) and apparently said driver was unaware of the approaching ambulance (T. 101, 102, 123); that nevertheless the defendant proceeded at a high rate of speed, knowing that he must compete with favored drivers for the intersection. Defendant, therefore, did not "slow down and proceed with due caution for the safety of others" and apparently had no "due regard for the safety of others" and apparently was quite arbitrary in the exercises of the privileges that he felt that he had under the cited statute 41-6-14 Utah Code Annotated 1953. See *Jensen vs. Taylor* 271 P. 2d 838, 2 Utah 196.

As to the rights of "private" ambulances see *Blashfield's Cyclopedia of Automobile Law and Practice,* Vol. 1, Sec. 800, page 597 as follows:

> "The mere fact that *private* ambulances may have a statutory right of way over other vehicles on the highway *in the absence of an exception in their favor* does not give them the right to violate the speed laws or requirements that stops be made before entering certain streets." (Italics ours.) Citing *West vs. Jallof* 232 P. 642,113 (Ore.) 84, 36, A.L.R. 1391; *Buck vs. Ice Delivery Co.,* 29 P. 2d 533, 146 (Ore.) 132.

There is no evidence of negligence on the part of the plaintiff inasmuch as she was proceeding on the green light, she did not hear a siren or see a red light on the ambulance and her attention was devoted to the oncoming pickup truck driven by Mr. Martin and, as she stated, she was concerned as to whether or not Mr. Martin would make a left-hand turn in front of her.

See *Rogers vs. City of Los Angeles* 44 P. 2d 465 which was a case almost on fours with the case at bar in that it involved an ambulance running a red light. In that case the Court stated as follows:

> "There is nothing to suggest negligence on her part unless she heard the siren (or saw the light) and disregarded them. Her duty to give way to the ambulance was based upon her knowledge of its approach."

Also see *Johnson vs. Maynard* 342 P. 2d 884, 9 Utah 268 which was a case where a police vehicle ran the red light and collided with the plaintiff who was proceeding on the green light. This Court held that the plaintiff was not contributorily negligent and stated as follows:

> "A traveler approaching a signal controlled intersection with the light in her favor has the right of way and can rely on it until something appears to indicate it is not safe to do so. It is, of course, true that she cannot assume full protection by the traffic light and remain oblivious to cars approaching against it, but it is to be kept in mind that the management of an automobile in down-town traffic demands an awareness of a number of things so that she cannot be giving her full attention to any particular hazard. She must be paying some attention to the actual operation of her car and also be aware of possible hazards from a number of directions; to the road ahead and any possible obstacles therein or pedestrians who may be in or approaching the cross-walk; to traffic which may be approaching from the east and, or, turning right or left in the intersection. It is because of these numerous hazards and to facilitate an orderly flow of traffic that traffic lights are installed. They permit the motorist to enter the intersection with some assurance of safety when the traffic light is in his favor." Citing *Coombs vs. Perry*, 2 Ut. 2d 381, 275 P. 2d 680.

The defendant was negligent per se in that he was not operating an "authorized emergency vehicle". He was merely oper-

ating a private ambulance and collided with plaintiff's vehicle while operating said private ambulance at an excessive rate of speed and ran a red light after noticing movement in the intersection and the operation of defendant's private vehicle was without due regard for the safety of others. Therefore, the instruction requested was proper and it was error for the Court not to so instruct the jury.

POINT 2. THE COURT ERRED IN NOT INSTRUCTING THE JURY AS REQUESTED IN PLAINTIFF'S REQUESTED INSTRUCTION NO. 2.

The requested instruction which was refused by the Court was as follows:

> "Instruction No. 2. You are instructed that the motor vehicle that the defendant, Walter Jackson, was driving September 6, 1964, and which was involved in a collision with a motor vehicle driven by the plaintiff, Beverly Howe, was not an authorized emergency vehicle as defined by the laws of the State of Utah, and that the defendant, Walter Jackson, the driver of said vehicle was subject to the duties, generally imposed upon drivers on the highway and specifically that he was not authorized to proceed past a red or stop signal or stop sign and was not authorized to exceed the prima facie speed limit."

Plaintiff contends that the Instruction requested was a correct statement of law that should be applied to the facts of the case. In order not to be redundant, plaintiff adopts the argument contained in Point 1, and specifically the portion of the argument relating to "authorized emergency vehicles" and their definition.

It is called to the Court's attention that before any evidence whatsoever was introduced by either party, the Court ruled that the "defendant was on an emergency call and as such, under the

authority vested it, as a licensed ambulance service that it was entitled to make such call." (T. 5), and thereafter prevented the plaintiff from introducing any evidence to show that the defendant's vehicle was not an "authorized emergency vehicle" (T. 9).

As heretofore stated at length in plaintiff's argument on Point 1, the requested Instruction was the law as it should have applied to the facts of the case, therefore, it was error for the Court not to have so instructed the jury.

POINT 3. THE COURT ERRED IN NOT INSTRUCTING THE JURY AS REQUESTED IN PLAINTIFF'S REQUESTED INSTRUCTION NO. 4.

The requested instruction is as follows:

> "Instruction No. 4. If you find from a preponderance of the evidence that the defendant, Walter Jackson, doing business as Mercy Ambulance, conducted himself in violation of the statute as read to you which is proposed for the safety of the plaintiff, Beverly Howe, and persons in whose class she was at the time, such conduct constituted negligence as a matter of law."

The statute referred to is contained in plaintiff's Instruction No. 3 and is Section 41-6-24, Utah Code Annotated, 1953, as Amended, which requires a vehicle facing a red signal to stop before entering the nearest cross-walk at an intersection or at such other point as may be indicated by a clearly visible line and shall remain standing until green is shown alone.

The evidence shows that the defendant was not operating an "authorized emergency vehicle" and therefore was not entitled to the exemptions of Section 41-6-14, Utah Code Annotated, 1953, as Amended, and therefore was required to stop at the red light rather than proceeding through it and thus causing the damage and injuries to the plaintiff. The requested instruction therefore

is a correct statement of the law as it is applicable to the facts of the case and it was error for the Court not to so instruct the jury.

POINT 4. THE COURT ERRED IN GIVING INSTRUCTION NO. 8.

The Instruction objected to is incorrect in that it does not correctly state the law. The Instruction as stated by the Court is as follows:

> "No. 8. An authorized emergency vehicle includes such ambulances as are designated or authorized as ambulances, either by the State of Utah, or by local municipal authorities within the State of Utah."

The Instruction clearly indicates that it was the opinion of the Court that in order for defendant's ambulance to be "an authorized emergency" vehicle, it was necessary only for the jury to find that the State of Utah, alone, had designated the vehicle as such or that a local, municipal authority within the State of Uah had made such a designation without further requirements. This clearly does not conform to the requirement of the statute in that the statute gives the power to the State of Utah, through its Public Safety Deparment or local authorities to designate only such vehicles as "authorized emergency vehicles" as are "of municipal departments or public service corporations and as are designated or authorized by the department or local authoities."

This instruction clearly does not conform to the requirements of the statute 41-6-3 Utah Code Annotated, 1953, as Amended.

Before the State of Utah, (Department of Public Safety) or local municipal authorities can designate or authorize any such ambulance to be an "authorized emergency vehicle" such vehicles

must be of the fire department or police vehicles or of municipal departments or public service corporations.

The evidence was that the vehicle of defendant was privately owned (Counterclaim, pretrial order) and there is no evidence that it was in fact of a municipal department or public service corporation.

POINT 5. THE COURT ERRED IN REFUSING TO INSTRUCT THE JURY AS REQUESTED IN PLAINTIFF'S REQUESTED INSTRUCTION NO. 8.

The plaintiff's Requested Instruction No. 8 is as follows:

"Instruction No. 8. You are instructed that authorized emergency vehicles are vehicles of the fire department, police vehicles and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the Department of Public Safety or local authorities."

Plaintiff's Requested Instruction No. 8 was and is a correct statement of the law and is based upon the following statutes of the State of Utah: 41-6-3, Utah Code Annotated, 1953 as Amended:

"(a) Authorized Emergency Vehicle. Vehicles of the fire department, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the department or local authority."

41-6-6 (b) Utah Code Annotated, 1953, as Amended:

" 'Department'. The Department of Public Safety of this state."

The instruction was, therefore, a correct statement of the law as it is applicable to the facts of this case, the jury should have been so instructed.

CONCLUSION

The evidence clearly shows that defendant's vehicle was not an "authorized emergency vehicle" and therefore the exemptions contained in 41-6-14, Utah Code Annotated, 1953 as Amended, did not apply to defendant's operation of his vehicle. The defendant was negligent per se in running the red light at the time and place of the accident; that defendant was further negligent in that he was not operating his vehicle with due regard for the safety of others. Plaintiff was not contributorily negligent in that she had the right of way and had no notice of the fact that defendant would not observe the rules of the road and keep his vehicle under proper control. For these reasons the verdict of the jury should be vacated and the cause remanded for trial on the issue of damages only.

Respectfully submitted,

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