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Harvey Thompson v. Ford Motor Company : Respondent's Supplemental Brief

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

JAN 15 1964

HARVEY THOMPSON,

Plaintiff-Appellant,

—vs.—

FORD MOTOR COMPANY,

Defendant-Respondent

Case No. 10024

RESPONDENT'S SUPPLEMENTAL BRIEF

Appeal from the Judgment of the Third
District Court for Salt Lake County
Honorable Merrill C. Faux, Judge

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IN THE SUPREME COURT of the STATE OF UTAH

HARVEY THOMPSON,
Plaintiff-Appellant,

—VS.—

FORD MOTOR COMPANY,
Defendant-Respondent

Case No. 10024

RESPONDENT'S SUPPLEMENTAL BRIEF

STATEMENT OF KIND OF CASE

This is a suit by plaintiff for personal injuries sustained by him in attempting to stop a garbage truck which was rolling down a steep grade, allegedly as a result of the failure of the parking brake.

DISPOSITION IN LOWER COURT

The trial judge granted a summary judgment in favor of defendant Ford Motor Company and against the plaintiff, no cause of action, on the grounds that it appeared from plaintiff's own testimony that he was guilty of contributory negligence as a matter of law in violating Section 41-6-105, U.C.A. 1953.

RELIEF SOUGHT ON APPEAL

Defendant-respondent seeks an affirmance of the judgment below.

THE FACTS

This is the second time that this case has been before the court. On the original appeal, Case No. 9807, a summary judgment in favor of defendant and respondent Ford Motor Company was reversed for the reason that depositions, relied upon by defendant to support the order granting the summary judgment, had not been opened or published. This court specifically refrained from considering or ruling upon the merits of the case.

Following remittitur to the District Court, an order was made opening and publishing all depositions which had been taken in the case. (R. 9). Subsequently defendant filed a renewal of its motion for summary judgment, which was argued before Judge Faux, and after being taken under advisement was again granted. (R. 10, 11-12). The parties have stipulated that the briefs served and filed in case No. 9807 may be refiled in support of their respective positions in the present case, since the issues are identical. The parties have further stipulated, and this court has ordered, that either side may file supplemental briefs in order to present to the court any new material which may be helpful in assisting the court to a determination of the issues.

In view of the caveat contained in the opinion in case No. 9807, we felt that it would be advisable, and of assis-

tance to the court, to elaborate upon the facts, which are entirely without dispute, upon which Judge Faux relied in making his ruling.

Plaintiff had had eight years experience working in the Street Department as a garbage collector. He was familiar with the use of garbage trucks, and with the use of air brakes. (Plaintiff's deposition, p. 3). He had worked "the avenues" for a long time before the date of the accident. (Plaintiff's deposition, p. 4). According to his fellow worker Jensen, plaintiff and Jensen had worked for five to six years together on "the avenues." (Jensen's deposition, p. 18). The hill where the accident occurred was "a pretty steep hill." (Jensen's deposition, p. 18).

There was nothing strange or unusual about the operation of this truck. (Plaintiff's deposition, p. 26). Plaintiff had had previous experience with this type of equipment. (Plaintiff's deposition, pp. 40, 44).

Both plaintiff and his co-worker, Jensen, were fully familiar with the dangers of a runaway on a steep hill. Both had had that experience, and the possibility was a source of conversation and kidding among the garbage collectors. (Plaintiff's deposition, p. 37; Jensen's deposition, pp. 8-9).

According to plaintiff's own testimony, the truck was stopped eight feet from the curb, pointed in a south-westerly direction. (Plaintiff's deposition, pp. 10, 23). (See also Jensen's deposition, p. 11). Plaintiff's own

version of the accident is set forth in following excerpts from his testimony.

“Q. Now, were you in the middle of the street or on the right-hand side or left-hand side?

A. We was on the left-hand side.

Q. What way were the wheels pointed, if you know?

A. Kind of an angle like this. (Indicating)

Q. The street goes straight south, does it not?

A. Straight south, and I was kind of parked on an angle like this. (Indicating)

Q. Now, *you are showing me your wheels were turned somewhat toward the southwest?*

A. *Well, yes, a little.*

Q. Was the truck pointing right up and down the street *or was it angled a little toward the southwest?*

A. It was angled.” (Emphasis ours.) (Plaintiff’s deposition, p. 10).

“Q. Now, tell us what you did first after you got out of the truck; where did you walk?

A. To the back.

Q. Now, you didn’t walk over to the curb to get some garbage?

A. Well, I was against the curb, I walked between the curb and the truck.

Q. And did you pick up a garbage can?

A. Yes.

Q. Did you get a chance to empty it?

A. Yes.

Q. Then what did you do?

A. When we was debating on which way to go, whether we went east or went west.

Q. You and your partner?

A. Yes.

Q. And you were standing there talking for a minute about that?

A. Yes, and some conversation about how the truck worked.

Q. Where was the demonstrator at that time, the man demonstrating it?

A. He was standing, I think, between I and Jimmy. Jimmy was standing on the one side and I was standing on the other.

Q. How long did you say you stood there and talked?

A. Oh, from three to five minutes." (Plaintiff's deposition p. 11).

"Q. Had you emptied all the garbage for that stop?

A. Yes.

Q. Then what happened?

A. *Then I turned around to set two garbage cans down and someone said the truck was moving, and that was it.*

Q. And what did you do?

A. I just automatically took off.

Q. Took after the truck?

A. Yes.

Q. And tell us then what happened?

A. Well, I jumped on the running board about the time it hit the curb and then the door hit me in the back of the head and knocked me off.

* * *

Q. What were you hanging onto?

A. The steering wheel.

Q. *Did you ever get a chance to get into the seat of the cab?*

A. No.

Q. *Were you trying to reach in to any of the controls before you got knocked off?*

A. That's what I was trying to do, *to get into where I could control the truck.*

Q. But you weren't able to do that?

A. *I wasn't able to do it.*" (Emphasis ours.)
(Plaintiff's deposition, p. 12).

"Q. And the truck was gaining speed all this time?

A. It had to be if it was running down hill.

Q. Well, do you have a memory of it gaining speed?

A. Yes." (Plaintiff's deposition, p. 13).

"Q. Now, before the truck started to roll and before you reached the cab, how far had the truck rolled?

THE WITNESS: I don't know.

Q. (By Mr. Bayle) Do you have any estimate?

A. I could guess.

Q. All right, let's have that.

A. I'd say from 60 to 80 feet.

Q. *And what were you doing during that time?*

A. *During the time the truck was rolling?*

Q. *Yes.*

A. *I was after it.*

Q. And which side were you on?

A. On the left side.

Q. *Were you running?*

A. *Yes.*

Q. What path did the truck take before it reached the curb?

A. On an angle straight across the road.

Q. To the southwest?

A. On an angle like this. (Indicating)" (Emphasis ours.) Plaintiff's deposition, pp 32-33).

"Q. *And did you see the truck start to roll?*

A. *No, I didn't.*

Q. Which way were you looking at that time?

A. I'd dumped the garbage can *and turned around facing away from the back end of that truck* and put the two garbage cans down and just about got turned around when someone says, "The

truck's moving.'” (Emphasis ours.) (Plaintiff's deposition, p. 34).

“Q. And do I understand that *your only concern about securing the truck is to set the brakes?*

A. *Make sure it's set.*

Q. *That's the only precaution you take, is that right?*

A. *Well, that is the only precaution you take that I know of.*

Q. And there aren't any published rules about that in your departments, as far as you know?

A. As far as I know.” (Emphasis ours.) (Plaintiff's deposition, p. 42).

“Q. Mr. Thompson, *were you running as hard as you can run by the time you caught up with the truck that day?*

A. Well, I'd say *I was giving it all I had.*

Q. And you think the truck had gone about sixty to eighty feet before you could catch it?

A. That's just a guess.” (Emphasis ours.) (Plaintiff's deposition, p. 47).

The testimony of Jensen was in full accord:

“Q. Did *Thompson have to run as fast as he could to catch it?*

A. Yes.

Q. *Was he going full speed when he jumped on the truck?*

A. Yes, he was pretty well going at it.” (Emphasis ours.) (Jensen's deposition, p. 13).

“Q. It happened to be on the east curb, is that right?

A. Yes.

Q. *And the wheels were turned to the west?*

A. *To the southwest. The truck was actually facing south and the rear wheels were cramped to the southwest so he could make the turn over west to pick that other can up on the other side, because it's too far to carry the cans from one side to the other on that one particular place there.”* (Emphasis ours.) (Jensen's deposition, p. 15).

“Q. If you had been in Mr. Thompson's position there in reference to the truck when it started off, would you have run after it?

A. Probably would have, yes, just like I did the other one. We have always joked and kidded and this and that that we would never try to stop a truck, but that's just a joke and kid there.

Q. You have joked and kidded that you'd never stop a truck?

A. Yes. The way we figure it, if we ever do that, we would think more about the other people, what the truck is going to do and the damage, and *a lot of other guys have had the same trouble*, but they've caught it and stopped it in time to save the accident.

Q. *Does this often happen among the other drivers?*

A. *Oh, once in a while, yes.*

Q. And haven't you had any instructions about leaving a man in the cab while you are on a steep hill?

A. Well, that's why we try to get a third man on our routes like that on the hills.

Q. Yes. That morning they didn't have a third man because there wasn't enough to go around." (Emphasis ours.) (Jensen's deposition, p. 17).

It was upon the foregoing testimony that Judge Faux based his ruling. There was no evidence to the contrary. Plaintiff, of course, is bound by his own testimony.

ARGUMENT

POINT I.

THIS IS A PROPER CASE FOR A SUMMARY JUDGMENT.

We have nothing to add to the argument advanced under Point I of our brief in Case No. 9807, and we merely reaffirm and readopt it as part of this brief.

POINT II.

PLAINTIFF VIOLATED THE STATUTORY STANDARD OF CARE, AND WAS THEREFORE GUILTY OF CONTRIBUTORY NEGLIGENCE AS A MATTER OF LAW.

A. PLAINTIFF VIOLATED SECTION 41-6-105, U.C.A., 1953.

By way of supplement to the argument under Point II of our brief in case No. 9807, we wish to point out the following:

This case resolves itself into a problem of statutory construction. There is no dispute as to what occurred. For purposes of the motion for summary judgment,

plaintiff's testimony is accepted as true. The only issue before the court for determination is whether such conduct was contributory negligence as a matter of law under the aforesaid statute.

It is elementary that a "statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute requires interpretation, that is, where the statute is ambiguous, or will bear two or more constructions, or is of such doubtful or obscure meaning, that reasonable minds might be uncertain or disagree as to its meaning." If there is no ambiguity "it is the established policy of the courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. A plain and unambiguous statute is to be applied and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity." 50 Am. Jur., Statutes, §225.

The language of Section 41-6-105, U.C.A. 1953, is clear, and, except for one phrase, hardly open to construction. Under the facts of this case, there can be no doubt that plaintiff was a "person driving or in charge of a motor vehicle." There is no doubt that he left the driver's seat, and got out of the vehicle and went to the rear thereof, for the purpose of loading some garbage. There is no doubt that he did this "without first stopping the engine, locking the ignition, and removing the key." There is no doubt that the truck was "standing

upon" a "perceptible grade," and there is no doubt that the front wheels thereof, were not turned to the curb or side of the highway, but on the contrary were turned away from the curb. For the purpose of this motion, it may be assumed that the parking brake was effectively set and that it failed, permitting the truck to go down hill. The only phrase which appears to be open to construction, and the meaning of which must be ultimately determined by this court, is the phrase "stand unattended." There can be no doubt that effect must be given to these words, and they must be given "a consistent reasonable meaning." *Robinson v. U.P.R.R. Co.*, 70 Ut. 441, 261 P.9; *Board of Ed. v. Bryner*, 57 Ut. 78, 192 P. 627.

The cardinal question in statutory construction, is determining the legislative will or intent. Once the legislative intention has been determined, it should be carried into effect to the fullest degree. 50 Am. Jur., Statutes, §223; Sec. 68-3-2, U.C.A. 1953.

As said by this court in the case of *Price v. Tuttle*, 70 U. 156, 258 P. 1016:

"In the construction of statutes it is the duty of the courts to ascertain the intent of the legislative body and, if the legislation is within the constitutional power of the Legislature, to enforce that intent. In determining the intent of legislation, not only the language of the act may be considered, but the purpose or objects sought by the legislature should be and are considered by the courts in determining the Legislative intent."

The purpose for which a statute is enacted, is of primary importance in determining the legislative intent. In the construction of a doubtful statute it is proper to take into consideration its purpose or object, the particular evils at which the legislation is aimed, or the mischief sought to be avoided. 50 Am. Jur., Statutes, §§303 and 305.

Sec. 41-6-105, U.C.A., 1953, is part of our Motor Vehicle Act. It is taken from the Uniform Act Regulating Traffic on Highways. The obvious purpose of this act is to protect the public safety. As said in *Ostergard v. Frisch*, 333 Ill. App. 359, 77 N.E. 2d 537:

“Our statute in relation to the regulation of traffic is entitled . . . a ‘Uniform Act Regulating Traffic on Highways.’ . . . It is a comprehensive act of which the quoted portion . . . is a part. A reading of the entire act leads to but one conclusion. *It is designed in the main to protect the public safety.*” (Emphasis ours.)

To the same effect see *Ross v. Hartmn*, 139 F. 2d 14.

The same principle was specifically recognized by this court in treating a different section of the same statute in *North v. Cartwright*, 119 Ut. 516, 229 P. 2d 871. See also 7 Am. Jur., 2d 795, *Automobile and Highway Traffic*, §234:

“A number of states have enacted statutes prohibiting motorists from leaving a motor vehicle unattended without first stopping the engine, locking the ignition, and removing the key. The purpose of such a statute is twofold; it is a deterrent to theft, and is also a safety device, for to

lock the ignition and remove the key results in preventing interference with the vehicle's stationary condition and mechanical immobility."

It is, of course, entirely proper to refer to the appellate decisions of other courts where a question of statutory construction is of novel impression in the forum, as in this case. "Indeed it is highly desirable that a statute be given a similar interpretation by the courts of the several states wherein it is in force." 50 Am. Jur. 315, Statutes, §323. That canon of construction has been dignified by codification. Sec. 41-6-174 U.C.A. 1953, provides as follows:

"This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." (Emphasis ours.)

Statutes identical to, or closely similar to the Utah Statutes have not been construed by many appellate courts. However, the few which have had occasion to interpret the meaning of this language, have made the interpretation which we urge in this case, namely, that to "stand unattended" means in effect, that there is no properly qualified person sufficiently close to, or having effective control of, the vehicle as to be able to prevent it from escaping, either through mechanical failure or through the interference of third persons. See *Hochschild, Kohn & Co., Inc. v. Candles, (Md.)*, 66 A. 2d 700, and other cases cited under Point II A of our brief in case No. 9807.

All of the rules and canons of construction point the same way. They all indicate that the legislative

intent was to protect the public from runaway vehicles. The accident which occurred here, is of the very type which the statute was enacted to prevent. Other courts which have had occasion to pass on similar legislation have so concluded. No sound reason has been advanced why this court should rule differently.

B. VIOLATION OF SECTION 41-6-105, U.C.A. 1953, IS NEGLIGENCE AS A MATTER OF LAW.

We wish to amplify our argument under Point II B of our brief in Case No. 9807. Having established that the conduct of the plaintiff was violative of the statute, the only question which remains is whether the violation of the statute was negligence *per se*. This court has ruled in an unbroken line of authority that the violation of an ordinance or statute designed for the safety of life, limb and property, constitutes negligence *per se*.

In *Smith v. Mine & Smelter Supply Co.*, 32 Utah 21, 88 P. 683, this court said:

“When a standard of duty or care is fixed by law or ordinance, and such law or ordinance has reference to the safety of life, limb, or property, then, as a matter of necessity, a violation of such law or ordinance constitutes negligence. ****Care and prudence alone cannot excuse. Exceeding or disregarding the standard of care imposed must be held to be negligence, if it is anything.*” (Emphasis ours.)

That doctrine was reaffirmed in *Skerl v. Willow Creek Coal Co.*, 92 Utah 474, 69 P.2d 502.

That the doctrine applies to violation of statutes and ordinances designed for the control of motor vehicle traffic was clearly established by *North v. Cartwright*, 119 Utah 516, 229 P.2d 871, where this court said:

*“The statutes were promulgated for the protection of the public and to safeguard property, life and limb of persons using the highways from accidents of the type here involved. Violation of these statutes then, constitutes negligence in law. This doctrine of the law has been steadfastly adhered to by this court and generally in other courts throughout the United States.”***

“Plaintiff’s violation of the statutory standard of care here involved, bars recovery if the violation was a proximate contributing cause of the injury.” (Emphasis ours.)

See also 8 Am. Jur. 2d 393:

“The cramping of the wheels against the curb is sometimes required by statute, the violation of which has been held to be negligence per se.”

It is no answer to say that questions of negligence and contributory negligence are generally for jury determination. While this is manifestly true where there is a conflict in the evidence, no conflict exists here. What occurred is established by the undisputed testimony of the plaintiff himself, by which he is bound. There is neither a conflict in evidence to be resolved, nor are there different inferences to be drawn from the undisputed evidence. Neither is this an area where a jury may say what a reasonable person would have done

under the circumstances. The legislature has specifically prescribed what all persons shall do under the circumstances here prevailing. Plaintiff clearly did not conform to the legislative standard. His failure to do so, under the law of this jurisdiction, (which represents almost universal law), is negligence as a matter of law, barring his recovery in this case.

C. PLAINTIFF'S NEGLIGENCE IN VIOLATING THE
STATUTORY IMPOSED DUTY OF DUE CARE WAS
A PROXIMATE CAUSE OF THE ACCIDENT.

We have nothing to add to our argument under Point II C, and simply reaffirm and readopt the arguments set forth under Point II C of our original brief.

CONCLUSION

The applicable Utah statute determines the standard of care to which plaintiff was required to adhere in this case. By his own unequivocal admissions, he failed to conform to the legislative mandate in several different particulars. As a natural and proximate result thereof, he was involved in an accident causing his injury. The trial court correctly concluded that he was guilty of contributory negligence as a matter of law, and it follows that the judgment should be affirmed.

Respectfully submitted,

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