1964

Melvin Greenhalgh v. Elaine G. Green : Plaintiff-Brief of Appellant

Utah Supreme Court

Rawlings, Wallace, Roberts & Black; Attorneys for Plaintiff-Appellant;
Raymond M. Berry; Attorney for Defendant-Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN GREENHALGH,
Plaintiff-Appellant,

vs.

ELAINE G. GREEN, administratrix of the Estate of GERALD F. GREEN, deceased,
Defendant-Respondent.

Case No. 10169

PLAINTIFF-APPELLANTS BRIEF

Appeal from the Judgment of the Third District Court of Salt Lake County
Hon. A. H. Ellett, Judge

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STATEMENT OF CASE

This is an action for personal injuries arising out of an automobile accident.

DISPOSITION IN LOWER COURT

The Third Judicial District Court at a pretrial hearing granted a summary judgment of No Cause of Action in favor of defendant and against plaintiff.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the entry of the summary judgment and a decision remanding the case for trial by jury.

STATEMENT OF FACTS

The complaint alleges that on the 18th day of October, 1963, plaintiff was a passenger in a 1963 Dodge panel truck camper being driven by Gerald F. Green. That near the city of Beaver, Utah, he so negligently operated the truck as to cause an accident which resulted in his death and caused plaintiff to suffer personal injuries. (R. 1).

Defendant answered the complaint and denied plaintiff was a passenger in the truck and alleged as a defense to the claim of negligence that plaintiff was a guest passenger of the driver. (R. 3).

At the pretrial conference defendant moved the court for a summary judgment on the ground plaintiff was a guest passenger and the complaint did not allege the accident was the result of any wilful misconduct on the part of the deceased driver. (R. 6). In support of this motion defendant had published and introduced into evidence the deposition of the plaintiff. The only testimony of the plaintiff in the deposition that is material to this appeal is his statement concerning the relationship between himself and the deceased driver. With respect to this matter, plaintiff testified he was

a friend of the deceased, and when the accident occurred they were on a deer hunting expedition to Lost, Utah. He stated this was an annual trip, and the parties had left Salt Lake City that morning and were practically to their destination when the accident occurred. (Dep. 6).

Plaintiff was then questioned concerning the manner in which he was to pay for his ride. He testified that it had been agreed between the parties, Mr. Green and their other companion, Mr. Lockyer, and himself, that all of the expenses of the trip, including food, gas, and oil and maintenance for the vehicle would be divided in three equal shares. (Dep. 16). Plaintiff testified each party was to retain the receipts for his respective purchases and there would be an accounting when the trip was completed. In accordance with this agreement, plaintiff and Mr. Lockyer paid $40.00 for the initial purchase of groceries and supplies, and the deceased paid for the costs of having the truck serviced for the trip. The only additional expenses incurred on this trip were at Holden, Utah, when plaintiff paid the sum of $6.45 for a tankful of gas. (Dep. 17, 18).

The foregoing testimony was the only evidence introduced by defendant to support his contention that plaintiff was, as a matter of law, a guest passenger at the time of the accident.

In opposition to the motion, counsel for plaintiff, by a proffer of proof, advised the pretrial judge that additional testimony would be introduced at the trial

to the effect that sharing of expenses was compensation for the ride, and an inducement to the deceased to take his vehicle. (R. 18-19).

The pretrial judge granted the motion for summary judgment and ruled as a matter of law that plaintiff was a guest passenger. This erroneous ruling is the subject of plaintiff's appeal. (R. 6).

POINT I

TO JUSTIFY SUMMARY JUDGMENT THERE MUST BE NO GENUINE ISSUE OF FACT PRESENTED.

The pretrial judge, in granting defendant's motion for summary judgment, ruled that there was no genuine issue of fact concerning the status of plaintiff. If an issue of fact existed with respect to this matter then the trial court committed error. See *Young vs. Felornia,* 121 Utah 646, 244 P.2d 862; *Morris vs. Farnsworth Motel,* 123 Utah 289, 259 P.2d 298.

In *Abdulkabir vs. Western Pacific Railroad Company,* 7 Utah 2d 53, 318 P.2d 339, this court stated:

> "We are in accord with the idea that the right of trial by jury should be scrupulously safeguarded. This, of course, does not go as far as to require the submission to a jury of issues of fact merely because they are disputed. If they would not establish a basis upon which plaintiff could recover, no matter how they were resolved, it would be useless to consume time, effort and

> expense in trying them, the saving of which is the very purpose of summary judgment procedure. The pertinent inquiry is whether under any view of the facts the plaintiff could recover. It is acknowledged that in the face of a motion for dismissal on summary judgment, the plaintiff is entitled to have the trial court, and this court on review, consider all of the evidence which plaintiff is able to present, and every inference and intendment fairly arising therefrom in the light most favorable to him."

With this controlling rule in mind plaintiff will now move on to a consideration of whether the pleadings and depositions and statements made at the pretrial conference present a genuine issue of fact that should have been presented to a jury.

POINT II

THE PRETRIAL JUDGE COMMITTED PREJUDICIAL ERROR IN HOLDING THAT PLAINTIFF WAS A GUEST PASSENGER.

Plaintiff respectfully submits that under the facts of this case the jury is the proper tribunal to determine the relationship between the plaintiff and the deceased driver, Gerald Green. In support of this position, plaintiff cites the recent case of *Smith v. Franklin,* 14 Utah 2d 16, 376 P.2d 541. In the *Smith* case plaintiff instituted an action to recover damages for the death of one Ardith Smith, a cousin of the defendant driver. Ardith Smith, a resident of Tooele, Utah, told defend-

ant she needed to go to Salt Lake City to obtain a loan and asked defendant to drive her there. Defendant advised Ardith Smith that defendant had no money for gasoline. Ardith agreed to pay and paid defendant $2.00 for the gas. On the return trip to Tooele there was an accident, and Ardith was killed.

The trial court denied defendant's motion for a directed verdict and submitted to the jury the question of whether deceased was a passenger for hire or a guest passenger. In affirming, this court stated:

> "The test is simple to state and under most circumstances is easy to apply: a passenger for hire is one who pays for his ride; a guest is one who is furnished a ride free of charge. The former is in the nature of a business transaction for money; whereas the latter is motivated by other considerations, usually of a social nature. Difficulties are encountered where both factors are present in such a way that it does not appear with sufficient certainty to justify a ruling as a matter of law either that the rider was a guest or a passenger for hire. Where such uncertainty exists, the definition given by Sec. 41-9-2, U.C.A. 1953, that a guest is 'a person who accepts a ride in any vehicle without giving compensation therefor,' does provide the conclusive answer. The question arises as to what constitutes 'compensation' sufficient to change what normally would be a guest to a passenger for hire.
>
> "It must be conceded that where it is shown that the rider is basically a social guest, neither the giving of just 'any compensation,' which might be some inconsequential amount of money

or other consideration of value, nor even the sharing of expenses, merely in social reciprocation for the ride, would change the relationship to that of passenger for hire. The phrase 'compensation thereof' as used in the statute means compensation for the ride. Therefore, it would have to be sufficient money (or other thing of value) that it reasonably could be supposed that the parties so regarded it. But whether there is profit in the transaction is obviously not the determining factor. Where payment for the ride is the main inducement for it, the fact that there may also exist some social incentive which makes giving the ride enjoyable or desirable for the driver woudl not change its character to that of host and guest.

"Howsoever convenient or expedient it may be to see things as either black or white and to avoid perplexing problems in the twilight areas of uncertainty, that cannot always be done. *Where both payment and social incentive are present, and the evidence would support a finding that each exerted a substantial influence on hauling the passenger, the problem as to the relationship between the parties must be faced up to and resolved by submitting the issue to the jury (or fact trier).* (Emphasis supplied).

"From our consideration of this subject and the authorities which have dealt with it, we are persuaded that the sound and practical view is that the determination should be made on the basis of which was the chief inducement for giving the ride. Although the instructions which were given are not so faultless as to be beyond criticism, if their treatment of this subject is considered in the composite, the jury was adequately so ad-

vised in language not unfavorable to the plaintiff. In the absence of error prejudicial to her, a reversal and granting of a new trial is not warranted.

"It is apparent that the trial court regarding the evidence as showing that even if it be true that Lorrie would not have taken the trip except for the request and as a favor to her cousin Ardith, it also could reasonably be found that she would not have taken the trip except for the fact that Ardith furnished the $2.00. Under those circumstances, it was discreet and proper to refer the disputed issue to the jury for determination."

Plaintiff respectfully submits the ruling by the pretrial judge is contrary to the above decision.

It will be recalled the only evidence in this case is the testimony in the deposition of the plaintiff. Plaintiff testified in this deposition that the purpose of the trip was a deer hunting expedition, but he also testified he agreed to pay for his ride by sharing the expenses incurred for the trip.

Page 16, Line 15:

"Q. Did you and Mr. Green and Mr. Lockyer have any agreement or understanding amongst yourselves as to how the expenses of this hunting trip was going to be taken care of?

A. Yes.

Q. What was your agreement?

A. We would split it three ways.

Q. In other words, you were going to share all the expenses equally?

A. Yes."

The foregoing testimony and the inferences to be drawn therefrom in the light most favorable to plaintiff clearly establish that the payment by plaintiff for his share of the expenses was one of the inducements of the trip. A jury could well have found that unless plaintiff had paid his share, he would not have been permitted to ride in the truck. We submit that both payment and social incentive were present in this case. The drawing of inferences and formulating of conclusions from the facts was properly for the jury. A jury could reasonably find that the deceased would not have taken the trip unless plaintiff agreed to share the expenses. The trial court held as a matter of law that the sharing of expenses by plaintiff was not an inducement for the ride. This ruling is clearly contrary to the *Smith* case, supra, and should not be permitted to stand.

CONCLUSION

Plaintiff respectfully submits that the evidence presented an issue of fact as to whether plaintiff was a guest passenger or a passenger for hire, and that this issue should have been left to the jury. This Honorable Court should reaffirm the *Smith* case and reverse the decision of the trial court.

Respectfully submitted,

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