

1952

Henry Early v. Karl L. Jackson : Respondent's Petition for Rehearing and Supporting Brief

Utah Supreme Court

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Rich & Strong; Attorneys for Respondent;

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7725

Case No. 7725

IN THE SUPREME COURT

OF THE

STATE OF UTAH

FILED

MAY 6 - 1952

HENRY EARLEY,

Respondent,

Supreme Court, Utah

vs.

KARL L. JACKSON,

Appellant.

RESPONDENT'S PETITION FOR
REHEARING AND SUPPORTING
BRIEF

RICH & STRONG

Attorneys for
Respondent

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

HENRY FARLEY,

Respondent,

vs.

KARL L. JACKSON,

Appellant.

Case No. 7725

RESPONDENT'S PETITION FOR
REHEARING AND SUPPORTING BRIEF

The plaintiff and respondent in the above captioned case, on the grounds and for the reasons hereinafter stated, respectfully petitions the above court for a rehearing in this case and requests that the court vacate and set aside the order and judgment of this court reversing the judgment of the lower court.

POINT 1. The court has erroneously based its decision on the ground that the driver of the appellant's car was confronted with an emergency of the respondent's making. In so doing it has completely overlooked material evidence in the case from which the jury could have found that the driver of the appellant's car never saw the respondent's parked vehicle and accordingly could not be confronted with any emergency in attempting to avoid a collision with it.

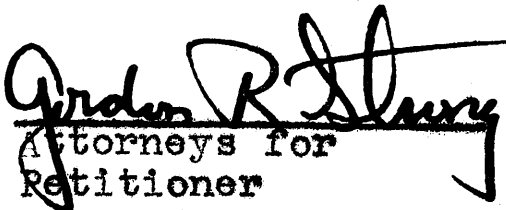
POINT 2. The court in holding that the driver of the appellant's car was not able to determine the presence of the parked truck until he was within 250-300 feet of it has completely overlooked the provisions of Section 57-7-196 (a), Utah Code Annotated, and cases of this court decided thereunder.

POINT 3. The court has misconstrued the facts and the law in holding that the

respondent deliberately ran into the course of the appellant's vehicle and placed himself in the path which that vehicle would have to take in avoiding a collision with the respondent's truck.

WHEREFORE, petitioner prays that he be granted a rehearing in this cause and that the matter be set down for further argument and that on such hearing the court set aside and vacate its former judgment and decision filed herein and enter herein a decision affirming the decision of the lower court.

RICH & STRONG

By 
Attorneys for
Petitioner

BRIEF IN SUPPORT OF PETITION
FOR REHEARING

INTRODUCTION

It clearly appears from the opinion that
this court did not have in mind all of the

material facts and evidence at the time of making its decision. Important evidence has been completely and wholly overlooked. Such evidence, which the jury could have believed, supports the judgment of the lower court. The interests of our client and the ends of justice require that the record in this case, and particularly the portions herein mentioned, be reexamined and the case reheard.

POINT 1.

THE COURT HAS ERRONEOUSLY BASED ITS DECISION ON THE FACT THAT THE DRIVER OF THE APPELLANT'S CAR WAS CONFRONTED WITH AN EMERGENCY OF THE RESPONDENT'S MAKING. IN SO DOING IT HAS COMPLETELY OVERLOOKED MATERIAL EVIDENCE IN THE CASE FROM WHICH THE JURY COULD HAVE FOUND THAT THE DRIVER OF THE APPELLANT'S CAR NEVER SAW THE RESPONDENT'S PARKED VEHICLE AND ACCORDINGLY COULD NOT BE CONFRONTED WITH ANY EMERGENCY IN ATTEMPTING TO AVOID A COLLISION WITH IT.

This court by its opinion has held that the driver of the appellant's car was confronted with an emergency of the respondent's own making; that by reason thereof his

attention was directed on the respondent's

stalled truck and in getting safely around it; that the driver had to swerve to the north and was excused from earlier ascertaining the respondent's presence on the north edge of the highway. All of this assumes that the driver of the appellant's truck saw the respondent's stalled vehicle blocking the south side of the road. True, the driver of the appellant's truck did testify that he saw the vehicle when he was within 250 or 300 feet of it and turned to the left to avoid it. However, there was other material evidence in the case on this point which has been completely overlooked by this court. Harold Johnson, one of the persons who arrived on the scene shortly following the accident, testified that following the accident the driver of the appellant's truck in his presence stated that he had not seen the respondent's truck at all, but had just seen the respondent out waving his hands, (R. 184, 186). There was,

accordingly, a conflict in the evidence on this point. It was for the jury to determine whether the facts were as testified to by the driver at the trial or whether Johnson's testimony about the driver's statement made in Johnson's presence after the accident occurred was true. For the purpose of this appeal the court must bear in mind that the jury under the evidence could well have found that the driver of the appellant's truck never saw the respondent's truck at all, but merely saw the respondent on the highway waving his arms. Such being the case, the driver could not possibly have been confronted with an emergency. The emergency, if any, could only be based on knowledge that the south half of the highway was blocked by the respondent's truck. Without such knowledge, the presence of the truck was wholly immaterial and could not be used as an excuse for the appellant's car swerving to the left into the respondent

or for the failing of the driver to ascertain the respondent's presence upon the highway. Under this theory of the case we simply have the respondent running in a westerly direction down the north edge of the highway, the appellant's truck being operated in an easterly direction on the south side of the highway, and the appellant's driver failing to see the respondent until he was too close. Then, in his excitement, he suddenly applied the brakes, causing the truck to skid out of control, swerve to the north and strike the respondent on the north edge of the paved road. If the driver of the appellant's truck did not see the respondent's vehicle, but merely saw the respondent on the north edge of the road, we submit that there is no justification whatsoever for the appellant's truck swerving to the north and striking the respondent. The negligence of the truck driver in failing to have his vehicle under control, under such

circumstances, would be the sole proximate cause of the accident.

POINT 2.

THE COURT IN HOLDING THAT THE DRIVER OF THE APPELLANT'S CAR WAS NOT ABLE TO DETERMINE THE PRESENCE OF THE PARKED TRUCK UNTIL HE WAS WITHIN 250-300 FEET OF IT HAS COMPLETELY OVERLOOKED THE PROVISIONS OF SECTION 57-7-196 (a), UTAH CODE ANNOTATED, AND CASES OF THIS COURT DECIDED THEREUNDER.

This court in the opinion sets forth "that the driver (of appellant's truck) was not able to determine until he was within 250-300 feet of the parked truck that it was obstructing the entire lane of his side of traffic." This again is the testimony given by the driver of the appellant's truck, but the distance at which he actually saw the truck is not the same as the distance at which he should have observed its presence upon the highway. Section 57-7-196 (a), Utah Code Annotated, requires that every vehicle shall be equipped with headlights of such intensity on high beam "as to reveal persons and vehicles at a distance of at least 350

feet ahead for all conditions of loading."

The driver of the appellant's truck testified that his headlights were burning on high beam, (R. 253.). There was no oncoming traffic or obstructions to vision, (R. 265, 268, 282). Accordingly, by statute, he should have been able to detect the presence of the truck and also the respondent's presence on the highway at a distance of at least 350 feet from each. In connection with an earlier version of this statute this court has held that it is the duty of an operator to have a vehicle equipped with headlights as required by statute and to keep such control of his car as will enable him to stop and avoid obstructions that fall within the range of his vision. See Dalley vs. Mid-western Dairy Products Company, et al, 80 Utah 331, and Nikoleropoulos vs. Ramsey, 61 Utah 465.

The driver of the appellant's truck should, therefore, have detected the presence

of the parked truck on the highway at a distance of at least 350 feet and should have been able to stop prior to reaching the parked truck. If, as we have seen in our discussion under Point 1, the driver of appellant's truck did not see the presence of the respondent's truck, then there was nothing to distract his attention, even under the reasoning of this court, and he most certainly should have seen respondent's presence on the highway at a distance of at least 350 feet. Under either theory the driver of appellant's truck should have been able to stop before reaching the parked truck or before striking respondent, and there was no reason for the sudden swerving of the appellant's truck so as to strike the respondent on the north edge of the road.

POINT 3.

THE COURT HAS MISCONSTRUED THE FACTS AND THE LAW IN HOLDING THAT THE RESPONDENT DELIBERATELY RAN INTO THE COURSE OF THE APPELLANT'S VEHICLE AND PLACED HIMSELF IN THE PATH WHICH THAT VEHICLE WOULD HAVE TO TAKE IN AVOIDING A COLLISION WITH THE

This court in its opinion has held that the respondent deliberately ran into the course of the oncoming vehicle. This is not a correct application of the evidence in the case. As indicated by the court in its opinion, the evidence most favorable to the respondent would place him on the north edge of the paved portion of the highway. There was also evidence from which the jury could determine that the appellant's truck was on the south side of the highway when the brakes were first applied, (R. 219). Had the appellant's truck continued on its course, there would have been no impact as there would be at least 10 feet between the respondent and the left side of the appellant's truck as they passed. Certainly, in this sense it cannot be said that the respondent was running directly into the path of the vehicle.

This court in its opinion has further contended that the respondent placed himself

in the course he knew the appellant's truck would have to take to avoid a collision. This assumes that in order to avoid a collision there was no other reasonable course open to the driver of the appellant's truck than to suddenly swerve from the south side of the highway clear over to the north edge of the paved road at a point 140 feet west of the parked truck. We submit that this is not a reasonable interpretation of either the facts or the law. As we have seen in our discussion under Point 2, the driver of the appellant's truck should have seen the parked truck at a distance of at least 350 feet and should have been able to stop within that distance. The respondent testified that he didn't know that the appellant's truck would have to turn to the left, but expected that it would stop as it could have done, (R. 146). There was ample evidence from which the jury could have

found that the respondent acted as a reasonable man in assuming that the appellant's truck would not have to turn to the left but would stop before reaching the parked truck as it was required by law to do, if such action was necessary.

Assuming for the purpose of argument that the appellant's truck would have to turn to the left to avoid a collision, nonetheless, there was certainly no reason to expect that it would suddenly swerve from the south side of the highway clear over to the north edge of the paved road to avoid a vehicle which was 140 feet distant. 140 feet is almost one quarter of a Salt Lake City block, and certainly the jury could have found that the respondent acted as a reasonable individual in assuming that the oncoming vehicle would not suddenly swerve from its course clear over to the north side of the road to avoid an object a quarter of a block away. There is, of course, ample

evidence to sustain a sudden swerving because of the testimony that the appellant's truck was on the south side of the road when the brakes were applied, (R. 219), and the additional testimony that the respondent was on the extreme north edge of the paved road, (R. 111, 153-54), and the testimony from another witness as to the brake marks that they zig-zagged back and forth across the highway, (R. 186). Under the evidence in this case there was no reason for a sudden swerve. The truck could have stopped on the south side before reaching the stalled vehicle or it could have proceeded either on the south half or even in the middle of the road until it safely passed the respondent and still had 140 feet within which to move over entirely on the north half of the road to pass the parked vehicle.

CONCLUSION

It is undisputed that the respondent

in this case was seriously and permanently injured. Before depriving him of the jury's award, we feel that this court should reexamine its decision. If the present decision is allowed to stand, in our opinion, a gross miscarriage of justice will result and the respondent will have nothing for his pain, suffering and injuries. It is, therefore, respectfully submitted that the petition for rehearing should be granted.

Respectfully submitted,

RICH & STRONG,

Attorneys for Plaintiff
and Respondent