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Richard Shields v. Peter Ramon : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FILED

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RICHARD SHIELDS,

Clerk, Supreme Court, Utah

Appellant,

— vs. —

Case

No. 7822

PETER RAMON,

Respondent.

Brief of Appellant

MINER AND JONES,

Attorney for Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD SHIELDS,

Appellant,

— vs. —

PETER RAMON,

Respondent.

Case
No. 7822

Brief of Appellant

In the above action the plaintiff is the appellant and appeals from a judgment rendered in the above cause.

STATEMENT OF FACTS

This case involved a collision between two automobiles, one automobile, a 1939 Ford eight-passenger station wagon which was owned and driven by Richard Shields, the plaintiff and appellant herein, and the other automobile a 1951 Hudson two-door sedan which was owned and driven by Peter Ramon, the defendant and respondent herein. The plaintiff brought suit against

the defendant for personal injuries and for damages to his automobile. The defendant counterclaimed for personal injuries and for damages to his automobile. The court below awarded judgment to the defendant upon his counter-claim for both personal injuries and for damages to his automobile.

The accident occurred about 6:30 P.M., January 26, 1951, on State Street, a north and south street in Salt Lake City, Utah, at the intersection of Truman Avenue and State Street. State Street at the time was divided into six marked traffic lanes, three for northbound traffic and three for southbound traffic. The center was marked by two yellow lines about three feet apart. The defendant, Peter Ramon, was driving his 1951 Hudson north on State Street intending to turn west into Truman Avenue. The plaintiff, Richard Shields, was driving his 1939 Ford in a southerly direction on State Street, traveling in the lane of traffic next to the center line dividing north and south bound traffic. Defendant was traveling north in the lane of traffic for northbound vehicles, next to the center line.

The plaintiff was returning home from his work at the Bingham mine. When he left his work he was carrying six passengers. According to plaintiff's testimony he took the following course (R. 10): "Came down the Bingham-Midvale Road, came up Redwood Road to 8th South, from there went over to 6th West, and let out a rider; from there drove over to 2nd West and 8th South, let out another rider; from there drove over to 9th East and 9th South and let out another rider; and from there

drove up 5th West to 2nd South and let two riders out; I drove to 10th West and 4th North street to see a fellow who was supposed to ride with me; and from there I drove up 1st South and let out a rider there; from there I drove down to 8th West and 21st South, I went over to 21st South and State Street and turned south on State Street.’’

At the time of the accident plaintiff was driving in a southerly direction on State Street, traveling in the lane of traffic next to the center line. Defendant was traveling north on State Street in the lane of traffic next to the center line, intending to turn west on Truman Avenue. Plaintiff first saw the defendant at approximately 150 feet away (R. 21-22). It was foggy and visibility was poor. The defendant’s car lights, however, were plainly visible at a distance of 150 feet (R. 21-22). Plaintiff was approaching the intersection of Truman Avenue when he first saw defendant’s car lights (R. 21). Plaintiff saw the lights on defendant’s car approaching (R. 23). Plaintiff was driving with his lights on (R. 45-46). Plaintiff was traveling at approximately 25 miles per hour (R. 21). Other cars were observed traveling at 25 to 30 miles per hour (R. 51).

As plaintiff continued south down State Street he saw defendant’s car lights coming from the south and, according to plaintiff’s testimony, “all of a sudden he made a left hand turn directly in front of me” (R. 11). It was so sudden plaintiff could not stop or avoid the accident (R. 11). He attempted to avoid the accident by turning to the right, but it was too late (R. 11).

At the time of the collision, defendant was not observing plaintiff's automobile (R. 40-45). Instead, he was looking west (R. 46). At the time of the impact, defendant was traveling westerly at a speed of 5 miles per hour (R. 40). He had traveled about 15 feet (R. 24). He drove his car from the northbound traffic lane into the southbound traffic lane next to the center dividing line—directly into plaintiff's lane of travel (R. 24). The accident was very sudden (R. 12, 40). There were no skid marks (R. 35). Plaintiff's car traveled a distance of 12 feet after the impact. Defendant traveled 67 feet (R. 34). The point of impact was in plaintiff's lane—the southbound traffic lane next to the center dividing line (R. 24-28). The front end of plaintiff's car was damaged (R. 13). The right front fender, right front door, center door post, and right side of defendant's car was damaged (R. 43).

At the point of impact the defendant's car had barely crossed the double center dividing line (R. 24-28). The accident happened in the southbound traffic lane—plaintiff's driving lane—the lane next to the center dividing line (R. 24-28). Dippo, investigating officer, received word of the accident at 7:25 P.M. and arrived at the scene at 7:29 P.M. after traveling a distance of four blocks. Plaintiff's wife, Jean Shields, received word of the accident at 7:15 P.M. and arrived at the scene at 7:30 P.M.

ASSIGNMENT OF ERROR

The court erred in granting judgment to the defendant on his counter-claim.

ARGUMENT

Defendant was guilty of negligence upon his own evidence and upon the evidence of the plaintiff and other witnesses, and his negligence was the sole proximate cause of the accident.

1. He violated Section 57-7-133 U.C.A. 1943 in that he turned his vehicle from a direct course northward to westerly when such movement could not be made with reasonable safety.

2. He violated Section 57-7-137 U.C.A. 1943 in that he failed to yield the right of way to plaintiff's motor vehicle which had either entered the intersection or was so close as to constitute an immediate hazard.

3. He negligently and carelessly drove and operated his car into the pathway of plaintiff's on-coming vehicle in disregard of the hazard to himself and his car when it was so close as to constitute a hazard, regardless of any question of right of way.

French vs. Utah Oil Refining Co., Utah ;
216 Pac. (2d) 1002.

In that case plaintiff made a left turn at an intersection at a speed of eight miles per hour in front of an oncoming truck traveling twenty miles per hour. The court held he was negligent because the truck was so close that the collision could not be avoided and that he had failed to yield the right of way.

“A burden is placed on the driver making the turn as he has control of the situation, and if there is a reasonable probability that the move-

ment cannot be made in safety then the disfavored driver should yield. The driver proceeding straight ahead has little opportunity to know a vehicle is to be turned across his path until the movement is commenced and in many instances, the warning is too late for the latter driver to take effective action.”

Also, the court states:

“While it is doubtful that plaintiff established any negligence on the part of the defendant’s truck driver we pass that question as the court directed the verdict because of the lack of due care on the part of the plaintiff.” (Italics added.)

Hence in this case the court inferred that the negligence of the person making the left hand turn was the sole proximate cause of the accident.

Hart vs. Kerr, 110 Utah 479, 175 Pac. (2d) 475.

In that case plaintiff made a left turn in front of an oncoming vehicle 300 feet away which was coming at 40 miles per hour. This court held he was guilty of contributory negligence. In this case, however, defendant made the left hand turn when the oncoming vehicle could not have been more than 70 feet away and traveling at 25 miles per hour. In this case the accident happened within 2 seconds after defendant started his left turn. Defendant’s own evidence did not justify the court in finding a verdict for the defendant.

In the Cederloff vs. Whited (110 Utah 45, 169 Pac. (2d) 777) case the defendant drove his car in front of plaintiff’s oncoming vehicle at a slow rate of speed. This court held he was guilty of negligence as a matter of law

and that his negligence was the sole proximate cause of the accident.

“Section 57-7-133 U.C.A. 1943 provides:

(a) No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety * * *. Defendant turned his car from a direct course in the highway into the lane of traffic intended for vehicles traveling in the opposite direction at a time when plaintiff's car was approaching in such close proximity that the collision occurred as soon as the front end of defendant's car had reached a few feet into plaintiff's lane of traffic.”

Judge Wolfe stated that

“the driver making the left turn in most every case has control of the situation. He knows when he is going to turn. The opposing approaching drivers must discover it. Even when an approaching driver is coming too rapidly, the left hand turn drivers must take that into consideration. All the more reason that he should not take a chance. After all, the approaching driver is in his own lane. His excess speed may have constituted negligent driving but that negligence did not contribute to the accident.”

In this case the defendant testified that the accident happened very sudden—“all at once” (R. 40). It could only happen that fast if they were in such close proximity as to constitute an immediate hazard. Under the circumstances, plaintiff could not have avoided the accident, and defendant's negligence was as a matter of law the sole proximate cause of the collision and resulting injury and damage and the court erred in not so finding.

See also :

Sine v. Salt Lake Transportation Co., 106 Utah 289, 147 Pac. (2d) 875; Bullock vs. Luke, 98 Utah 501, 28 Pac. (2d) 350; Mingas vs. Olsson, Utah, 201 Pac. (2d) 495; Conklin v. Walsh, Utah, 193 Pac. (2d) 437; Hickock v. Skinner, Utah, 190 Pac. (2d) 514; State v. Newton, 105 Utah 561, 144 Pac. 2d 290.

Defendant's story that he could not see the plaintiff's car is not sustained by the evidence. On cross-examination he testified that he was not looking in the direction from which plaintiff's car was approaching (R. 45-46) :

“Q. When did you first see his (plaintiff's) lights?

A. It was that far from me. (Indicates)

Q. That is the first time you saw his (plaintiff's) lights?

A. Yes, of course, I was watching west.

Q. Mr. Shields' car, you never did see it?

A. Never did see it.”

The defendant testified that he was able to see other cars traveling on State Street (R. 45) :

“Q. Did you see any cars pass you as you were traveling?

A. On the opposite side, the same side——.

Q. As you were going up State Street?

A. Yes."

He also testified that he could see cars traveling south on State Street (R. 45):

"Q. You could see those cars plainly?

A. Yes."

Mrs. Shields, who arrived at the scene of the accident a minute after Dippo, the investigating officer—approximately 7:30 P.M.—testified as follows: (R. 49)

"Q. When you arrived on State Street, did you notice a change in the visibility?

A. Very much, Main Street was very dark and on State Street you could see.

Q. What did you observe?

A. Well I could observe car lights, I know for two blocks up the street.

Q. Did you make any other observations?

A. I could see there was a police car up in the street, see their red dome light on, and their red flares.

Q. How far was this street, where you went on State Street, to where the accident took place?

A. I would say one city block to two small blocks in South Salt Lake from Truman Avenue to Oakland Avenue."

In response to the question regarding the illumination of the State Street lights which, as a matter of common knowledge are especially designed to illuminate

State Street highway under such atmospheric conditions as described in this case, Mrs. Shields testified: (R. 49-51)

“Q. Now you observed the lights that were on State Street, did you not?

A. Yes sir.

Q. What kind of lights are they?

A. Those sodium things they have up high.

Q. And what color do they reflect?

A. Yellow.

Q. And you noticed when you came on State Street the illumination lighted up and you could see much better?

A. Yes.”

Mrs. Shields also testified that she observed other cars traveling along on State Street at the scene of the accident (R. 51):

“Q. When you arrived on State Street, did you have occasion to observe cars travelling up and down on State Street?

A. Yes.

Q. Could you give your judgment as to the speed of these cars — relative to the speed of these cars you saw travelling?

A. I would say they were doing between 25 and 30 until they came upon the scene of the accident, then everyone slowed down to see what happened.”

There is no doubt as to the fact that defendant was negligent and that his negligence was the sole proximate

cause of the accident. Both the plaintiff and the defendant testified that the accident happened very sudden. It could only happen that fast if they were in such close proximity, when the defendant made his left hand turn, as to constitute an immediate hazard. Certainly if it was negligence in the above recently decided cases, then defendant was negligent in this case.

CONCLUSION

In conclusion we insist that it is apparent that plaintiff is entitled to a judgment against the defendant for personal injuries and for damages to his automobile. We also insist that this proposition is so clearly borne out by the evidence that this court should remand the case to the District Court of Salt Lake County with instructions to enter judgment for the plaintiff.

Respectfully submitted,

MINER AND JONES,

Attorney for Appellant