FILED
JAN 26 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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MILLER SEED COMPANY,
Plaintiff-Appellee,

vs.

JOHN L. SOSSAMAN,
Defendant-Appellant,

and

T. H. SOSSAMAN, d/b/a SOSSAMAN TRUCKING COMPANY,
Defendant.

Filed January 26, 1982

1-438
2-66295

Appeal from Crawford District Court - George F. Davis, Judge.

Defendant appeals from judgment for the plaintiff after trial to the court of this negligence action arising from the hauling of corn by truck. AFFIRMED.

Thomas E. Gustafson of the Gustafson Law Firm, Denison, Iowa, for defendant-appellant.

Russell Wunschel and Gary McMinimee, Carroll, Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, a trucker, appeals from judgment for the plaintiff, a seed corn dealer, after trial to the court of this negligence action arising from the hauling of corn by truck. The issues concern the sufficiency of the evidence to show that the defendant committed any negligent act, that the plaintiff was free from contributory negligence, and that the plaintiff suffered the damages which were awarded by the trial court. We consider all of these issues and affirm the trial court.

I. Negligence and Contributory Negligence. In this law-tried action, we apply the rule that generally questions of negligence, contributory negligence, and proximate cause are for the trier of fact and it is only in exceptional cases that they may be determined as matters of law. Iowa R. App. P. 14(e)(10). Applying this standard in the present case, we reject defendant's argument that there is insufficient evidence of its negligence. Such evidence lies in the fact that the record shows delivery of corn to the defendant in an uncontaminated condition, the presence of a contaminant in the corn upon its delivery to the plaintiff, and the fact that the particular contaminant had previously been present in the vehicle employed by the defendant for delivery of the corn. We also find no evidence upon which plaintiff can be found to have been contributorily negligent as a matter of law. We therefore do not upset the trial court's findings on these issues.

II. Damages. Next we consider defendant's claim that damages were not proved with reasonable certainty as required by Conley v. Warne, 236 N.W.2d 682, 687 (Iowa 1973) and Northrup v. Miles Homes, 204 N.W.2d 850, 857 (Iowa 1973). Granting the requirements of the cited cases, we find the proof in the present case to be adequate to sustain the award. Witnesses who were shown to be in a position to know testified as to the necessity of sorting the corn in order to remove the contaminant, the cost of performing this activity, and the value of

lost product as a result of the contamination and sorting process. All of these elements made up plaintiff's damage award as found by the trial court.

III. Reduction in Plaintiff's Expenses of Sale. Lastly, we consider defendant's claim that the award should be reduced to reflect the extent to which plaintiff's expenses of sale would be reduced as a result of lost product. Because plaintiff's damages were computed in the trial court based upon the cost of replacing the lost corn rather than upon lost sales, we find such argument to be without merit.

We have considered all issues presented and find no ground for reversal.

AFFIRMED.