1967

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

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

BEVERLY HOWE,

Plaintiff-Appellant,

vs.

WALTER JACKSON, Doing Business as MERCY AMBULANCE,

Defendant-Respondent.

Case No. 10570

RESPONDENT'S BRIEF

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

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STATEMENT OF THE KIND OF CASE

This is an action for personal injuries arising out of a collision between the plaintiff driving a pick-up truck and the defendant driving an ambulance on an emergency run.

DISPOSITION IN THE LOWER COURT

The case was tried to a jury. From a verdict and judgment for the defendant, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Defendant-respondent seeks an affirmace of the judgment below.

STATEMENT OF FACTS

Inasmuch as appellant's brief generally fails to recite the evidence supporting the verdict, we shall undertake that task.

The defendant's white ambulance (R. 12, 112 and defendant's exhibit 4) was on an emergency call from Harrisville to Ogden (R. 10). Defendant had traveled South on a four-lane main highway (R. 29) up to 60 miles per hour (R. 7) with red light and siren operating (R. 19, 20, 21). When the defendant was about two-tenths of a mile north of the accident intersection, the semaphore light turned red for south bound traffic into the intersection (R. 8, 25). The defendant then started slowing down (R. 8) from 50 miles per hour (R. 103) by braking (R. 15). The speed limit for south bound traffic in the vicinity of the accident was 50 miles per hour (R. 24).

The plaintiff was traveling east on 12th Street approaching the intersection at 20-25 miles per hour (R. 39). She was operating a pick-up truck with an annoying cast on her right forearm and hand (R. 50, 52, 60). Her two teenage daughters were seated in the cab of the truck (R. 38). The plaintiff's left door window was down (R. 53). It was a quiet Sunday morning (R. 53). Plaintiff had a clear view of traffic approaching from the north (R. 32, 52, 59 and Defendant's Exhibits 1 and 2). Plaintiff saw the defendant's ambulance approach from the north at what appeared to plaintiff to be a fast speed at a point three-fourths of a block north of the intersection (R. 39, 54-55). At that time and thereafter the defen-

dant's red light and siren were operating and clearly detectable (R. 53, 100, 101, 104 and 106), although the plaintiff claims that she never saw the red light or heard the siren of the ambulance (R. 41). The semaphore light turned green in favor of the plaintiff when she was three-fourths of a block west of the intersection or just as she was entering the intersection (R. 39, 55 and 57).

The only traffic in the vicinity of the intersection was the defendant's south bound vehicle, Martin's west bound vehicle, and a Mr. Scivally who was stopped at the south boundary of the intersection headed north (R. 39 and 40).

As defendant was about to enter the intersection he observed Martin's pick-up truck start up from a stopped position at the eastern approach to the intersection (R. 16, 26). Defendant thereupon braked further, turned slightly to the right to avoid Martin (R. 16, 26, 118), and entered the intersection traveling at less than 20 miles per hour (R. 117). Martin had no obstruction to his view of defendant's ambulance (R. 31, Defendant's Exhibits 1 and 2) yet Martin made no attempt to avoid the ambulance (R. 111). The front of Martin's truck struck the left rear door and fender of the ambulance (R. 16, 33) knocking the ambulance out of control to the west (R. 109) and into the plaintiff's pickup-truck which had entered the intersection from the west (R. 22, 23, 40, 103). The plaintiff did not heed or otherwise observe the ambulance until after it had been struck by Martin, which collision was not observed by the plaintiff (R. 58, 59).

Plaintiffs and defendant's vehicles moved but a short distance after impact (R. 60, 113).

The defendant doing business as Mercy Ambulance Service was authorized to operate ambulances by the Township of Harrisville and the City of Roy (R. 98, 99, 138). The defendant held himself out to the public as an ambulance service (R. 11) and had subjected his ambulance service to the Public Service Commission under the provisions of Section 54-6-12, U.C.A. 1953 as amended (R. 134, 135 and Defendant's Exhibit 3).

ARGUMENT

POINT 1
THE TRIAL COURT COMMITTED NO ERROR IN REFUSING TO DIRECT LIABILITY AGAINST THE DEFENDANT

Plaintiff consistently challenged the status of the defendant as an "authorized emergency vehicle." Throughout the trial plaintiff's position was premised on the notion, now apparently abandoned, that defendant could not obtain authorization as an emergency vehicle from either Harrisville or Roy but was dependent upon authorization from either the Public Safety Department of Utah or Ogden City (T. 5, 6, 9, 10, 35, 36, 89, 138, 139, 156). Thus evidence was introduced by defendant with respect to authorization from Roy and Harrisville and by plaintiff on the absence of authorization from the Department of Public Safety and Ogden. Plaintiff made no point of the fact that defendant lacked status as a "municipal department or public service corporation." There-

fore no detailed evidence was introduced on such status and qualification of the defendant other than the authorizations by the Public Service Commission, Roy and Harrisville and that the defendant held himself out to the public through a telephone listing. Although the plaintiff in her requested instruction No. 8 invited the trial court to cite the provisions of Section 41-6-3, U.C.A. 1953 as amended, defining an "authorized emergency vehicle" at no time did the plaintiff request any amplification for the jury as to what constituted municipal departments or public service corporations. Nor did the plaintiff seek relief on this issue by motion for a new trial. The main burden of plaintiff's present appeal that the defendant was not a municipal department or public service corporation is thus a novel and belated issue which should be ignored. *Chumney v. Stott,* 14 Utah 2d 202, 381 P.2d 84.

The meaning of the terms "Public Service Corporation" referred to in Section 41-6-3, U.C.A. 1953 as amended may be found in the total context of Section 54-2-1, U.C.A. 1953 as amended, the Public Utilities Act. Therein the various public service corporations by definition include corporations and individuals.

As this court indicated in the recent case of *Blomquist & Granite Credit vs. Zion's First National Bank,* ..... Utah 2d ....., ... P.2d ....., statutes "must be looked at carefully in cognizance of the full meaning underlying both the terms used and the purpose sought to be accomplished." Thus courts have construed the word "cor-

poration" in statutes to include natural persons whenever it has appeared that the legislative intent required it. 18 Am. Jur. 2d, Corporations, Sec. 3, page 550.

In *Bischell v. State,* 157 P.2d 41, (Cal.), under a California statute defining an emergency vehicle as one operated by state or county "fire warden" or "forest ranger" a salaried employee of the Forestry Department assigned to duty by an authorized fire warden or forest ranger was, in the broader sense of the statutory language, deemed "a fire warden."

There is no apparent reason to construe the term "public service corporation" strictly and literally, as plaintiff contends, so as to discriminate in favor of corporations over individuals in receiving the special status of an authorized emergency vehicle. Such a construction subjects the statute to an unintended, unreasonable and unnecessary challenge of arbitrary discrimination which would be constitutionally objectionable. Under common principles of construction, statutes should be construed in favor of their validity.

That the defendant comes within the ambit of public service and a public carrier is evident from the pronouncement of this court in *State vs. Nelson,* 65 Utah 457, 238 P. 237:

> ". . . (A) common or public carrier is one who, by virtue of his business or calling or holding out, undertakes for compensation to transport persons or property, or both, from one place to another for all such as may choose to employ him. Running through the cases is a recognition of the

> dominant element of public service, serving and carrying all persons indifferently who apply for passage or for shipment of goods or freight . . . Public service, as distinguished from mere private service, is thus necessarily a factor to constitute a common carrier. Such element, in portions of the act, is not as clearly expressed as might be. Nevertheless, it necessarily is implied."

Such principles are embodied in Section 54-6-1, U.C.A. 1953 as amended, which provides:

> " 'Common motor carrier of passengers' means any person who holds himself out to the public as willing to undertake for hire to transport by motor vehicle from place to place, persons who may choose to employ him."

Enchancing the defendant's status as a "public service corporation" and "authorized emergency vehicle" is the defendant's authorization to operate an ambulance as an exempt carrier under the provisions of Section 54-6-12, U.C.A. 1953 as amended, under which defendant subjected himself to certain controls and regulations of the Public Service Commission.

There is also authority for the proposition that even without express statutory exemption, vehicles engaged in emergency governmental service are exempt from the usual traffic regulations. 7 Am. Jur. 2d, Automobiles & Highway Traffic, Sec. 172 at page 727.

Dallas Railway and Terminal Co. vs. Walsh, 156 SW2d 320 (Tex.) is an intermediate appellate court opinion which, in addition to the holding therein cited

by plaintiff's brief, premised its decision upon the following:

> "Further, even if said ambulance was an authorized emergency vehicle by the single test that it did belong to a public service corporation there was nevertheless no evidence sufficient to show that it had been 'designated' or 'authorized' as such by the Chief of Police."

Levy vs. Yellow Cab Taxi, 75 Atl. 2d 421 (Del.), cited in plaintiff's brief, is a trial court opinion.

In *Rogers vs. City of Los Angeles,* 44 P.2d 465, (Cal.), the following pertinent language should also be noted:

> "Unless she knew or in the exercise of ordinary care should have known that the ambulance was approaching, the plaintiff driving the coupe was under no obligation to anticipate its presence."

Plaintiff's belated suggestion that the defendant does not qualify as a municipal department or public service corporation should be ignored in this appeal. In any event the evidence in the lower court established that the defendant was an authorized emergency vehicle as a matter of law or upon the findings implicit in the verdict.

Not only does the evidence fail to establish any negligence of the defendant as a matter of law, but it does, we submit, establish as a matter of law that the plaintiff was contributorily negligent in failing to give heed to the defendant's ambulance which she saw three-fourths of a block away from the intersection traveling at a fast speed which, in the exercise of ordinary care, she should

have known was an emergency vehicle with red light and siren employed. *Jensen vs. Taylor,* 2 Utah 2d 196, 271 P.2d 838; *Johnson vs. Maynard,* 9 Utah 2d 268, 342 P.2d 884; *Martin vs. Ehlers,* 13 Utah 2d 236, 371 P.2d 851.

POINT 2

THE COURT DID NOT ERR IN FAILING TO INSTRUCT THE JURY AS REQUESTED BY PLAINTIFF'S REQUESTED INSTRUCTION No. 2.

Although the lower court did express an intention of ruling as a matter of law that the defendant was an "authorized emergency vehicle," as heretofore indicated in our argument under Point 1, such ruling was not made and the court did in fact permit the parties to introduce evidence with respect to authorization and lack of it by the Department of Public Safety and local authorities and did submit such issue to the jury.

POINT 3

THE COURT DID NOT ERR IN REFUSING TO INSTRUCT THE JURY AS REQUESTED IN PLAINTIFF'S REQUESTED INSTRUCTION No. 4.

The courts instructions No. 11 and No. 9 fairly apprised the jury that if they found that the defendant was not an authorized emergency vehicle then he would not be entitled to proceed past a red signal, which rule of law is well known to all persons who can qualify as jurors.

POINT 4

THE COURT DID NOT ERR IN GIVING INSTRUCTION No. 8.

Inasmuch as counsel stipulated that "local authority"

had authorized the defendant as an ambulance, the alleged failure to designate the Department of Public Safety in the instruction could not have affected the verdict. The plaintiff's exception to the court's instruction No. 8 was based on the premise that "the authorization must be by the Department of Public Safety or by local authorities" (R. 156) without reference to defendant's status as a municipal department or public service corporation.

POINT 5

THE COURT DID NOT ERR IN REFUSING TO INSTRUCT THE JURY AS REQUESTED IN PLAINTIFF'S REQUESTED INSTRUCTION No. 8.

In view of the stipulation of plaintiff that defendant was authorized as an ambulance by local authorities, and the failure of plaintiff to make any point in the lower court of the status of the defendant as a municipal department or public service corporation or to request amplifying instructions thereon for the jury, we submit that the court did not err in refusing plaintiff's instruction No. 8.

CONCLUSION

The defendant's vehicle was an "authorized emergency vehicle" as a matter of law. Plaintiff's failure to raise any issue in the lower court on the defendant's status as a "public service corporation" should bar plaintiff's present appeal thereon. As a matter of law the defendant was not negligent but the plaintiff was contrib-

utorily negligent. The case was fairly submitted to the jury whose verdict that the defendant was not proximately negligent and/or that the plaintiff was contributorily negligent should be affirmed.

Respectfully submitted,

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