

212 Va 774

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD No. 7817

EDGAR LEONARD DELANEY,
Appellant,

v.

REBECCA LYNN CRAIGHILL,
Appellee.

APPENDIX

[1]

MOTION FOR JUDGMENT*

Filed August 31, 1970

1. On or about the 2nd day of September, 1969, the infant Plaintiff was riding as a passenger in an automobile which was being operated by the Defendant, Edgar Leonard Delaney, on Orchard Street, at its intersection with Rives Road, in Martinsville, Virginia.

* * *

3. Notwithstanding the duties which the Defendant, Edgar Leonard Delaney, owed to the Plaintiff at the time and place aforesaid, he was grossly negligent in that:

(a) He operated the automobile under his control without keeping a careful and proper lookout for other users of the road;

(b) He operated the automobile under his control in a grossly negligent manner by driving it at an excessive rate of speed under the circumstances then and there existing;

(c) He operated the automobile under his control in such a grossly negligent manner that he failed to keep it under proper control, thereby causing his automobile to collide with the motor vehicle operated by the Defendant, Randolph Franklin Stone, wrecking both of the said motor vehicles and injuring the Plaintiff.

* * *

5. As a direct and proximate result of the combined and joint negligence of the said Defendants, that is, the gross negligence of the Defendant, Edgar Leonard Delaney, and the negligence of the Defendant, Randolph Franklin Stone, the Plaintiff was caused serious and permanent injury to her person, internally and externally; was caused great

* Paragraphs relating solely to the co-defendant are deleted inasmuch as such defendant was nonsuited prior to trial.

App. 2

physical pain and mental anguish; was required to incur great medical expenses and will be required to do so in the future; was incapacitated for a period of time and was rendered less capable of pursuing her daily tasks, all to her damage.

* * *

PRE-TRIAL ORDER*

Entered October 12, 1970

[19]

* * *

3. Issues

- (x) Status of plaintiff: (driver) (guest) (passenger)
(Invitee) (other)
- (x) (Simple) (Gross) negligence of Defendant No. 1.
- (x) (Simple) (Gross) negligence of Defendant No. 2.
- (x) Contributory negligence of plaintiff.
- (x) Assumption of Risk.
- () Sudden Emergency.
- () Damages:
- () Other:

* * *

* Appellant was defendant No. 2; defendant No. 1 was nonsuited prior to trial.

INSTRUCTION NO. 1

[65]

(Granted)

The Court Instructs The Jury that on the occasion in question the defendant owed to the plaintiff the duty of keeping a proper lookout and drive his automobile in a manner and at a speed so as not to endanger life or property and further to drive his automobile under proper control. If you believe that the defendant violated any of the

App. 3

foregoing duties and in the violation was guilty of gross negligence, as defined in another instruction of the Court, then you will find your verdict for the plaintiff, unless the plaintiff was guilty of negligence proximately contributing to cause the accident in question.

INSTRUCTION NO. 2A

[66] (Granted)

The Court Instructs The Jury, that gross negligence is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another, such as to be shocking to reasonable men.

INSTRUCTION NO. 3

[68] (Granted)

The Court Instructs The Jury, that when two motor vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have.

If you believe from the evidence that the two vehicles involved herein approached or entered the intersection at approximately the same time, and if you believe from the evidence that Randolph Franklin Stone was not driving at a speed in excess of 30 miles per hour, then it was the duty of the Defendant to yield the right of way to the vehicle being operated by Randolph Franklin Stone.

And if you believe from a preponderance of the evidence that the Defendant violated the foregoing duty by operating his automobile in a grossly negligent manner as defined in another instruction of the Court; and if you further believe from such evidence that any such gross negligence was a

proximate cause of the collision, then, unless the Plaintiff was guilty of negligence which proximately contributed to cause the collision, you shall find your verdict in favor of the Plaintiff.

EXCERPTS FROM REPORTER'S TRANSCRIPT

Tendered February 25, 1971 and Signed February 26, 1971

In-Chambers Discussions

[126]

* * *

Mr. Haskins: They reverse the cases on instructions that attempt to define gross negligence. Gross negligence is that degree of negligence that shows utter disregard for the safety of another, such as to be shocking to reasonable men. There are cases in the advance sheets that will approve that definition.

The Court: They took out the slight care.

Mr. Meade: I will tell you what Judge Craig has ruled. This won't be permissible.

Mr. Haskins: Why not?

Mr. Meade: He said unless you believe the defendant was guilty of gross negligence, then you return your verdict for the defendant. I think the inference is that if he didn't keep proper control or lookout, then he is guilty of gross negligence.

Mr. Haskins: You have got to read the whole instruction.

The Court: I am going to give it because I want to see what the Court of Appeals is going to do about it. We will try this, and if this is overturned, we will do it the other way.

Mr. Haskins: It's the duty of Delaney to operate his automobile in a manner which would not be negligent to the plaintiff.

App. 5

Mr. Meade: Read the last paragraph.

Mr. Haskins: If you believe from the evidence that he violated the foregoing duty—

Mr. Meade: The duty is to keep a proper lookout.

[127] Mr. Haskins: It's his duty to operate his automobile in a manner that would not be grossly negligent towards the plaintiff.

Mr. Meade: It's conflicting and confusing and contrary to the law, and I object.

The Court: I am going to submit it because I want to, and I am going to overrule your motion. There is some question in my mind whether the Court of Appeals is going to approve this instruction.

Mr. Meade: If you want my grounds, I want to point out that the operating of the separate duties, and then defining gross negligence and then, in the second paragraph, saying that the defendant violated the foregoing duty, in many respects is confusing. I think the use of the word duty,—

Mr. Young: We agree that it would be foolish for the plaintiff. All we want is a gross negligence instruction. If Mr. Meade objects to it, we will re-write it. We would like to submit A1.

The Court: He won't agree to that.

Mr. Meade: It's up to you to write your own instruction.

Mr. Young: Let me have it. No need to read it. You are not going to agree to anything. I would like to submit this one, in view of the fact that we think this is better, and we worked on this one, but this is an instruction that has been given.

The Court: It hasn't come up. This is just a sample.

Mr. Meade: When you wrote these, did you know that you were going to non-suit Bill Stone?

Mr. Young: No.

Mr. Haskins: Let's have the definition of gross negligence and eliminate these finding instructions.

[128] The Court: That would do away with it.

Mr. Young: We really prefer to change it. We have done this before, and just give the instruction on the duties the defendant owed the plaintiff, and then you come to a definition of gross negligence, which Frank would submit anyway.

* * *

[131]

* * *

Mr. Young: We offer these two in place of the other gross negligence instruction. This would be number one and two "A." We offer two in place of one.

The Court: You want two "A" to come after two?

Mr. Young: After one.

The Court: I am not going to be hard to get along with. I will give that one too.

Mr. Young: We give the straight definition.

The Court: They have substituted that for the original number one on gross negligence. That is number one and two "A."

Mr. Meade: Is there a misprint in number one. The defendant owed to the plaintiff the duty of a proper lookout of driving his— [132] I would think that you meant "and" driving his automobile.

App. 7

The Court: What are you objecting to, specifically?

Mr. Meade: Lookout of driving, doesn't make any sense.

Mr. Haskins: I don't see any problem with it.

Mr. Young: Proper lookout and drive his automobile in a manner and at a speed so as not to endanger life.

The Court: I don't think it changes the meaning.

Mr. Meade. I also object to it, because you are re-defining gross negligence. You have got back to the duty of lookout and speed, and talking about endangering life and property, rather than saying in a grossly negligent manner.

The Court: Do you want to state any specific objection?

Mr. Meade: I already have. They owed to the plaintiff the duty of a proper lookout, which is in conflict with the degree of care required, not to be grossly negligent. Proper control down here is wrong. You don't have to keep your vehicle under proper control to keep from being grossly negligent. Proper control is reasonable care. Two "A" is correct.

The Court: All right. We have got you covered except for the re-drafting of number five.

* * *

JUDGMENT ORDER

Filed December 28, 1970

[83]

* * *

Wherefore, it is Adjudged and Ordered that the Plaintiff recover from the said Defendant the sum of Thirty Thousand Dollars (\$30,000.00), that being the sum fixed

App. 8

by the jury, together with her taxable costs and interest at the legal rate from December 4, 1970.

* * *

ASSIGNMENTS OF ERROR

Filed February 24, 1971

[91]

* * *

3. The trial court erred in the granting of plaintiff's Instruction No. 1 (gross negligence finding instruction).

* * *

INDEX

	<i>App. Page</i>
Motion For Judgment—Filed August 31, 1970	1
Pre-Trial Order—Entered October 12, 1970	2
Instruction No. 1	2
Instruction No. 2A	3
Instruction No. 3	3
Excerpts From Reporter's Transcript, Tendered February 25, 1971 And Signed February 26, 1971, In-Chambers Discus- sions	4
Judgment Order—Filed December 28, 1970	7
Assignments Of Error—Filed February 24, 1971	8