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Roland Lavar Denison v. Alvin D. Chapman : Brief of Defendant and Respondent Dora Hartley

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

ROLAND LAVAR DENISON,
Plaintiff and Appellant,

vs..

ALVIN D. CHAPMAN, CONTINENTAL
OIL COMPANY, a corporation, and DORA
HARTLEY,

Defendants and Respondents.

**NO. 8554
CIVIL**

**Brief of Defendant and Respondent
Dora Hartley**

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Brief of Defendant and Respondent Dora Hartley

STATEMENT OF FACTS

Respondent Dora Hartley agrees in full with the statement of facts set forth in the brief of Alvin D. Chapman and Continental Oil Company, and adopts the whole thereof as her statement of facts. We believe that the brief of respondent Alvin D. Chapman and Continental Oil Company fairly and accurately sets forth the facts as shown by the record on this appeal. We cannot agree with the statement

of facts set forth in appellant's brief for the same reasons discussed in the brief of respondent Alvin D. Chapman and Continental Oil Company.

STATEMENT OF POINTS TO BE RELIED UPON

POINT I

THERE IS NO EVIDENCE FROM WHICH THE JURY COULD FIND DEFENDANT DORA HARTLEY NEGLIGENT.

POINT II

THE DOCTRINE OF RES IPSA LOQUITUR HAS NO APPLICATION TO THE FACTS OF THIS CASE.

POINT III

IF DEFENDANT WERE GUILTY OF ANY NEGLIGENCE, PLAINTIFF WAS EQUALLY GUILTY OF CONTRIBUTORY NEGLIGENCE.

ARGUMENT

PRELIMINARY STATEMENT

Plaintiff's argument for recovery against Dora Hartley seems to be founded on the theory that the jury could have found negligence on her part from the mere fact that:

- (1) The automobile driven by defendant Dora Hartley collided with the truck driven by defendant Alvin Chapman, or that,
- (2) She was negligent for even trying to negotiate the hill or that,
- (3) Other drivers had successfully negotiated the hill without having an accident.

On page 13 of appellant's brief, he states:

"It taxes credulity to believe that the accident could have happened if both Mr Chapman and Mrs. Hartley had been driving with due care commensurate with the hazards they knew existed."

Such argument is fallacious and without merit. It is a matter of common knowledge that accidents occur without the fault of either of the drivers. The mere fact that an automobile accident occurs does not warrant a recovery unless it can be shown that the injury or damage was caused by the negligence of the operator. It is essential to the existence of negligence that there be some fault on the part of the operator; no liability exists for an unavoidable accident. (5A Am. Jur. 346, 347, 439, Automobiles and Highway Traffic, Secs. 193 and 341).

An unavoidable accident is such an occurrence as under circumstances could not be foreseen or anticipated in exercise of ordinary care as the proximate cause of the injury by any of the parties. (Uncapher vs. Baltimore and O. R. Company, 127 Ohio St. 351, 188 N. E. 553). An accident which is caused by an absence of exceptional foresight, skill or care which the law does not expect of the ordinary prudent man is also characterized as inevitable or unavoidable. No redress is afforded for an injury caused by such an accident, and the loss must be borne by the one upon whom it falls. (Parker vs. Womack, 37 Cal. 2d 116, 230 P. 2d 823, and authorities cited on page 825).

In the case of Jolley vs. Clemen (82 Cal. App. 2d 55, 82 Pac. 2d 51) the Supreme Court of California pointed out on page 61:

“ . . . if the accident was inevitable or unavoidable that is the same thing as to say that defendant was not negligent, or that his negligence, if any, did not cause the accident. In other words, it is to say that plaintiff has failed in his proof.”

It is elementary that plaintiff has the burden of proof to show that defendants were negligent and that the negligence of the defendants was the proximate cause of the injuries complained of. We are mindful that in a case where a verdict has been directed in favor of the respondents the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the appellant. We have carefully searched the record and can find no evidence from which the jury could find defendant Dora Hartley negligent. Plaintiff argues that they could have found that she was negligent for attempting to negotiate the hill. With this proposition we most earnestly disagree. Nor can we agree with the proposition that since others negotiated the hill without accident the jury could well find that defendants were negligent because they had an accident. If either proposition were true plaintiff would likewise be guilty of negligence in attempting to negotiate the same hill and since he was involved in an accident.

POINT I

THERE IS NO EVIDENCE FROM WHICH THE JURY COULD FIND DEFENDANT DORA HARTLEY NEGLIGENT.

The only evidence touching upon the conduct of defendant Dora Hartley in operating her automobile was the testimony of Mrs. Hartley, Mr. Chapman and possibly that

of Mr. Denison. The testimony of Mrs. Hartley is undisputed and is corroborated by that of Mr. Chapman. She was driving up the hill entirely in the right hand lane at approximately 15 miles per hour and had her car completely under control from the time she entered the highway until it skidded in a counter-clockwise direction just as the oil truck began passing her. She didn't realize the highway was so slick until after she entered, and then she realized that it was extremely slick. Thereafter she drove very cautiously, since she had had previous experience in driving this hill under wintry conditions.

In appellant's brief he keeps suggesting that Mrs. Hartley "experienced great difficulty in keeping her car under control almost from the moment she entered the highway" and "she was struggling to get her vehicle up the hill." We have searched the record and can find no such evidence. In fact, the evidence shows otherwise. It is undisputed that the Hartley car did not weave or skid until the oil tanker came alongside of her automobile. The weaving of the Hartley automobile suggested by Mr. Denison could only be the counter-clockwise spin which resulted in the accident with the oil tanker and the clockwise spin which resulted from the collision.

The only possible theory remaining upon which the jury could find negligence upon the part of defendant Dora Hartley is from the mere fact that her automobile skidded. It is well settled that the mere fact that an automobile skids or slides on a slippery highway is not evidence, in and of itself, of negligence. This rule has been recognized by this Court and was applied in the case of *West vs. Standard Fuel Co.*, 81 Utah 300, 17 Pac. 2d 292. In the *West* case, this Court held that the fact that plaintiff's automobile skidded

on a slippery highway into a truck standing in the traveled portion of the highway did not follow as a matter of law that plaintiff did not have his automobile under control. On page 294 this Court said:

“There is no evidence that plaintiff did not have his car under control unless it may be said that the fact his automobile skidded into the truck is such evidence. Such fact may not be said to show as a matter of law that plaintiff did not have his car under control.”

If the automobile were carefully operated, and was caused to skid through no fault of the operator, but due to conditions of the highway beyond his control, then the operator is not guilty of negligence, and the accident is deemed unavoidable. (See 5A Am. Jur. 346, 347, 439 Automobile and Highway Traffic, Secs. 193 and 341).

The evidence conclusively shows that the highway was extremely slippery. The evidence further shows without dispute that the automobile driven by defendant Dora Hartley skidded with no fault on her part. Since skidding in and of itself is not evidence of negligence, there is no evidence from which the jury could find Mrs. Hartley negligent. The trial court properly granted the motion of defendant Dora Hartley for an involuntary dismissal. Not only was such action proper, but the evidence demanded it, to prevent the jury from speculating on a verdict. The same action was upheld by this Court in the case of Lockheed vs. Jensen, 42 Utah 199, 129 Pac. 347, where the evidence of negligence was held to be insufficient to go to the jury where a car was driven at a lawful rate of speed on a country road and skidded upon running into ruts of chuck holes partly filled with sand.

POINT II

THE DOCTRINE OF RES IPSA LOQUITUR HAS NO APPLICATION TO THE FACTS OF THIS CASE.

Apparently appellant does not contend in his brief that the doctrine of Res Ipsa Loquitur applies to defendant Dora Hartley. If there be any question about its application, we submit that it does not apply. The authorities cited in the brief of Respondents Alvin D. Chapman and Continental Oil Co. demonstrates that the law is well settled that the mere fact that an automobile skids on a slippery pavement does not of itself constitute evidence of negligence on the driver's part so as to render the Res Ipsa Loquitur Doctrine applicable.

To avoid repetition we adopt and incorporate in full the argument set forth under this point in the brief of Respondents Alvin D. Chapman and Continental Oil Co.

POINT III

IF DEFENDANT WERE GUILTY OF ANY NEGLIGENCE, PLAINTIFF WAS EQUALLY GUILTY OF CONTRIBUTORY NEGLIGENCE.

The argument set forth in the brief of Respondents Alvin D. Chapman and Continental Oil Company very ably demonstrates that if defendant Dora Hartley were negligent, plaintiff was equally negligent. It is difficult to understand how plaintiff can claim that the jury could find Dora Hartley negligent for attempting to negotiate the hill and not be required to find plaintiff equally as negligent for attempting to drive down the same hill, which according to the evidence was even more hazardous. Since we would have

nothing more to add, we adopt and incorporate the argument set forth under this point in the brief of Respondents Alvin D. Chapman and Continental Oil Company.

CONCLUSION

Since there is no evidence from which the jury could find defendant Dora Hartley negligent, the trial court properly granted her motion for involuntary dismissal. If there were any conduct on the part of the defendants from which the jury could have found negligence, the jury would have been required to find contributory negligence on the part of plaintiff, since his conduct was of the same kind. The accident was clearly unavoidable, without negligence of any party, as determined by the trial court. Since the doctrine of *res Ipsa loquitur* has no application to the facts of this case, we know of no other theory upon which the case could have been submitted to the jury. We respectfully submit that the judgment of the trial court was correct, and should be affirmed.

Respectfully submitted,

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