IN THE COURT OF APPEALS OF IOWA

No. 1-545 / 91-489

FILED
FEB 25 1992
CLERK SUPREME COURT

SCOTT M. BLASBERG,

Appellee,

vs.

FRIEDMAN MOTORCARS, LTD., an Iowa Corporation,

Appellant,

and

CHARLES GABUS FORD, an Iowa Corporation,

Defendant.

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Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Friedman Motorcars appeals a district court judgment, following a jury verdict, finding it 75 percent at fault and awarding Blasberg damages. **AFFIRMED.**

Richard G. Book of Jones, Hoffman & Huber, Des Moines, for appellant.

Glenn L. Norris and George F. Davison, Jr. of Hawkins & Norris, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

On May 1, 1986, Scott Blasberg was injured as a result of an auto accident between a Toyota Supra and a Ford van. The Toyota was driven by Kevin Messenger, a mechanic at Friedman Motorcars, for the purpose of predelivery service. Blasberg, an employee of Friedman, was a passenger in the Toyota. The Ford van owned by Gabus Ford, was operated by James Sohn, a Gabus salesman, who was test driving the vehicle for customers. The Toyota proceeded east on the road at a speed in excess of the posted speed limit. The Gabus van made a left turn from the road, resulting in a collision between the vehicles.

In June 1987, Blasberg filed a petition in district court against Friedman, Gabus, and the two drivers. Eventually, the two drivers were dismissed from the lawsuit. The action was stayed pending a decision by the industrial commissioner as to whether Blasberg's injuries arose out of the course of his employment. The commissioner determined that Blasberg was not in the course of his employment.

Following trial, the case was submitted to the jury. The jury set damages and determined that Friedman was 75% at fault and Gabus was 25%. The district court entered judgment and only Friedman has appealed, challenging certain jury instructions and evidentiary rulings.

Issue I. Assured Clear Distance: We first consider whether the trial court erred as a matter of law in

submitting to the jury the issue whether the driver of the Friedman vehicle was negligent in failing to stop within the assured clear distance ahead.

Friedman asserts that the requirement under Iowa Code section 321.285, is inapplicable under this case. Friedman argues that at the point in time in which its vehicle was confronted with the Gabus van, there was no longer an assured clear distance ahead within which to stop. Friedman further argues that as a matter of law the issue of failure to stop within assured clear distance is inapplicable where one vehicle illegally turns left in front of another. We find no merit to these arguments.

Iowa Code section 321.285 provides in part:

> Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law. (emphasis added).

The words "assured clear distance ahead" signify that a driver shall at all times be able to stop his car within the distance that discernible objects may be seen ahead of it. Coppola v. Jameson, 200 N.W.2d 877, 879 (Iowa 1972). There is no dispute that the Friedman vehicle was speeding. The record indicates that Messenger saw the van in sufficient time to wonder if the van was going to pull

in front of him. Messenger saw a van pull up and stop. According to Messenger, the van hesitated, went, then stopped, seem to hesitate, and then pulled out in front of the Toyota. Upon observation of the van at this point, Messenger was or should have been alerted, that the van could be turning and should have slowed to a speed that would have allowed him to stop within the "assured clear distance ahead" as required. He could no longer rely upon the assumption the van driver was observing the law. Section 321.285 provides no hard and fast rule applicable in every case where a motorist collides with an object on the highway. Demers v. Currie, 139 N.W.2d 464, 466 (Iowa 1966). We find under the circumstances of this case the issue was properly presented to the jury. We affirm the trial court on this issue.

Issue II: We next consider whether there was sufficient evidence to support the allegation that Messenger was negligent in failing to have his vehicle under control and honking his horn. Friedman asserts that the trial court erred as a matter of law in submitting these issues to the jury. We disagree.

Messenger testified that he perceived that the driver of the Gabus van was not paying attention to oncoming traffic and did not see the Toyota. It is reasonable to conclude if Messenger would have sounded his horn, the driver would have been alerted and his attention focused upon the upcoming vehicle. This testimony, along with the

evidence that the Friedman vehicle was on the road at rush hour operating at a speed in excess of the posted speed limit, was sufficient to submit the issues to the jury. We affirm the trial court on this issue.

Issue III: Friedman next asserts it was error for the trial court to give jury instruction number 21, because the instruction as given placed undue emphasis on the speed of the Friedman vehicle as a cause of the accident and the instruction was not applicable to the facts of the case. Friedman argues that the instruction placed undue emphasis on Gabus's theory of the case and was prejudicial to Friedman because it resulted in a higher percentage of fault being assigned to Friedman. We disagree.

Instruction number 21 reads:

> The driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or o close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.
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> However, there is no duty to yield the right-of-way to vehicles not yet in view or so far distant from the intersection that had the approaching vehicle been traveling at a lawful speed, there would have been no collision unless the driver of the turning vehicle either knew or should have known of the approaching vehicle and knew or should have know it was exceeding the speed limit.
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> A violation of this law is negligence.

We do not find the instruction placed undue influence on the speed of the Friedman vehicle as the cause of the collision. The jury was presented with evidence that the driver of the Gabus van, by his own admission, was not paying attention to oncoming traffic for several seconds. The expert for Gabus agreed that if the van driver looked during that time, he would have seen the Toyota in order to take evasive action. We find no error in the submission of instruction number 21.

Issue IV: We finally consider whether the trial court erred in refusing to allow Friedman to offer evidence of plaintiff's violation of its safety rules as evidence of plaintiff's negligence. Friedman sought to offer testimony by its former comptroller, Robert Buckley, regarding safety rules. The purported rule was an unwritten rule. There is no evidence that Mr. Buckley formulated the rule or knew whether the rule had been communicated to the Friedman employee. The trial court ruled among other reasons that the testimony was hearsay. We agree and affirm the trial court.

Each party will pay its attorney's fees. Costs are taxed to the appellant.

AFFIRMED.