

1953

# Tom Northern v. General Motors Corporation et al : Brief of Respondent

Utah Supreme Court

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Case No. 7973

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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**TOM NORTHERN,**

*Plaintiff and Respondent,*

VS.

**GENERAL MOTORS CORPORATION,  
CHEVROLET DIVISION,**

*Defendant and Appellant.*

---

**BRIEF OF RESPONDENT**

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BRIEF OF RESPONDENT

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STATEMENT OF FACTS

A. PRELIMINARY STATEMENT

Plaintiff and respondent, Tom Northern, will be referred to throughout this brief as plaintiff; defendant and appellant, General Motors Corporation, Chevrolet Division, will be referred to throughout this brief as defendant.

All italics are ours.

## B. THE FACTS

The statement of facts contained in the brief of defendant seems to be fairly accurate. There are a number of omissions and some matters which will be corrected, but since plaintiff's brief will be primarily a discussion of the evidence, a restatement of the facts will not be made at this point.

The Statement of Points contained on pages 21 and 22 of the brief of defendant shows that the material portion of the appeal of defendant is concerned only with the proposition of whether or not the evidence was sufficient as matter of law to sustain the verdict of the jury in plaintiff's favor. There are two statement of points which do not go directly to this proposition. They concern the matter of whether or not two witnesses were qualified to express the opinions which they expressed in their testimony. Plaintiff will, therefore, discuss in this brief in answer to the first four points set forth in defendant's Statement of Points, one point which is as follows: The evidence sufficiently supports the finding of the jury that defendant was negligent and that its negligence caused plaintiff's injuries.

## STATEMENT OF POINTS

### POINT I.

**THE EVIDENCE SUFFICIENTLY SUPPORTS THE FINDING OF THE JURY THAT DEFENDANT WAS NEGLIGENT AND THAT ITS NEGLIGENCE CAUSED PLAINTIFF'S INJURIES.**

## POINT II.

WITNESSES WERTSDERFER AND SYNDER WERE QUALIFIED TO EXPRESS OPINIONS CONCERNING OBSERVATIONS MADE AT THE SCENE OF THE ACCIDENT.

## ARGUMENT

## POINT I.

THE EVIDENCE SUFFICIENTLY SUPPORTS THE FINDING OF THE JURY THAT DEFENDANT WAS NEGLIGENT AND THAT ITS NEGLIGENCE CAUSED PLAINTIFF'S INJURIES.

The logical propositions which confront the court seem to divide themselves into four distinct and separate categories. The first category which plaintiff will discuss concerns the evidence of what happened at Sacramento Pass when plaintiff sustained his injuries.

**(a) The Steering Mechanism Broke While the Truck was on the Surface of the Highway.**

In discussing the question of what occurred at Sacramento Pass, the court, the jury and all parties must turn to the eyewitness evidence of the plaintiff, Tom Northern. No one else witnessed the accident which caused plaintiff's injuries.

Plaintiff's evidence is clear, unequivocal and undisputed. On his direct examination he stated as follows concerning what happened (R. 89, 90) :

"Q. When you left the Sacramento Pass tell us what you did, where you went on the road, and what happened?

"A. After we put water in the truck I pulled out first and went down about a mile or a mile and three quarters, somewheres in there.

"Q. What speed were you making?

"A. Started off from stop still. I imagine I was travelling around 50 and near 60; went on down around a curve, then the first thing I knowed I was in the middle of the road from the right side; and I turned my truck back onto the right side again, and when I went to turn it again, *which* the steering wheel had completely turned plumb around and the truck went on about its business.

"Q. Did you hit any bumps, or had any jolts in the front end of that car before the steering wheel came loose in your hand and turned?

"A. After the steering wheel came loose in my hand?

"Q. Before that time?

"A. Before that, no, sir.

"Q. Mr. Northern, had there been any kind of ruts or obstructions in the road from Sacramento Pass down to the point where the steering wheel came loose in your hand?

"A. Only one, and that was on Highway No. 6, the main road, rough road, graveled state road, is all.

“Q. From the top of Sacramento Pass down to where the steering wheel came loose in your hand had there been any rough or obstructions of any kind?

“A. No, sir.

“Q. Will you tell us then what happened after the steering wheel came loose in your hand?

“A. Only thing I could say about that, when it came loose it shocked me; I reached for my wife, and the next thing I knowed of the steering wheel was in my face.

“Q. Where were you when the steering wheel was in your face?

“A. God only knows.”

There were several attempts made by counsel for defendant to confuse, mislead and put into plaintiff's mouth words of a contradictory nature, but the quoted portion of his evidence stands uncontradicted by any evidence. The jury would be required to believe plaintiff; find that the steering wheel on his truck came loose in his hand before the truck tipped over and before it came into collision with any object along the side of the highway, and while he was operating the truck down a slight grade on a usual and ordinary stretch of highway. The quoted testimony is substantial evidence of those facts. Even if it were not corroborated by any additional immutable or physical proof it would justify a finding in accordance with the testimony. In addition to plain-



tiff's testimony photographs were introduced in evidence which show beyond dispute that the steering wheel had broken and the front wheels were operating free from the control of the driver. The photographs showing the tire marks are Exhibits "C", "M" and "N".

The various measurements concerning the distance between the sets of marks shown by the exhibits indicate the impossibility for the driver of a vehicle to have turned the wheels of the truck with sufficient speed to cause the tire marks shown by the exhibits. Even witness Harris, defendant's own expert, testified that in his opinion the tire marks shown by the exhibits could not have been made voluntarily by a person driving the truck, and that the tire marks could have been made by the wheels after they had broken loose from the steering mechanism (R. 408, 409). The oral testimony of plaintiff is thus corroborated and proven beyond possible controversion by the exhibits showing the tire marks on the surface of the highway.

In addition to the recited facts, the occurrence of the accident itself indicates that there was some interference with the driver's control of the truck. There was no traffic; the highway was smooth; the highway was fairly straight, and nothing on its surface interfered with the way in which the truck could be controlled. Yet, suddenly there appeared on the surface of the highway tire marks, shown by the exhibits, and the truck swerved off of the highway and tipped over in the borrow pit.

The happening of this accident is further evidence of the truth of plaintiff's testimony and of the fact that some portion of the truck became inoperative causing a loss of control by the driver.

The evidence is substantial, undisputed and corroborated and plaintiff submits that it forms a sound evidentiary basis for a jury finding that the Pitman shaft on the steering mechanism broke while plaintiff was driving his truck down the highway in a usual and ordinary manner.

**(b) The Truck Became Uncontrollable Because the Pitman Shaft Broke.**

The evidence was clear, undisputed and unequivocal concerning the portion of the truck's steering mechanism which failed to operate and which resulted in the truck being uncontrollable by the driver.

Witnesses Wertsderfer and Snyder, who were both machinists of many years of experience, examined plaintiff's truck at the scene of the accident and before it had been moved and both stated that the only portion of the steering mechanism which they discovered to be broken was the Pitman shaft.

Renold O. Jenson, the purchaser of plaintiff's wrecked truck and an auto body repairman, testified that the only portion of the front end of the truck which was

damaged was the Pitman shaft and arm and that the two front wheels, the drag link and the tension bar were all in place; were not damaged and were not broken (R. 206, 207). The effect of this testimony was that the only thing in the steering mechanism which was not in an operable condition was the Pitman shaft.

Apparently defendant would, by its brief, attempt to cast some doubt on the proposition that the Pitman shaft broke and the loss of control of the truck resulted. The speculation thus attempted finds no support whatever in the evidence introduced. When this evidence is considered with the evidence recited in Point I, subparagraph (a) it appears that the jury was confronted with unequivocal and uncontradicted evidence of two facts: that the truck became uncontrollable while being operated down the surface of the highway, and that the only cause of loss of control was the broken Pitman shaft. The proof of these two facts plaintiff submits would have justified the submission of his case to the jury, for a jury could have found from the evidence that under normal operation the Pitman shaft had broken and therefore it must not have been reasonably suited or sufficient for the purpose for which it was intended, manufactured and designed and that defendant was negligent in so equipping the Chevrolet truck which it had sold to defendant. Defendant went further than the bare minimum in his proof and offered substantial uncontradicted and unequivocal evidence as to the defect in the manufacture of the Pitman shaft.

**(c) The Pitman Shaft Broke Because of a Defect.**

The Pitman shaft that was broken was of the highest quality steel. The evidence of the defendant, as well as a portion of the evidence of plaintiff, demonstrated beyond dispute that it was a high quality chrome steel, designed to resist great and enormous pressures, stresses and strains. The expert witness, on whom defendant as well as plaintiff placed great reliance, that is, Dr. Earl R. Parker, testified that in his opinion the shaft was of such strength that a driver could not by exertion and pressure on the steering wheel break the shaft as it was broken (R. 296). Dr. Parker was also of the opinion that the force breaking the Pitman shaft moved from the back toward the front of the truck, which would not be the result had the Pitman shaft been broken by a blow while the truck was moving forward (R. 294).

The witnesses for the defendant all agreed with Dr. Parker's opinion that the force required to break the shaft greatly exceeded the amount that a driver could bring to bear by turning the steering wheel.

From this evidence plaintiff submits that the jury could find that the driver of the truck by manipulating the steering wheel could not have broken the Pitman shaft and that therefore the shaft must have been broken at a time prior to the placing of it on the Chevrolet truck.

This conclusion is further substantiated by the evidence of Jenson, the auto body man. Jenson testified that there were stops which prevent the wheels of the truck from turning beyond a certain torque and that these stops operate independent of the steering mechanism and operate on each individual wheel so that when the wheel is back against the stop no amount of force applied on it could exert further force into the steering mechanism (R. 208).

Plaintiff submits that the evidence of Parker and Jenson completely destroys any possible basis for inference that the Pitman shaft was broken by the operation of the truck or by the force of any blow which may have been struck on the front end of the truck while it was proceeding forward.

**(d) The Pitman Shaft was Broken Before it was Assembled on the Truck.**

Plaintiff presented evidence showing that the break in the Pitman shaft was in existence before the truck was assembled and left the hands of the defendant manufacturing company. Defendant's own witness Griffin testified that the Pitman shaft was manufactured by a division of General Motors Corporation and that the assembling of the Pitman shaft on the Chevrolet truck was accomplished by the Chevrolet Division of the defendant corporation. A part of the assembling of the truck included the placing over the point where the Pitman shaft broke a sleeve or bushing, which sleeve re-

tained oil between its inside surface and the surface of the Pitman shaft; the oil would prevent rusting on the Pitman shaft as long as the bushing was in place (Testimony Jenson, R. 207, 208).

Plaintiff presented evidence that the broken portions of the Pitman shaft contained on the face of the broken surface a rust spot. This condition existed immediately following the accident while plaintiff's truck was still in position on the edge of the highway.

The witnesses Wertsderfer and Snyder examined the broken Pitman shaft and both were men whose lives had been spent handling metals, welding them, examining their surfaces and who were certainly qualified to know rust or oxidation on metal when they saw it. The testimony of Snyder and Wertsderfer was unequivocal that a portion of the surface was oxidized and had a slight rust film on it. Wertsderfer pointed out the rust film to his wife, whose deposition was also presented and considered by the jury.

The existence of this rust spot on the broken surface of the metal was one of the most hotly contested issues in the case. The testimony of Snyder and Mr. and Mrs. Wertsderfer remained unto the end as a substantial basis for a finding that the rust spot existed.

Even defendant's own witnesses were able, at the time of trial, to observe on the surface of the broken shaft a portion which was more oxidized than other por-

tions of the broken shaft. Dr. Parker, whose evidence defendant adopts, pointed out to the court and jury the superficial oxidation on a portion of the broken part (R. 302). Witness Griffin, the expert upon whom the defense case primarily rests, in front of the jury and at the time of trial, was able to observe the rust on the top of the broken portion of the Pitman shaft and this rust occurred at the point where Mr. Griffin and the other experts testified the break of the shaft commenced. In discussing the rust, witness Griffin testified as follows (R. 355):

“Q. Isn’t that true — if you look at it maybe you can see it a little better than I can, now, but above that line there are evidences of rust, which do not exist below that line?”

“A. There appears to be rust there that doesn’t appear below the line.”

He described the rust as superficial oxidation, the same language used by Dr. Parker (R. 356).

One expert, Dr. Flanders, of the University of Utah, could not see the rust on the face of the broken part. It appears then that of the five expert witnesses who testified about the broken part and examined its face four of those witnesses were able to see rust. Two of the witnesses saw the rust immediately following the accident. The other two saw it sometime after the accident, but nevertheless were able to discern its presence. In addition to the four experts, one lay witness, Mrs. Wertsderfer, saw the rust at the time of the accident.

Plaintiff submits that there is substantial evidence from which the jury could find that the face of the broken shaft was rusted immediately following the accident; that the rust could not have accumulated while the shaft was in its bushing and under the grease film held in place by the bushing; that therefore the rust must have accumulated in the break prior to the assembling of the bushing on the shaft. From these facts it would be required to find that the part was broken before assembled and had been broken for such a length of time as to permit this accumulation of rust in the break. A further finding would necessarily follow that the defendant manufactured and sold the truck purchased by plaintiff without adequate precautions and safeguards to insure that the steering mechanism was adequate to meet the stresses and strains of normal use and that the failure to so equip was negligence on the part of defendant.

No evidence was presented by the defendant as to any inspections of the part in question after it was machined and assembled and before it was placed on the truck. Therefore, there is no affirmative proof which would overbalance the required findings from the recited evidence.

Plaintiff submits that the evidence presented overwhelmingly proves that defendant was negligent and its negligence was the proximate cause of the injuries and loss suffered by plaintiff.



There can be no question concerning the law of the State of Utah since the recent decision of *Hooper v. General Motors Corp.*, ..... Utah ....., 260 P. 2d 549. To fit the facts of the case at bar into the framework set forth in the *Hooper* opinion I will paraphrase the language of that opinion as found on page 551. Plaintiff is required to show (1) a defective Pitman shaft at the time of the truck assembly; (2) such defect being discoverable by reasonable inspection; (3) injury caused by the failure of the Pitman shaft.

Plaintiff respectfully submits that on each and every one of the required elements of liability the evidence overwhelmingly supports the jury's verdict and proves by a great preponderance the required elements set forth in the *Hooper* decision.

## POINT II.

WITNESSES WERTSDERFER AND SYNDER WERE QUALIFIED TO EXPRESS OPINIONS CONCERNING OBSERVATIONS MADE AT THE SCENE OF THE ACCIDENT.

Points 5 and 6 of defendant's brief concern claimed error in permitting witnesses Gordon Wertsderfer and Frank Snyder to testify concerning their opinions and conclusions. Both witnesses were machinists qualified by 40 years of experience in handling, machining, fashioning and welding metals. These witnesses were both at the scene of the accident immediately following its occurrence. Each examined the broken Pitman shaft and

each discovered the presence of rust thereon. Certainly no one could seriously contend that these men were not competent from their years of experience to recognize rust when they saw it. This court has long recognized that practical experts are witnesses whose testimony is of great value to the jury.

In the case of *Wright v. Southern Pac. Co.*, 15 Utah 421, 49 Pac. 309, 310, a witness for plaintiff, qualified as a practical expert, testified concerning certain operations of a train. His testimony was objected to by the defendant and the objection overruled. This ruling of the trial court was the subject of the appeal and from the opinion of this court we quote :

“ \* \* \* It appears that the witness was shown to be competent to testify as an expert. Whether a witness is shown to be qualified to testify as to matters of opinion is a preliminary question for the trial judge to pass upon at the trial, and his discretion is conclusive unless manifestly erroneous as a matter of law. *Railway Co. v. Novak*, 9 C. C. A. 629, 61 Fed. 580. It also appears that the subject about which the witness was called upon to give his opinion was not a matter of such common knowledge that the jury could judge as intelligently as one skilled in the use and management of an engine. \* \* \* ”

The question of practical expert testimony was subsequently discussed both in the majority and dissenting opinions in the case of *Graham v. Ogden Union Ry. & Depot Co.*, 79 Utah 1, 6 P. 2d 465, 467. The majority opinion states as follows :

“ \* \* \* The question as to whether the witness had shown such knowledge, special skill, or experience as to entitle him to express an opinion is a preliminary one for the court to decide before the testimony is received, and ordinarily an appellate court will not disturb the trial court’s ruling except for a clear abuse of discretion. The rule applicable is stated as follows:

“ ‘Whether or not the qualification of a witness with respect to knowledge or special experience is sufficiently established is a matter resting largely in the discretion of the trial court, whose determination is usually final and will not be disturbed by an appellate court except in extreme cases where it is manifest that the trial court has fallen into error or has abused its discretion, and that prejudice to the complaining party has resulted, even though the appellate court might have decided differently if the question had been presented to it in the first instance.’ 22 C. J. 526.

“This rule is supported by decisions from this court. *Garr v. Cranney*, 25 Utah, 193, 70 P. 853; *Olson v. O. S. L. R. Co.*, 24 Utah, 460, 68 P. 148; *Wright v. Southern Pacific Co.*, 15 Utah, 421, 49 P. 309.”

A most instructive opinion concerning expert witnesses is *Bratt et al v. Western Air Lines, Inc.*, 155 F. 2d 850, 853. There Judge Murrah, after reviewing the field, stated the rule pertinent here in the following language:

“ \* \* \* There is no precise requirement as to the mode in which requisite skill or experience shall have been acquired. ‘A witness may be com-

petent to testify as an expert although his knowledge was acquired through the medium of practical experience rather than scientific study and research.' Am. Jur., Evidence, vol. 20, Sec. 784.

"The witness had no scholastic standing in the science of aerodynamics, but he was a man of practical experience who said he had made an actual study of the structural stress and strain of the parts of an airplane, and that based upon his examination of the wreckage at the point of the accident and other facts available to him, he had an opinion concerning which of the parts of the plane structurally failed first in flight, and was therefore the proximate cause of the accident. It may be that his testimony was of little value when judged by the substance of direct testimony, or when compared with the testimony of those whose opinions are steeped in the lore of scientific research. But, 'the law does not require the best possible kind of a witness'. Wigmore on Evidence, 2d Ed., vol. 1, Sec. 569; *Fightmaster v. Mode*, 31 Ohio App. 273, 167 N.E. 407. The testimony of a country doctor concerning the sanity of his patient is as readily admissable as the testimony of the most renowned psychiatrist."

In the present case the experts were actually witnesses to the event about which they testify. The extent of their qualification would only go to the weight of their testimony. Both Wertsderfer and Snyder testified concerning the rust and that in their opinion the presence of the rust indicated a flaw in the shaft. Neither Wertsderfer nor Snyder pretended to be experts on the composition of the shaft and neither ventured any

opinion that metal, of which the shaft was constructed, was not reasonably suited for that purpose. Their testimony was only that the shaft, after being manufactured and assembled, contained a flaw which both witnesses saw.

Plaintiff respectfully submits that the witnesses Wertsderfer and Snyder were properly qualified and their testimony was competent, material and relevant to the issues for the jury to decide. No error was committed by the ruling of the court in permitting their depositions to be read.

### CONCLUSION

Plaintiff submits that the verdict of the jury is fair: that the evidence presented supports the findings on each and every element necessary to place responsibility upon the defendant for plaintiff's injuries and damage. That this court should, therefore, affirm the judgment of the lower court based on the jury's verdict.

Respectfully submitted,

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