FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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GORDON LUNDBERG,)

Plaintiff-Appellant.) Filed March 31, 1980

vs.)

WILLIAM ADAMCZYK,) 0-46
2-63212

Defendant-Appellee.)

Appeal from Webster District Court - Newt Draheim, Judge.

Plaintiff appeals from judgment entered on a jury verdict for defendant in a personal injury suit arising from an automobile accident. AFFIRMED.

Keith Ferguson of Dayton, Iowa, for plaintiff-appellant.

Donald Hohnbaum of Christianson, Hohnbaum & George, Des Moines, Iowa, for defendant-appellee.

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

PER CURIAM

Plaintiff, Gordon Lundberg, appeals from judgment entered on a jury verdict for defendant, William Adamczyk, in a personal injury suit arising from an automobile accident. We affirm.

I. Plaintiff contends the trial court erred in instructing the jury on the doctrine of sudden emergency. To justify giving an instruction to the jury upon an issue, there must be substantial evidence supporting it in the record. Franken v. City of Sioux Center, 272 N.W.2d 422, 428 (Iowa 1978). In determining whether there is support for an instruction, the evidence is given the most favorable construction it will reasonably bear. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 399 (Iowa 1977).

The facts of the accident leading to this suit are not seriously disputed. Plaintiff and defendant were both traveling east on Highway 20 in Fort Dodge. Traffic was moving along at approximately thirty miles per hour. It had been raining and misting outdoors shortly before the accident and the pavement was wet. Plaintiff, who was immediately in front of defendant, was required to stop suddenly when the traffic preceding him stopped. Defendant was unable to stop and his vehicle struck the rear of plaintiff's vehicle. The front of defendant's vehicle was damaged in the collision while the back of plaintiff's truck was not.

Defendant's striking the rear of plaintiff's vehicle is evidence of negligence on the part of defendant. Harris v. Clark, 251 Iowa 807, 809, 103 N.W.2d 215, 217 (1960). This would not, however, preclude defendant from showing circumstances indicating he was confronted with a sudden emergency not of his own making. Id. Douglas Lundberg, a passenger in plaintiff's vehicle, testified "we had to make a sudden stop and got hit in the rear of our truck." He admitted further that the stop was very sudden and unexpected. Plaintiff, on cross-examination, admitted that he was "faced with a kind of sudden emergency situation in having to stop . . . ." Defendant testified that "all of a sudden he saw brake lights and he slammed on his brakes" and that the stop of the vehicle ahead of him was sudden and unexpected. We conclude this evidence supports the giving of the challenged instruction with respect to the common law duties of defendant under the circumstances. Fagen Elevator v. Pfiester, 244 Iowa 633, 56 N.W.2d 577 (1953).

II. Plaintiff contends the trial court erred in failing to submit Uniform Jury Instruction 3.14, regarding aggravation of a pre-existing condition, to the jury. Any error occasioned by the trial court's refusal to submit the instruction to the jury, however, was cured by the jury's verdict in favor of defendant. See Berding v. Thada, 243 N.W.2d 857, 862 (Iowa 1976); Shannon v. Garr, 234 Iowa 1360, 1364-65, 15 N.W.2d 257, 259-60 (1944). We find no merit in plaintiff's contention of error.

III. Plaintiff also contends the trial court erred in overruling his motion for a new trial on the grounds that he "did not sustain the burden required for proximate cause." We disagree. Generally, questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases they may be decided as matters of law. Iowa R. App. P. 14(f)(10). Although plaintiff presented evidence indicating his injuries were connected to the collision, the evidence was by no means conclusive with respect to the issue of proximate cause. We believe the trial court was correct in overruling plaintiff's motion for a new trial.

AFFIRMED.