

1960

Leslie Price and Lafe Morley v. Ashby's Inc. and General Motors Co., Pontiac Div. : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

King and Hughes; Attorneys for Plaintiffs;

Recommended Citation

Brief of Appellant, *Price v. Ashby's Inc.*, No. 9165 (Utah Supreme Court, 1960).
https://digitalcommons.law.byu.edu/uofu_sc1/3540

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Civil No. 9165

IN THE SUPREME COURT

of the
STATE OF UTAH

FILED
APR 18 1960

Clerk, Supreme Court, Utah

LESLIE PRICE and LAFE MORLEY,
Plaintiffs,

—vs.—

ASHBY'S INCORPORATED, a Utah
corporation; and GENERAL MOTORS
CORPORATION, Pontiac Division,
Defendants.

BRIEF OF APPELLANTS

KING AND HUGHES
DWIGHT L. KING
No. 205 Sentinel Building
2121 South State Street
Salt Lake City, Utah
Attorneys for Plaintiffs

INDEX

	<i>Page</i>
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	9
POINT I. THE EVIDENCE PROVIDES SUFFICIENT BASIS FOR A FINDING BY THE JURY THAT THE AIR RIDE MECHANISM ON THE STAR CHIEF PONTIAC WAS DEFECTIVE.	9
POINT II. THE EVIDENCE PROVIDED SUFFI- CIENT BASIS FOR THE JURY TO FIND THAT THE DEFECT IN THE AIR RIDE SUSPENSION MECHANISM OF THE STAR CHIEF PONTIAC CAUSED THE TIP OVER.	9
ARGUMENT	10
POINT I. THE EVIDENCE PROVIDES SUFFICIENT BASIS FOR A FINDING BY THE JURY THAT THE AIR RIDE MECHANISM ON THE STAR CHIEF PONTIAC WAS DEFECTIVE.	10
POINT II. THE EVIDENCE PROVIDED SUFFI- CIENT BASIS FOR THE JURY TO FIND THAT THE DEFECT IN THE AIR-RIDE SUSPENSION MECHANISM OF THE STAR CHIEF PONTIAC CAUSED THE TIP OVER.	13
CONCLUSION	17

AUTHORITIES CITED

Hewitt v. General Tire and Rubber Company, 3 Utah 2d 354, 284 P. 2d 471	14
Hooper v. General Motors Corp., 123 Utah 515, 260 P. 2d 549..	14
Mazzietelle v. Belleville Nutley Buick Co., 46 N.J. Super 410, 134 At. 2d. 820	15
Northern v. General Motors Corp., 2 Utah 2d 9, 268 P. 2d 981..	14

TEXTS CITED

Sec. 433, Restatement of Law of Torts, Vol. 2, P. 1165.....	15
---	----

IN THE SUPREME COURT
of the
STATE OF UTAH

LESLIE PRICE and LAFE MORLEY,
Plaintiffs,

—vs.—

ASHBY'S INCORPORATED, a Utah
corporation; and GENERAL MOTORS
CORPORATION, Pontiac Division,
Defendants.

Civil No.
9165

BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

Throughout this brief, plaintiff Leslie Price, will be referred to as Price. Plaintiff Lafe Morley as Morley. Ashby's Incorporated, a Utah corporation, will be referred to as "Ashby's" and defendant, General Motors Corporation, Pontiac Division, will be referred to as "General Motors".

All Italics are ours.

STATEMENT OF FACTS

This case arises out of an incident which occurred on the 28th day of April, 1958, as plaintiffs were returning from Garrison, Utah, to Delta, Utah, in the 1958 Pontiac Star Chief Sedan owned by Price. The car was being driven by Price in a northeasterly direction on Highway 6-50, approximately 1½ miles West of Delta. There was a slight turn to the left and as the automobile turned on the highway the steering wheel froze in Price's hands and the automobile went straight off the curve and went over in the barrow pit causing the damage to the automobile and injuries to the plaintiffs that were complained of.

The case came on for trial on the 6th day of October, 1959 before the Honorable Aldon J. Anderson. At the close of the plaintiff's evidence, the Court granted both of the defendants' motions to dismiss the complaint.

From the Order of Dismissal this appeal has been perfected.

The evidence reveals the following facts. Price purchased his Star Chief Pontiac Sedan on the 14th of February, 1958. For the first 2,000 miles, the automobile seemed to operate, so far as the air suspension mechanism is concerned, without any difficulty. (R. 34). Some time after the first 2,000 miles of operation, the automobile

began to act in a strange manner in that the right front of the body of the automobile would be near the ground after the automobile had been stopped for a short period of time. This was reported to Ashby's and on one occasion the malfunction was discussed with the Salesman who sold the automobile to Price, one Clay Broderick. On another occasion, it was discussed by Price with the mechanic at the Ashby's, one Jay Fillmore (R. 36). Broderick informed Price that the difficulty with his air suspension was the same as was experienced on all such cars. (R. 36).

Price took the automobile back to Ashby's on four separate occasions to have the air suspension mechanism adjusted but none of the work seemed to change the peculiar way in which the suspension acted and the right front of the car continued to go down.

On several occasions, Price could hear a hissing sound in the right front wheel of the automobile. He never did attempt to fix the air ride himself, (R. 38), but followed the instructions in his Owner's Manual which required him to report each peculiarity in the car to the Dealer from whom he purchased it. (R. 39).

On April 28, 1958, Price and Morley left Delta, about 4:30 in the afternoon and went to Garrison, Utah a distance of about 80 miles.

At Garrison, Morley, who was a real estate salesman, showed Price a ranch which he had listed for sale, and

around 7:30 to 8:00 o'clock Price and Morley, together with a man by the name of "Dierdon" went to supper at Baker, Nevada.

Before supper, Price had two coke highballs which were prepared by the bar keeper at the place where he ate. Following the two drinks he had two ham sandwiches and then drove Mr. Dierdon back to his residence. About 8:30 or 8:45 p.m., Price and Morley left Garrison and headed back toward Delta, Utah. (R. 45 and 46).

On the way back to Delta, Price drove the automobile at 55 and 60 miles per hour. The curve on which the automobile tipped over was not a sharp curve but a gentle curve easterly to a more northerly direction. The highway at the time of the accident was in all respects normal, a smooth oiled surface highway.

Describing what happened, Price stated:

"When we were making that turn it happened so quick, kind of hard to explain, but it seems like the car stepped up and was off and over and when we got out" (R. 46).

Next day after the accident, Price returned to the scene of the accident and examined the highway. He observed that on the surface of the highway he could see brake marks on the oil and the car just went straight along the mark and down over the shoulder. The black

marks on the surface of the highway, Price estimated to be between 50 and 60 feet over all. (R. 51 and 52).

After the automobile had been removed from the scene of the accident, Price observed it at the local service station and noticed that the body of the car was sitting practically with the bottoms of the doors on the ground. (R. 53). On one prior occasion, Price had had the Pontiac automobile greased and when the grease rack was lowered the car came right down onto the ground with the whole body resting on the cement apron around the grease rack. (R. 55).

The repair work on the automobile was done at Carlson's Pontiac-Cadillac garage in Salt Lake City. Since the repair, the peculiar operation of the air suspension ceased. The car rides evenly and there is no longer any air escaping making the hissing sound that Price had noted prior to the accident. (R. 56).

Price's automobile was repaired by one, Milo Solomon, who was called as a witness for the plaintiffs. Solomon had had a lifetime of experience as a general mechanic working over 32 years at his trade. (R. 86). After he had made the necessary repairs Solomon attempted to get the air suspension on the Pontiac to work and could not get it to lift the car to its normal uplift position. Solomon discovered a small hole in the line between the tank of the airlift mechanism which ultimately leads to the right front wheel. (R. 89). The

line where the hole was discovered was near the upper control link of the right front wheel. Solomon was of the opinion that this control link, or arm, a moving part, had rubbed a hole in the line carrying the air. Solomon cut out a portion of the line approximately 16 inches in length and spliced a new piece into the line. Prior to this he had attempted to braze the hole but filled the line full of solder.

Solomon was of the opinion that the line carrying the air to the air suspension mechanism on the right front wheel was supposed to be installed so that it would not touch any moving part. (R. 93, 94). On no other Pontiac had Solomon ever seen the line so close to the control arm. It was his opinion that it should always be clear of any moving part. (R. 95, 96).

As long as the hole was in the line Solomon could not get the airlift to lift the car. (R. 97). When the air is out of the airlift mechanism the body of the car would be very close to touching the ground. (R. 98). The mechanism that creates the lift in the air suspension system is a boot-type of installation with a single boot located at each wheel of the automobile. Without sufficient air pressure in the boot the lift will not occur and the automobile will be down onto its frame. (R. 98). Solomon was of the opinion that the size of the hole in the line would govern whether or not the boot on the wheel would actually perform and create a lift on the automobile. It was Solomon's testimony that the line in which he dis-

covered the hole was in the clamps installed by the factory. (R. 106). There was no evidence that anyone had ever monkeyed with or repaired the line prior to the time Solomon examined it. (R. 106). After Solomon repaired the hole the air mechanism on the automobile would then operate. (R. 107). Solomon had never seen on a Pontiac automobile the air suspension line located where it was on the Price automobile.

Witness Morley returned to the scene of the accident the day afterward and observed on the highway the dark mark on the surface of the road leading down to its edge off toward the point where the automobile of Price tipped over. (R. 137).

Plaintiff called as one of its witnesses a service instructor employed by General Motors Corporation at its General Motors training center in Salt Lake City. His name was Renshaw. Renshaw was unable to testify as to the size of the hole in an air-lift line would be necessary to permit the air pressure to escape and the mechanism become inoperative. (R. 191). Renshaw was of the opinion that if the air-lift lines are properly installed they would not rub on the upper control arm. (R. 201). It was also his opinion that if the line did rub on the upper arm they were either improperly installed or in need of repair. (R. 201). His opinion was also that a hole in the line is a defect in the line. (R. 205). Renshaw was not able to give any opinion as to how large a hole would have to be before it would drain off the air faster

than it could be put in by the air compressor. (R. 213). Only if air pressure is lower or excessive amounts of weight are placed on the front of the automobile would the right front of the automobile be lower than the other corners of the automobile.

Exhibit P. 2 is a diagram of the Pontiac Air Suspension system and shows the point in the system where Witness Solomon discovered the hole. Exhibit P. 3 is the Pontiac Shop Manual for 1958. Page 3A-33 of the Manual is especially significant and was discussed with the witness Renshaw. One significant portion of the Manual explains the reason for the Price automobile going down on the ground after having been placed on the grease rack. It reads as follows:

“Before lifting an air-ride car with any hoist, except drive-on type, pull out car lift knob to raise car to over-ride position, and secure knob in out position. This will lock out levelling action and conserve air pressure in system.”

Price did not pull out the car-lift knob and as a consequence the air escaped from the system and when lowered the frame of the car came down to the level of the floor.

The Manual, at page 3A-33, states that the car-lift knob should be pulled out and held to lift the car a maximum amount while engine is running. Then the engine should be stopped and the knob tied in the out position.

This traps the air in the entire system and towing will be facilitated by the extra clearance provided by the override control car lift feature. If the car-lift knob is not tied or blocked in the out position, jouncing as the car is towed will cause exhaust of air from system. The pressure will have to be restored to maintain clearance for towing. Also, in the Manual, the following statement appears:

“When the air-suspension system has collapsed, ground clearances are at a minimum; therefore the car should be raised prior to towing.”

SUMMARY OF ARGUMENT

POINT I

THE EVIDENCE PROVIDES SUFFICIENT BASIS FOR A FINDING BY THE JURY THAT THE AIR RIDE MECHANISM ON THE STAR CHIEF PONTIAC WAS DEFECTIVE.

POINT II

THE EVIDENCE PROVIDED SUFFICIENT BASIS FOR THE JURY TO FIND THAT THE DEFECT IN THE AIR-RIDE SUSPENSION MECHANISM OF THE STAR CHIEF PONTIAC CAUSED THE TIP OVER.

ARGUMENT

POINT I

THE EVIDENCE PROVIDES SUFFICIENT BASIS FOR A FINDING BY THE JURY THAT THE AIR RIDE MECHANISM ON THE STAR CHIEF PONTIAC WAS DEFECTIVE.

The opinion of the witness Solomon that the air line providing air pressure to the boots on each of the wheels of the Pontiac automobile should not have been in the position where the upper control arm on the right front wheel could rub against it, was never seriously disputed. The witness, Renshaw, agreed that the line should not be in a position where other moving parts could touch it. It seems to be clear that if the line was in a position where a moving part could touch it or rub against it, the chances that hole would be worn through are so great that it would be dangerous to have such a device installed in an automobile.

Once the line is in the proximity of the upper control arm and the rubbing occurs it is only a matter of time until the hole in the line would appear permitting the air to escape from the line.

Both Solomon and Renshaw agree that the hole in the line is a defect and that it is only a question of size to render the air-ride mechanism completely inoperable. Both seem to feel that a small hole might be com-

pensated for by the Air Compressor and eventually if the hole continued to be enlarged, the Air Compressor would not be able to supply sufficient air to hold up the air-ride mechanism.

The upper control arm rubbing against the line continuously wears and enlarges the hole. When the maximum capacity of the Compressor is passed the system would necessarily fail.

The experience of Price in the use of the automobile is clearly consistent with plaintiff's theory and with the testimony of both Solomon and Renshaw concerning the operation of the Air-ride mechanism.

Price used the new car for a month before there occurred any kind of defect in the air-ride mechanism. Then the defect appeared and he noticed that the automobile would be down on the right front corner whenever it was left standing. Repeated service calls at Ashby's did not alleviate the situation. The increase in the size of the hole continues until finally on the night of April 28th the hole became so large that the Air Compressor could not supply sufficient air to compensate for the leak and the system completely failed.

As against Ashby's, the plaintiffs submit:

That the repeated complaints about the automobile which Ashby's failed to rectify; the obvious nature of

the defect; permitting the automobile to be used even though it had been demonstrated to be defective and even though the mechanics had been unable to discover the cause of the defective operation and rectify it constitutes negligence. Such negligence could well be found from the evidence.

The witnesses all testified that the line, after the tipover, was still in its original clamps and in place on the vehicle. The line was not an inflexible line but was a steel tubing clamped to the frame of the automobile. It is submitted that from this the Jury could have found that the line was installed by General Motors where Solomon found it. It was so close to the upper control arm as to be in a position where a hole would be rubbed in it, in the normal use and operation of the automobile. This, plaintiffs submit, is negligence and could well be found by the Jury.

A Jury interpreting the witnesses' testimony in the light most favorable to the plaintiffs could have found that the system was originally installed in a defective manner by the General Motors; that the defect could have been discovered and repaired by adequate examination by Ashby's, Inc. As a consequence both of the defendants were negligent in permitting the defect to exist in the automobile and failing to discover and rectify the defect.

POINT II

THE EVIDENCE PROVIDED SUFFICIENT BASIS FOR THE JURY TO FIND THAT THE DEFECT IN THE AIR-RIDE SUSPENSION MECHANISM OF THE STAR CHIEF PONTIAC CAUSED THE TIP OVER.

Once the air-ride suspension system failed, the automobile rode so close to the ground that the turn to the left caused the automobile to sway to the right and the automobile struck the surface of the road, causing a loss of control and the tip-over described by Price and Morley.

There was no defect in the Price automobile which would explain the loss of control and the tip-over other than the defect in the air-ride mechanism. None of the tires were blown out, no defect in the steering mechanism was discovered, no defect in the surface of the road or other traffic hazards came to light which would explain why the car would leave the road in the manner in which it did. After the tip-over, Morley and Price, observed on the surface of the road a straight mark on the oiled surface leading right up to the edge of the road and onto the shoulder over which the tip-over occurred. Price describes this as a brake-mark. Morley describes it as a dark mark on the road down to the edge of the highway. Such a mark, the Jury could well find might be made by a part of the automobile dragging on the surface of the highway. The exact nature of the mark would depend on the part which struck the road.

Certainly, this straight line across the road and off

present if the automobile was operating in normal fashion. The road mark is consistent with the evidence and supports plaintiff's theory that when the air-ride mechanism collapsed, the automobile would have minimum road clearance. Solomon, Price, and the Manual all bear out this result when the air leaves the system. Any slight variation in the level of the road could cause, a portion of the car, to drag. Swaying of the car might cause such drag.

The law of Utah seems to be clear. Three cases decided by the Court have spelled out the consideration for the Trial Court. They are: *Hooper v. General Motors Corp.*, 123 Utah 515, 260 P. 2d. 549. *Northern v. General Motors Corp.*, 2 Utah 2d. 9, 268 P. 2d. 981, and *Hewitt v. General Tire and Rubber Company*, 3 Utah 2d. 354, 284 P. 2d. 471.

These cases clearly establish the duty of the Manufacturer of an automobile to exercise reasonable care to discover and correct defects in manufacture. The evidence must be considered in the light most favorable to losing party. All the facts surrounding the accident may be considered in arriving at proper decision as to proximate cause.

In the *Northern* case the Court sets down some principles to be considered in deciding whether the evidence is sufficient to show causation. (2 Utah 2d. P. 9)

“(a) The factor which contributed in producing the harm was (taking plaintiff’s theory of the case) the fracture in the steering arm when manufactured;

“(b) Looking back at this time it appears highly probable that the harm was brought about by the manufacturer’s negligence in failing to inspect properly the steering mechanism;

“(c) The manufacturer’s conduct created a factor which appeared in continuous and active operation up to the time of the accident; and

“(d) There was no great lapse of time after the purchase of the vehicle to the day of the accident.”

See also: *Sec. 433, Restatement of Law of Torts, Vol. 2. P. 1165.*

In *Mazietelle v. Belleville Nutley Buick Co.* 46 N.J. Super 410, 134 A. 2d. 820. The New Jersey Court spelled out what appears to be the undisputed law in all jurisdictions concerning the duty of the dealer in automobiles. It said he was under a duty to exercise reasonable care to replace parts and make repairs in a safe and suitable manner, as well as inspect the car for such defects as plaintiff complained of and which a careful inspection would have disclosed.

Plaintiffs’ theory which, it is respectfully submitted, is fully supported by the evidence, seems to be the only

logical explanation of the tip over. When the hole in the air mechanism line became sufficiently enlarged that the compressor could not compensate for its existence, the operation of the automobile exhausted all the air in the system and the automobile became lower and lower on the highway until clearance between the edge of the automobile and the surface of the road was, as stated in the Manual, at a minimum. Then, as Price attempted to make a slight turn to the North at the place where the tip-over occurred, some portion of the automobile came in contact with the surface of the road, caused loss of control of the automobile.

After the air-ride mechanism was repaired by Solomon and the hole in the line repaired by a new piece of line, and after Solomon had removed the line from its close proximity to the upper control arm, the air-ride suspension system in Price's automobile has operated as intended by the manufacturer. The right front no longer goes down, and the car does not have the hissing sound which Price described as occurring prior to the tip-over.

It is respectfully submitted that the evidence clearly demonstrates that the air-ride mechanism of the Price automobile was defective. That the defect was such as to reduce the clearance of the automobile to a minimum when the defect came into full and complete operation; that when the clearance between the surface of the road and the frame of the automobile was at a minimum the risk that a portion of the frame would drag on or come

into contact with the surface of the highway was greatly increased; that the evidence shows that some portion of the automobile did come in contact with the highway and that as a result Price was caused to lose control of his automobile and the serious damage suffered by himself and Morley resulted.

CONCLUSION

Is is respectfully submitted that the Trial Court erred in granting defendants' motions for dismissal of plaintiffs' cause of action at the close of plaintiff's case; that this Court should order a new trial to be granted to plaintiffs and reverse the erroneous Orders of the Trial Court.

Respectfully submitted this day of ,
1960.

KING AND HUGHES
DWIGHT L. KING
No. 205 Sentinel Building
2121 South State Street
Salt Lake City, Utah
Attorneys for Plaintiffs