1959

Charles Joseph, Tamara Lee Joseph, and Melanie Joseph v. W. H. Groves Latter-Day Saints Hospital : Additional Authorities Cited by Appellants

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

CHARLES JOSEPH,
TAMARA LEE JOSEPH, and
MELANIE JOSEPH, by Their
Guardian ad litem,
CHARLES JOSEPH,

Plaintiffs and Appellants,

-vs-

W. H. GROVES LATTER-DAY
SAINTS HOSPITAL,
a corporation,

Defendant and Respondent.

Case No. 9068

ADDITIONAL AUTHORITIES CITED BY APPELLANTS

At the time of the oral argument, appellants cited Rogow v. United States 173 F. Supp. 547, 2d Cir. (1959) where the court said, "In the early days of aviation, perhaps, it could have been said that planes crashed frequently and mysteriously through no fault of pilot or maintenance personnel. Rochester Gas & Electric Corporation v. Dunlop, 1933,

148 Misc. 849 266 N.Y. Supp. 469. But great technical progress in the last few years has brought the art of flying to the state where aircraft do not generally meet disaster in the absence of some negligence. The New York courts have recognized this fact by applying the res ipsa loquitur doctrine in airplane crash cases. See Seaman v. Curtis, Flying Service 231 App. Div. 867 247 N.Y. Supp. 251; Solak v. State of New York 1929 United States Aviation Report 42. The Federal Courts applying New York law have also repeatedly upheld the doctrine. See Lobel v. American Airlines, Inc., 2d Cir., 1951, 192 F.2d 217, Certiorari denied 1952, 342 U.S. 945 72 S.C. 558 96 L. Ed. 703; O'Conner v. United States 2d Cir. 1958, 251 F.2d 939; Citrola v. Eastern Airlines, Inc., 10th Cir. 264 F.2d 815.

In this case the inference of negligence is certainly as compelling as the cases just cited. In Lobel, for example, plaintiff was injured when two engines of the plane on which he was traveling

"stopped functioning". In O'Conner decedents death was caused by the head-on collision of a B36 Bomber and a F51 Fighter which were engaged in tactical exercises. The planes had intended to pass within 500 feet of each other. In Citrola, the case was submitted to the jury on two theorys: (1) res ipsa loquitur, and (2) specific acts of negligence, i.e. flying below the minimum safe altitude. In upholding the district court judges charge, the court pointed out that low flying was far from the only probable cause of the accident. In all of these cases, as in the case at bar, the accident could have been due to various causes which the plaintiffs could not possibly have specified or negated. Government counsel has suggested, for example, that a plane may crash because a pilot has died at the controls. Indeed, the O'Conner crash might have been caused by a broken control cable; the Kesinger crash by a down draft and the Lobel disaster by defective fuel. However, the cases

teach that plaintiff need not negate every other possible cause for a crash. She must only show that such an accident does not usually occur without negligent maintenance or operation. This she has done.

See also United States v. Kessinger, 10th Cir. 1951 190 F.2d 529.

We see no reason why a different rule should be applied to the blood transfusion cases than to the airplane crash cases.

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Appellants' counsel has elected to file a supplement to his brief in which he cites airplane crash cases which have applied the doctrine of Res Ipsa Loquitur. His reference to these cases concludes with the argument that he cannot see any reason why a different rule should be applied to blood transfusion cases than some courts have applied in the airplane crash cases.

It seems very apparent to the respondent that the two situations present totally different factors which have no relation to each other whatsoever.

It should be obvious that an airplane, like a locomotive or an automobile, is made and designed by man. Any defects which a particular design or model may possess can be eliminated and removed. Like any man-made object, an airplane may be tested and experimented with and brought to a high state of perfection by such experimentation and testing. The maker or designer of an airplane has absolute and complete control over his product and can change or alter it at his will.

Not so the physiology of the human body. It is not man-made. It cannot be changed or altered or made more perfect by the act or ingenuity of man. No testing or experimentation

to improve its performance or function is possible.

The record before this court conclusively shows that no one could possibly have determined the physiological idiosyncracies present in Mrs. Joseph nor foretell in advance how they would react to the addition of blood, even from donors of the same type and Rh factor.

No one has yet been able to perfect the human body to the point where it could be said if it fails to function properly such failure is the result of negligence. The record in this case stands undisputed that reactions to blood transfusions occur without fault or negligence and for reasons unknown and unascertainable. The record in this case clearly shows that this is such a case. These are the reasons why the airplane cases cited by counse to this court have no parallel with the case at ba

Respectfully submitted,

RAY, QUINNEY & NEBEKER

BY ALBERT R. BOWEN