

1980

Sharon H. Collier v. Rick L. Frerichs : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SHARON H. COLLIER,	:	
	:	
Plaintiff-Appellant,	:	
	:	
vs.	:	Case No. 16906
	:	
RICK L. FRERICHs,	:	
	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT

Appeal from the Judgment of the Fourth District Court
Uintah County, The Honorable J. Robert Bullock, Judge

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NATURE OF THE CASE

This is a personal injury case resulting from a rear-end collision involving vehicles driven by the parties. Plaintiff and Appellant, Sharon Collier, sustained severe physical injuries.

DISPOSITION IN LOWER COURT

In November, 1979, a jury in Uintah County returned a verdict of no cause of action against Mrs. Collier. Her motion for a new trial was denied.

RELIEF SOUGHT ON APPEAL

Appellant, Sharon Collier, seeks a reversal of the judgment of the lower court and a new trial on all issues.

STATEMENT OF FACTS

On February 9, 1976, Defendant struck the rear of Mrs. Collier's vehicle at a point 1.7 miles south of Vernal on Vernal Avenue. The road was snow-packed and slippery and it was dark and there were no street lights. Mrs. Collier was driving a Datsun Pickup and her tail lights were on and working properly. In addition, the pickup had a camper shell on it with clearance lights which were also on and working properly.

Because of the deep snow conditions, Mrs. Collier's vehicle had been towed from her driveway onto the road by

her husband. She was traveling at about 10 mph on the snow-packed road and had been on the road long enough to observe Defendant approaching from about 500 yards back.

Defendant was approaching at about 35 mph and, just before the collision, he applied his brakes, skidded sideways and collided with Mrs. Collier's vehicle at a speed of about 20 mph. He testified that he did not see her until he reached a point about 75 feet from impact.

As a consequence of this accident, Mrs. Collier has sustained physical injuries, the effects of which continue to the present time. The medical expenses and other special damages exceed \$3,500.00.

ARGUMENT

INTRODUCTION

Rule 59(a) of the Utah Rules of Civil Procedure, sets forth the grounds for granting a new trial as follows:

Rule 59(a) Grounds.

(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against the law.

(7) Error in law.

In Holmes v. Nelson, 7 Utah 2d 435, 326 P.2d 722 (1958), a case with several similarities to this case, this

Court reviewed the facts after the jury returned a verdict of no cause of action. It was determined that there was ample evidence to support a verdict for the Plaintiff and that it did not support the verdict rendered. The Court concluded that a new trial was proper. In this case appeal by Mrs. Collier, there is also ample evidence that Defendant was negligent, and none to show that he acted reasonably under the circumstances.

POINT I

IT IS NEGLIGENCE FOR A DRIVER OF A MOTOR VEHICLE TO FAIL TO KNOW THAT THE ROADWAY AHEAD IS CLEAR AND SAFE FOR HIM TO TRAVEL AT THE SPEED WHICH HE IS MAINTAINING.

Common sense alone tells us that it would be negligence for a driver of a motor vehicle to proceed on a public roadway without knowing whether there are any obstacles in his path. It is further obvious to a reasonable person that it would be negligence to proceed, knowing that an obstacle is or may be in the roadway, without assuring oneself that he has the capability of stopping before hitting the obstacle.

In the recent case of Keller v. Shelley, 551 P.2d 513 (1976), this Court said:

It has been the law of this state ever since Dalley v. Mid-Western Dairy Products Co.: that and it is negligence as a matter of law for a person to drive an automobile upon a traveled public highway used by vehicles and pedestrians,

at such a rate of speed that said vehicle cannot be stopped within the distance at which the operator of said car is able to see objects upon the highway in front of him. (Emphasis added.)

See also, Dalley v. Mid-Western Dairy Products Co., 15 P.2d 309 (Utah 1932), which adopted the above language and legal doctrine.

In Henderson v. Meyer, 533 P.2d 290 (Utah 1975), the Defendant was distracted by a vehicle approaching the street from a driveway. Upon looking back to the street ahead, he found that he was too close to Plaintiff's car, which was stopped for a traffic signal, to avoid a collision. The court's decision reflected the obvious when it said:

It is the duty of a driver of a motor vehicle to see or to know, from having seen, that the highway ahead of him is clear and safe for him to travel at the speed which he is maintaining, and it is negligence for him to fail to do so. (Emphasis added.)

Although the court found unusual circumstances in Bullock v. Ungricht, 538 P.2d 190 (Utah 1975), it stated that:

...In most cases where our car 'rear-ends' another it accords with common sense and experience to believe that the following car has disregarded the duty to keep a lookout ahead and keep the car under control and is, therefore, at fault. (Emphasis added.)

In that case, the driver of the lead vehicle was driving

erratically and the jury returned a verdict of no cause of action in favor of the driver of the following car. This Court decreed that circumstances may alter the determination that the following car had disregarded its duty of care and said, "In order to make that determination, it is our duty to review the evidence under the assumption that the jury believed those aspects of it which support their verdict." Id. P. 191.

Such would be the duty of this Court in this case. Here the jury found contrary to "common sense and experience." It is necessary to determine whether the evidence supports that finding. Appellant contends that it does not, not because such evidence is weak, but because it is virtually non-existent. This is brought out more fully in Point II of this brief. It is "negligence as a matter of law" to drive at such a rate of speed that a vehicle cannot be stopped in time to avoid hitting objects within the sight of the driver, then the evidence in this case required a finding in favor of Mrs. Collier. There was no clear and direct evidence that this case would fall in the category of exceptions contemplated by Bullock, *Supra*. The only evidence of negligence adduced related to that of the Defendant.

POINT II

THE EVIDENCE DID NOT SUPPORT A VERDICT THAT DEFENDANT WAS NOT NEGLIGENT.

The trial court determined that Mrs. Collier was not negligent and said:

. . . the Court has now concluded as a matter of law that Plaintiff, Sharon Collier, was not negligent in driving her vehicle.(Tr. 140-41, L. 29 to L.1.)

In light of the evidence presented in the trial, that conclusion was proper.

In consequence of the above, the cause of the action could only be attributed to the negligence of the Defendant, or to an Act of God. The latter alternative has never been claimed, intimated or argued. The facts would not justify it. The evidence, however, clearly demonstrates the negligence of the Defendant. On the evening of the accident, the conditions were described as "dark, no street lights, snowy, slippery and cloudy" (Tr., P.25, L.32, P.26, L.1) by the investigating officer, a situation that would require more than normal caution. These conditions were verified by the testimony of the Defendant:

"Q. . . . Do you have any dispute about this road being snow-packed?

A. It was snow-packed.

Q. It was snow-packed?

A. (the witness nodded his head.)" (Tr. P. 1, Ll. 10-14.)

And further:

"Q. It [the snow] was all packed down. Was it slippery?

A. Yes." (Tr., P.81, Ll.21-22.)

also:

"Q. And you had been traveling, well, even back beyond 2500 South when you had been on a slippery surface that whole way.

A. Yes.

Q. Had you applied your brakes at any other place?

A. Yes. When I was going out there, I'd stop at signs and stuff.

Q. So you knew it was slick?

A. Well, I didn't spin out or nothing. I just made it----" (Tr., P.86, Ll. 119-28.)

The Plaintiff also testified that the road was "very slick," (Tr., P.40, Ll. 17-18,) and snow-packed, (Tr., P.40, Ll. 11-13.) Plaintiff's husband confirmed the condition of the road as brought out by the testimony of the police officer and the parties, (Tr., P.102, Ll. 3-10.)

Under such conditions it is obvious that the Defendant should have been maintaining a high standard of care to allow him to guard against possible danger. He should not only have been driving at a reduced speed, but should

also have been keeping an extra cautious lookout. Testimony demonstrate that he was doing neither.

The accident was determined by the investigating officer to have been caused by the Defendant, with no contributing cause on the part of Plaintiff. (Tr., Pp. 28-29) In fact, the Defendant was described as driving "too fast" (Tr., P.29, L. 13) and keeping an "improper lookout" (Tr., P.29, L.15).

Defendant admitted both to the investigating officer at the scene (Tr., P.31, L1. 2-3) and in testimony at court that he was traveling at a speed of 35 mph for some time preceeding the accident. (Tr., P.85, L1. 2-13.) With the road conditions as described, reason alone would question whether 35 mph was a safe speed to maintain. However, those who saw him approaching were immediately aware that he seemed to be driving "quite fast," (Tr., P.92, L1. 21-22), "faster than I would drive in a car on that type of conditions." (Tr., P.103, L1. 2-3.) There seems to have been ample grounds for Defendant's being cited by the investigating officer for driving too fast. Although the testimony is in accord with the proposition that the Defendant was driving too fast, the physical evidence is simple but overwhelming in showing negligence in the speed he was maintaining. Concerning this, the Defendant's testimony was as follows:

"Q. But you did when you got to this point say you observed at least her tail lights. (Indicating) What did you do?

A. I hit the brakes, and I put one hand on the horn. And she knew I was coming. And the car slid sideways, and I kind of straightened it out, but it just kept going, and then stopped at the impact. (Emphasis added.) (Tr., P.85, Ll. 25-30.)

Obviously, Defendant was going so fast that he did not have control of his vehicle when he became aware of a hazard in the roadway ahead.

Furthermore, the record is replete with testimony that the Defendant was maintaining an improper lookout. From the evidence at the scene, the investigating officer so concluded. (Tr., P.29, L.15.) The Defendant testified that he was about 75 feet from the Plaintiff's car before he saw her, (Tr., P.82, Ll. 4-1,) that is, he had passed Plaintiff's husband who was stopped, waiting to turn into his driveway. The accident was measured to have occurred 76 feet past the driveway. (Tr., P.27, Ll. 4-8.) Under ideal road conditions, Defendant might have been able to stop within that distance upon discovering a hazard. Under snowy, slippery conditions it was impossible. Plaintiff had observed Defendant approaching for some 500 yards. (Tr., P.42, Ll. 7-9.) Defendant testified that Plaintiff's car had tail lights and that he saw them (Tr., P.82, Ll. 15-20). Plaintiff's husband testified that not only were there tail

lights on Plaintiff's Pickup, but it also had three or four lights across the top of the camper shell. (Tr., P.96, Ll. 10-25.) In spite of this testimony which showed that Plaintiff's car was clearly visible, and that the view was unobstructed for at least 500 yards when Plaintiff first saw Defendant, Defendant still did not see Plaintiff in time to avoid a collision.

Not only does the evidence show that Defendant was traveling at a speed which prevented him from stopping to avoid collision with a vehicle properly on the roadway, but he traveled almost 500 yards after it became visible to him before he actually saw it. By that time his excessive speed made it impossible to stop in time to avoid the accident. Under existing Utah law, there was clearly an adequate showing that Defendant was negligent and a verdict to the contrary is both against the evidence and against the law.

CONCLUSION

It is conceded that there may be instances where a rear-end collision could result from circumstances other than the negligence of the following driver. The Bullock case, supra, is such a case where the lead car was driven erratically, making unexpected stops and starts.

In this case, however, Mrs. Collier was doing noth-

ing that a reasonable driver wouldn't do under the circumstances. The defendant was cited for driving "too fast" and keeping an "improper lookout." When he saw Mrs. Collier's vehicle he was not able to stop in time to avoid hitting her. Since 1932, when Dalley, supra, was decided, that has been negligence as a matter of law.


A verdict of no cause of action is clearly contrary to the law. The consequent failure to award any damage in light of the overwhelming evidence of negligence and the undisputed evidence of damages can only be explained in terms of passion or prejudice.

The judgment on the verdict in this case should be reversed and the case remanded for a new trial.

DATED this 7th day of April, 1980.

Respectfully submitted,

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MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Brief of Appellant to: JOHN M. CHIPMAN, Attorney for Respondent, 702 Kearns Building, Salt Lake City, Utah 84101, postage prepaid on this 7th day of April, 1980.
