FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-46 / 89-736

JOHN P. REYNOLDS,

Appellant,

vs.

JEANNIE JOY TOOMEY and JAMES C. WESTERBECK,

Appellees.

547

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge.

Plaintiff appeals a judgment upon an adverse verdict. **REVERSED AND REMANDED.**

Jon A. Vasey of Eichhorn, Elverson & Vasey, Des Moines, for appellant.

Harry Perkins III and Jeffrey A. Baker of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellees.

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

OXBERGER, C.J.

John Reynolds was injured when his motorcycle was struck by a car traveling the same direction on a one-way street. At the time of the accident the car was executing a lane change into the lane where Reynolds' motorcycle was already traveling.

Reynolds later filed the present lawsuit against the driver and the owner of the car that hit him. The suit was tried to a jury, which returned a special verdict finding that: (1) the car driver had been at fault, but (2) the car driver's fault was not a proximate cause of Reynolds' injuries.

Because of its negative answer to the second of these two questions, the jury (as instructed) did not proceed to answer any other questions. Thus, the jury made no finding concerning Reynolds' proportion of fault.

Based on the jury's verdict, the district court entered a judgment in favor of the defendants. Reynolds has appealed.

Reynolds contends the evidence did not support the jury's conclusion that the car driver's fault was not a proximate cause of his injuries. He contends the district court should have granted his motion for new trial due to the insufficiency of the evidence to support the verdict.

Reynolds also contends the district court erred by allowing testimony allegedly prejudicial to him. Much of

the challenged testimony concerned such subjects as Reynolds' poor driving record, high insurance rates, and lack of a valid driver's license at the time of the accident. Reynolds also challenges testimony that his motorcycle was called a "Hurricane" and would register speeds of up to 150 miles per hour. In addition, he challenges testimony by the defendant driver that she did not feel she was responsible for the accident.

Finally, Reynolds contends the district court erred by instructing the jury on several specifications in which it could find him negligent. He argues the evidence was insufficient to permit the jury to find him negligent in any of those respects. The defendants respond, among other things, that any such error would have been harmless because the jury never reached the question of Reynolds' own negligence.

Our review of this case is limited to errors of law. Iowa R. App. P. 4.

Because we find one issue dispositive of this case, we do not consider the appellant's other assignments of error. The trial court allowed questioning of Reynolds concerning the validity of his driver's license, his difficulty obtaining insurance, and the high cost of his insurance. Additionally, the trial court allowed questioning on Reynolds' need to obtain SR22 high risk insurance. Counsel's objections have preserved these issues for appeal.

Generally, whether a party has a driver's license is irrelevant absent the showing of a causal relationship between the lack of license and the accident. O'Haver v. Kraklio, 257 Iowa 1169, 1172-73, 136 N.W.2d 293, 295 (1965). The trial court partially overruled Reynolds' motion in limine to keep such information out of the trial. The trial court decided to allow information on possession of a valid motorcycle license. While we believe such information in itself is irrelevant and could be highly prejudicial, the record shows counsel for defendant disregarded the trial court's ruling anyway. Counsel for defendant directly asked Reynolds a leading question regarding the fact Reynolds received a citation at the accident for not having a valid driver's license. Although the trial court later admonished the jury to disregard this question and answer, an instruction cannot erase the prejudicial effect of such testimony. Miller v. Town of Ankeny, 253 Iowa 1055, 1059, 114 N.W.2d 910, 913 (1962).

Second, prejudicial error was committed by allowing questioning on Reynolds' insurance difficulties. Testimony of insurance of a party is not admissible on the issue of whether that party acted negligently. Iowa R. Evid. 411. Generally, cases deal with admissibility of insurance in regard to the defendant. The Iowa Supreme Court has held evidence of liability insurance is generally inadmissible. See Evans v. Howard R. Green Co., 231 N.W.2d 907, 914 (Iowa

1975). While an inadvertent reference to insurance is not prejudicial error, error arises when a party intentionally brings before the jury the fact the other party carries insurance. Price v. King, 255 Iowa 314, 322, 122 N.W.2d 318, 323 (1963); see also Strain v. Heinssen, 434 N.W.2d 640, 642 (Iowa 1989).

In this case, the effect of counsel for defendant's questioning on Reynolds' insurance problems had the effect of character evidence. Counsel for defendant appears to be trying to show Reynolds was such a poor driver he could not get insurance. The obvious corollary is Reynolds, not the defendant, must have been the one who caused the accident.

Questioning regarding Reynolds' needing SR22 high risk insurance was especially prejudicial. It is commonly known that such insurance is only required for those drivers the Iowa Department of Transportation considers a menace on the highways. In the minds of the jurors, such a person could easily be seen as dangerous, accident-causing, or accident-prone.

Questioning on Reynolds' poor financial status and its connection with his ability to obtain or afford insurance was also highly prejudicial. See, e.g., Hackaday v. Brackelsburg, 248 Iowa 1346, 1353, 85 N.W.2d 514, 518 (1957).

Questions regarding the name of the motorcycle as "Hurricane" and the fact the speedometer would register 150

miles per hour were within the district court's discretion and therefore admissible. No error occurred by allowing presentation of these facts to the jury.

None of these questions were relevant on the issue of causation or damages of the particular accident in question. We determine the cumulative effect of all these questions was so prejudicial as to deprive Reynolds of a fair trial.

Additionally, defendant should not have been allowed to testify at trial concerning her own opinion as to her responsibility for the accident. That is an issue of ultimate fact and is for the jury to decide. No witness should be allowed to give an opinion that the person is guilty or innocent, criminally responsible or irresponsible, or that the person was negligent or not. Grismore v. Consolidated Products, 232 Iowa 328, 361, 5 N.W.2d 646, 663 (1942); see also Kester v. Bruns, 326 N.W.2d 279, 281 (Iowa 1982).

We reverse and remand for a new trial in accordance with this opinion.

REVERSED AND REMANDED.