1965

Donna Stapely v. Salt Lake City Lines : Appellant's Brief

IN THE SUPREME COURT
of the
STATE OF UTAH

DONNA STAPLEY,
Plaintiff and Respondent,

vs.

SALT LAKE CITY LINES,
a corporation,
Defendant and Appellant.

Case No.
10345

APPELLANT'S BRIEF

Appeal from the Judgment of the
Third District Court for Salt Lake County
Hon. Ray Van Cott, Judge

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BRIEF OF APPELLANT

This suit was instituted as a result of a collision between a Salt Lake City Lines bus which was stopped stopping at a coach stop at 8300 South State Street vale, Utah, and a 1960 Ford Fairlane which hit from the rear on January 26, 1963, at approximately o'clock in the afternoon.

The automobile was owned and driven at by Roland Park Stapley, husband of plaintiff Stapley, who was accompanying her husband and seriously injured in the accident.

The trial court denied defendant's request directed verdict and submitted questions of the carrier's negligence, an intervening proximate cause damages to the jury. The jury returned a unanimous eral verdict in favor of plaintiff, assessing her damage the amount of $15,215.50, later reduced on motion cerning special damages by $639.25.

STATEMENT OF FACTS

The accident occurred on a four-lane highway the outside north-bound lane. The day was clear, surface condition of the highway was generally we 10) The speed limit is 40 miles per hour on State (Tr. 28). The investigating officer, because of the condition of the roadway, was unable to determine whether there had been a violation of speed restrictions. The rear vehicle left skid marks on the surface of road, but the bus did not. (Tr. 32)

A windrow of snow and road grit was pushed over the normal edge of the highway to a depth of approx

[illegible] inches. (Tr. 12, 178) The shoulder of the road, [illegible] wet and muddy, was deeply rutted with tire [illegible] Tr. 100, 178) and some puddles of water were observed. The shoulder measured approximately 9 feet in [illegible] and a utility pole bearing the coach-stop sign was [illegible] shoulder at 8.3 feet from the east edge of the hard [illegible] Tr. 97) The entire street measured 56.1 feet; [illegible] northbound inside lane, 11.6 feet; the northbound [illegible] lane, 11.4 feet. (Tr. 94)

After the collision, the bus came to rest with its [illegible] not its body) one foot from the edge of the driveable [illegible] of the roadway (Tr. 9); the automobile was found [illegible] two feet seven inches from the east edge of the [illegible] (Tr. 14; Ex. 1)

The driver of the bus testified that he was traveling [illegible] about 30 miles per hour (Tr. 63) and began his stop [illegible] permit passengers to alight at 8300 South State approximately one block before that stop, making a more [illegible] stop than usual. (Tr. 74) An eighty-four-year-[illegible] woman passenger on the bus fell forward when the [illegible] vehicle hit it. (Tr. 175)

The bus driver turned on the right-hand direction [illegible] probably 200 yards before the bus stop (Tr. 53) and [illegible] his brakes. The brake lights were tested immediately after the accident and found to be in working [illegible] (Tr. 72, 77, 196-7) He made no arm signal. (Tr. [illegible] He was concerned with stopping the front of the bus [illegible] driveway slightly north of the coach-stop sign to permit his passenger to alight in a dry area; he considered [illegible] unsafe to pull further to the right. (Tr. 67) He did not

notice the car traveling immediately to his rear ... heard the sound of brakes being applied and glanced ... rear-view mirror. (Tr. 50)

Passengers on the bus testified that the bus ... slowly. (Tr. 171, 175).

Roland Park Stapley first saw the bus ahead ... when the bus entered State Street at 8660 South ... inside lane and then pulled into the far right lane ... of him. (Tr. 113) He slowed for the bus and ... for a distance of 2½ to 3 blocks at a fairly constant ... of 30 miles per hour at approximately 100 feet ... the bus. (Tr. 115) Suddenly, he noticed that the bus ... moving in towards me and the distance closing ... 126) He admitted, as the skid marks showed, that he ... no attempt to pull to the right or left, stating that ... was traffic to the left and he could not move to the ... without danger of hitting a tree. (Tr. 128-9)

Mr. Stapley knew the area and was aware ... bus stops. (Tr. 134) He didn't see any lights on the ... of the bus, although they could have been there. ...

The plaintiff, Mrs. Stapley, testified at depos... that she did see "lights on both sides" of the bus. She ... fied at the trial, however, that although she had mistak... them "brake lights" at her deposition, that what she ... saw were the running lights at the top rear of the ... (Tr. 164-166)

The driver testified that the running lights are ... only at night and were not on at the time of the accident. (Tr. 192) The running lights at the rear sides of the ...

...activated by the same switch which lights three more ... across the rear of the bus. (Tr. 192)

...xhibits 13, 14, and 15 are the result of an experi... which demonstrated that arm signals from a bus ... type here involved are not visible 100 feet im... ...ately to the rear of the bus, because the left rear ... of the bus obscures the view to following traffic. ... 185-188)

Mrs. Stapley's injuries were severe and this is an unfortunate case where sympathy challenges the integrity of the law. The appellant asks the Court to set aside the verdict and judgment upon the following points of law:

STATEMENT OF POINTS

POINT I

THERE IS NO EVIDENCE OF NEGLIGENCE ON THE PART OF APPELLANT AND THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT IN ITS BEHALF.

POINT II

THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT FOR APPELLANT INASMUCH AS THE EVIDENCE SHOWS THAT THE SOLE PROXIMATE CAUSE OF THE ACCIDENT WAS THE NEGLIGENCE OF THE AUTOMOBILE DRIVER; IN THE ALTERNATIVE, THE NEGLIGENCE OF THE AUTOMOBILE DRIVER WAS AN INTERVENING PROXIMATE CAUSE WHICH CUT OFF THE LEGAL EFFECT OF ANY NEGLIGENCE ON THE PART OF THE BUS DRIVER.

POINT III

THE TRIAL COURT ERRED IN GIVING STRUCTION NO. 4, WHICH WAS INAPPLICA TO THE CASE UNDER THE LAW AND JUDICIAL IN ITS EFFECT.

POINT IV

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GIVING INSTRUCTION NO. CONCERNING SUDDEN STOPS, WHEN THE DENCE SHOWS THAT THE BUS WAS STOPPED VERY GRADUALLY.

ARGUMENT

POINT I

THERE IS NO EVIDENCE OF NEGLIGENCE ON THE PART OF APPELLANT AND THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT IN ITS BEHALF.

Three charges of negligence against the bus carrier and its driver were finally defined by plaintiff to be:

"1. That the bus was brought to a stop without proper or visible signal; that either the defendant's agent did not signal or because of the condition of the rear lights, the signal was not visible to the driver of the automobile in which plaintiff was riding.

"2. That the driver of said bus failed to exercise reasonable care to keep a proper lookout to the rear of said bus to observe automobiles following and particularly the automobile in which the plaintiff was riding

That the driver of said bus stopped the same on a ... portion of the roadway without pulling off to ... side."

... Section 41-6-70 provided that signals from ... vehicles be given either by means of the arm and ... a signal lamp or device, but required the use ... lamp or device "when a vehicle is so constructed or ... that a hand and arm signal would not be visible ... the front and rear of such vehicle." The present ... further defines the type of vehicle which must ... light or device as being those exceeding 14 feet ... width from the center of the steering post or exceeding ... inches in width left of the steering post. Buses of the ... Lake City Lines measure eight feet wide and thirty- ... feet long. (Tr. 11) An experiment demonstrated ... a hand signal would not be visible to the rear of the ... Tr. 183-188.) Therefore, the driver of the bus was ... required to give an arm signal, which would have been ... effective to warn vehicles to the rear.

... called the bus driver as witness and it was ... by his testimony that the brake or stop lights ... by pressure on the brake pedal, that the lights ... working condition at the time of the accident, that ... the brakes approximately one block before the ... stop, and that the lights were not obscured ... or other substance at the time of the accident. ... by which plaintiff sought to discredit or ques- ... evidence is equivocal or improbable and, in fact, ... nothing contrary to the bus driver's statements.

Mr. Stapley admitted that the brake lights may have ... although he didn't see them. Mrs. Stapley at-

tempted to explain her deposition statement ... seen the brake lights by stating that the two ... she had seen on the rear of the bus were, in fact, ... ning lights at the top of the bus. The physical ... construction of the bus render the attempted re... tion improbable and even impossible. She was ... by light on either side of the bus; had they been ... lights, her impression would almost certainly ... compassed five lights, all activated by the same ...

The bus driver testified that he had not turned ... running lights because the accident occurred at ... day when running lights were not necessary. He ... the right-hand direction light to signal his turn ... right-hand side of the road. The brake lights were ... by the investigating officer after the accident ... and by the Superintendent for the Salt Lake ... (Tr. 195) and found to be in working order. A ... film was on the brake lights, but no mud that would interfere with the visibility of the signal. (Tr. ...

The mere act of stopping lighted the stop ... the rear and there is no evidence that would ... prove this allegation of negligence.

2: As to the second allegation of negligence ... driver did not observe the Ford Fairlane behind him ... seconds before the impact, but the evidence discloses ... he discharged his duty to traffic behind him and was ... bound to anticipate unusual conduct from that ...

The duty of keeping a lookout for vehicles to the ... is generally discussed in relation to some other duty ... as the duty to signal. As stated in 60 C.J.S., Motor ... hicles, sec. 322, p. 743:

it has been held that the driver in the lead need not as a rule keep a vigilant watch for drivers trailing him, although it has also been held that he cannot entirely ignore vehicles in the rear, and that he may be required to keep a lookout for vehicles to the rear where there appears some particular fact that calls his attention to the following vehicle and imposes some duty on the motorist to maintain such lookout, or where he intends to execute some manoeuver requiring a lookout for, and signal to, the following vehicle. . . ."

In Richardson v. Hackett, 204 Va. 847, 134 S.E.2d 3, the driver of a truck which was hit in the rear by an automobile traveling in the same direction sought recovery from the driver of the rear vehicle. Upon the defense of contributory negligence in failing to observe vehicles to the rear, the court stated, "We hold that the failure of the driver of the truck to continue to look to the rear was not negligence as a matter of law and that such failure was not a proximate cause of the accident as a matter of law." Similar to the present case, the court noted that the driver had signalled that he was slowing down and that the stopping was gradual over a distance of 1500 feet.

In Mack v. Decker, 24 Wis.2d 219, 128 N.W. 2d 447, a motorcycle hit an automobile stopped at a crosswalk, and a judgment for the motorcycle operator was reversed for error in giving an instruction on the duty to look for vehicles to the rear. The court stated:

> "There was no evidence of any deviation by Taft but the testimony is undisputed that he brought his car to a stop in the south traffic lane. Under these facts *there was no requirement that*

> *Taft exercise lookout to the rear [illegible] where the application of his car [illegible] the red car taillights.*" (emphasis added)

The vague accusation of failure to observe the rear is meaningless where the forward [illegible] required signals and had no reason to anticipate [illegible] ordinary situation. The rule is stated in Morgensen, 11 Utah 2d 140, 356 P 2d 34 at [illegible] to observe is negligence proximately contributing harm *only where by observance the injury would be avoided or lessened the resulting harm*." (emphasis

3: Plaintiff urged that the bus made an unlawful [illegible] was successful in having the language of U.C.A. 41-6-101 read as a portion of Instruction No. 4 [illegible] the basis for appellant's claim of error under Point

That section provides:

> "Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway when it is practical to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicle shall be available for a distance of 200 feet in each direction upon the highway."

U.C.A. 1953, 41-6-10 defines "stop, stopping or standing" as used in the above section:

> "(b) 'Stop, stopping, or standing' when prohibited means any stopping or standing of a vehicle

[illegible] occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or [illegible] control sign or signal."

[illegible] control signs" are defined by U.C.A. 1953, [illegible]:

"All signs, signals, markings and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic."

Appellant contends that the statute cited by instruction to the jury is inapplicable (1) under interpretations in other jurisdictions of the same act, (2) because the proper stopping comes within an express exception of the [illegible] because it was not "practical to stop . . . such [illegible] such part of said highway," and (4) because [illegible] of the necessary conditions for the statute's [illegible] was not produced by the plaintiff.

The statute was adopted from the uniform motor [illegible] act and in other states where the act is effective, [illegible] of a public conveyance to pick-up or discharge passengers, although on the paved portion of the [illegible] has been held to be a mere temporary stop for a necessary purpose and not prohibited by the act. McAvon v. Brightmoor Transit Co., 245 Mich. 44, 222 N.W. 126; Keegan v. Carolina Coach Co., 225 N.C. 668, 36 S.E. 2d [illegible]; Peoples v. Fulk, 220 N.C. 635, 18 S.E. 2d 147; Leary v. Norfolk So. Bus Corp., 220 N.C. 745, 18 S.E.2d 426. Although not involving transit companies, numerous other cases hold that "Stop, park or leave standing" means some-

thing more than a temporary stop for a necessary purpose. See Kastler v. Tures, 191 Wis. 120, 210 N.W. 415, Stanley v. Buchan Transp, Co., 210 N.C. 201, 185 S.E. 941, Lee v. Boss, 111 Ore. 190, 224 P. 646.

(2) The designation of the points at which Salt Lake City Lines must stop to pick-up and discharge passengers is made by the local authority, in this instance, Midvale City. If the local authority and the transit company fail to agree or if there is a failure of the designations to serve the public, the Public Service Commission will enter an order requiring such a designation.

The designation of the coach stop at 8300 South State was not the subject of a municipal ordinance. It was adopted by agreement between Midvale City and the transit company, which is the more usual procedure in Utah, and does not make the posting of the sign any less an official act to make a stop thereat within the exception of the statute.

(3) The bus driver, as witness for the plaintiff, stated that he considered it unsafe to go upon the shoulder of the road to discharge his passengers. Similarly, driver stated did not turn his automobile to the right for fear of the danger in the area. There is no evidence to the contrary.

Additionally, by reason of the designation of the coach stop at 8300 South State, the bus driver was compelled to stop at that point. What little variance he was permitted to make on behalf of the convenience and safety of his passengers does not permit him to make a selection of a stopping place of his own choice. In describing the scope of 41-6-9, it is said in General Ins. Co. of America v. Lewis, 121 Utah 440, 243 P. 2d 433 at 434:

"This section deals only with cases where the driver stops his car on the highway from his own choice and has an opportunity to select the place and conditions of his stop. . ."

Plaintiff offered no proof that the area of the [illegible] was not a business or residence district, a necessary [illegible] to place it within the scope of the statute. In the exhibits and the addresses and testimony of witnesses indicate that the property contiguous to the highway was improved with residences and buildings in accordance with the definition of U.C.A. 1953, 41-6-8 (d) (e).

It is obvious that the requirement of the statute for leaving the room for traffic passage was fully met on a four-lane highway.

No evidence was produced demonstrating negligence on the part of appellant or its driver and the trial court erred in denying appellant's requested instruction "A" directing the jury to return a verdict in favor of the defendant and against the plaintiff, no cause of action.

POINT II

THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT FOR APPELLANT INASMUCH AS THE EVIDENCE SHOWS THAT THE SOLE PROXIMATE CAUSE OF THE ACCIDENT WAS THE NEGLIGENCE OF THE AUTOMOBILE DRIVER. IN THE ALTERNATIVE, THE NEGLIGENCE OF THE AUTOMOBILE DRIVER WAS AN INTERVENING PROXIMATE CAUSE WHICH CUT OFF THE LEGAL EFFECT OF ANY NEGLIGENCE ON THE PART OF THE BUS DRIVER.

U.C.A. 1953, 41-6-62 provides the standard [illegible] Mr. Stapley, as driver of the following vehicle, [illegible] held:

"The driver of a motor vehicle shall not follow [illegible] other vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the highway [illegible] Stapley's testimony reveals that he was familiar with the area and with the bus stops within that area. Although his testimony is in conflict with that of the bus driver he asserts that the traffic in the left lane was too heavy to permit him to change lanes. He was aware of the bus in the lane ahead of him and followed it for a distance of 2½ to 3 blocks. Similarly, he testified that the street conditions were virtually the same at the site of accident as that which he had experienced all along State Street. (R. 132) The bus driver, as a witness for plaintiff, testified that he started his stop one block prior to the point of impact. Disinterested witnesses also testified that the stop was gradual. Even Mr. Stapley offered no positive evidence to the contrary—he merely stated that he suddenly became aware that the distance between the two vehicles was diminishing rapidly, but too late to prevent the accident.

By his own evidence, Mr. Stapley was following the bus more closely than was reasonable and prudent with his knowledge and circumstances. He was aware of all the conditions of peril—a partially damp street, traffic conditions, the bus in front of him, the habit and necessity of the bus making stops along State Street. But [illegible]

[illegible] these observations, he negligently drove his automobile into the rear of the bus.

[illegible] were there an indication of negligence on the part of the bus driver, the unforeseeable negligence of Mr. [illegible] would be an intervening proximate cause, cutting off the legal effect of any negligence on the part of appellant's driver. The law in the area is comprehensively treated in the case of Hillyard v. Utah By-Products Company, 1 Utah 2d 143, 263 P.2d 287. That case was factually similar to this one with the exception that the vision of the driver of the rear vehicle may have been obstructed by the cars he was following and passing so that he may have failed to see the parked truck which he struck. The Court held this possibility to create a jury question, stating, 263 P.2d 293:

> "It thus seems proper to conclude that if the evidence was such as to make mandatory a finding that the driver Aston must have seen the truck as he approached, but nevertheless ran into it, that would have been something so unusual and extraordinary as not to be reasonably foreseeable. In such instance, his negligence would have been an independent intervening cause, insulating defendant's negligence as a proximate cause and plaintiff's judgment could not be allowed to stand."

This case represents the hypothetical thus posed in Hillyard if the appellant can be found negligent in any regard. A dangerous situation is created by the first actor and a later actor observed or circumstances are such that he could not fail to observe, but negligently failed to avoid it. It is held as a matter of law that the later intervening act does interrupt the natural sequence of events and cut

off the legal effect of the negligence of the initial actor. This is based upon the reasoning that it is not reasonably to be foreseen nor expected that one who actually becomes cognizant of a dangerous condition in ample time to [illegible] it will fail to do so." 263 P.2d at 292.

POINT III

THE TRIAL COURT ERRED IN GIVING INSTRUCTION NO. 4, WHICH WAS INAPPLICABLE TO THE CASE UNDER THE LAW AND PREJUDICIAL IN ITS EFFECT.

Instruction Number 4 given by the trial court permitted the jury, under paragraph 2, to consider the driver's lack of knowledge that the Stapley vehicle was immediately to his rear as an act of negligence despite the fact that there could be no causal connection between the failure to see the automobile and the accident. Reference is made to the discussion under Point I hereof. Appellant urges that the submission of the instruction was reversible error.

Instruction Number 4 also included the language of U.C.A. 1953, 41-6-101 and did not incorporate the exception created by the definitions of U.C.A. 1953, 41-6-9 and 10. Further, the statute was inapplicable to the present situation and the giving of the instruction was prejudicial to the defendant. Reference is made to the discussion under Point I.

POINT IV.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GIVING INSTRUCTION NO

NCERNING SUDDEN STOPS, WHEN ALL EVI-
E SHOWS THAT THE BUS STOPPED VERY
GENTLY.

Instruction No. 5 was as follows:

"The illumination of a brake-light on a vehicle which is actuated by depressing the brake-pedal does not meet the requirements of giving an appropriate signal before stopping or suddenly decreasing speed unless it is actuated by a gentle pressure of the brake-pedal in advance of the actual time of the sudden stop or decrease of speed is made. If the brake-light is actuated only when the brake-pedal is depressed for a sudden stop or decrease in speed, it affords no warning of the stop or decrease in speed since it is made simultaneously with the sudden stop or decrease in the speed of the vehicle."

There was no evidence that the bus was stopped suddenly but there was a great deal of testimony from disinterested witnesses that the bus stop was made very gradually. Even driver Stapley's testimony offered nothing to controvert the concept of a slow stop:

"The way I remember it was the bus moving in towards me and the distance closing in and I applied my brakes and the distance was too close for me to pull one way or the other. I couldn't pull to the left because of traffic and to the right I had the trees or a telephone pole to the right and about—and then I hit the ice and there was a slick spot or whatever it happened to be and that's the last I remember." (Tr. 117)

"Q. Mr. Stapley, if I understood you correctly you said that you were first aware that the bus was stopping when you observed that it was moving towards you?

A. That's right.

Q. Now you don't mean that the bus was traveling south, do you?

A. No, ordinarily they don't.

Q. What you mean to tell this jury, is it not, is that you were moving towards the bus at a high rate that is the distance was closing rapidly?

A. That's right.

Q. At that time can you tell us if the bus was moving or stopped?

A. No, I couldn't.

Q. And at that time you were aware of being about 100 feet to the rear of the bus, is that right?

A. At the time I noticed we were closing in on it. (Tr. 126)

The bus laid down no skid marks, but the automobile which began to slow more than 100 feet in advance of the point of impact did leave skid marks on the pavement surface.

Mr. Stapley's testimony proves nothing for in all collision cases, regardless of the cause, impact must appear imminent to the participants at one time or another.

It was error for the court to instruct the jury concerning sudden stops and decreases in speed when all evidence is to the contrary.

WHEREFORE, the appellant prays the Court to set aside the verdict of the jury and enter judgment of no cause of action for the defendant. In the alternative, if the Court otherwise resolves the issues of law, the appellant prays the Court to set aside the verdict and judgment as based on erroneous instructions and order a new trial.

Respectfully submitted,

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