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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

MICHAEL FREDERICK WILLIAMS,	)	Filed November 10, 1977
Appellant,	)	
	)	
v.	)	
	)	
JOHN CARL TETMEYER,	)	259
	)	2-58896
Appellee.	)	
	)	

Appeal from Wapello District Court - Charles N. Pettit, Judge.

Plaintiff appeals from adverse judgment in a negligence action arising from a motor vehicle collision. Affirmed.

John N. Moreland, of Ottumwa, for appellant.

Paul Zoss and Kenneth L. Keith, of Dull, Keith & Beaver, of Ottumwa, for appellee.

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

PER CURIAM

Plaintiff, Michael Frederick Williams, appeals from trial court's ruling which denied his motion for a new trial. Assignments of error are considered in the order briefed.

I. Williams first complains trial court erred in submitting to the jury, as a specification of his contributory negligence, violation of the assured clear distance duty imposed by section 321.285, The Code. Without examining the adequacy of plaintiff's objection as presented to trial court, we find that under the sufficiency of evidence test announced in Coppola v. Jameson, 200 N.W.2d 877, 880 (Iowa 1972) submission of the issue was proper. The evidence in the instant case, viewed in the light most favorable to the defendant, John Carl Tetmeyer, who had the burden of proof, would permit the jury to find that: the accident occurred between 9:30 and 10:00 in the evening; the weather was warm and clear; Tetmeyer's automobile lights were on; he backed his automobile to the south edge of the Blue Grass Road and stopped at the end of the driveway to look both east and west; to the west he observed a single, moving light, at a distance estimated as between 800 and 1000 feet; Tetmeyer proceeded to back onto the road and had started forward, toward the east, when he was struck from behind by Williams's motorcycle.

Tetmeyer met his "initial burden of producing sufficient substantial evidence to satisfy the trial judge" that the jury, acting as reasonable persons, "would be justified in drawing the conclusion from the facts and circumstances proved [that he] came into [Williams's] directional line of travel at a point sufficiently in front of [Williams] to have made it possible for [Williams] in the exercise of due care to bring [his] vehicle to a stop and avoid the collision." Nolte v. Case, 221 N.W.2d 741, 745 (Iowa 1974).

II. Plaintiff next asserts trial court erroneously submitted as a specification of his contributory negligence the issue of whether his vehicle was equipped with proper lighting devices. He timely objected "for the reason that there is no evidence to justify the submission of said specification," and further stated that he excepted and objected to the instruction defining the specification.

The supreme court dealt with an objection very similar to the present one in Rush v. Sioux City, 240 N.W.2d 431, 441 (Iowa 1976). There the plaintiff objected to an instruction on his contributory negligence, "for the reason that there is no evidence on

which to submit the issue of contributory negligence of the plaintiff to the jury." The court held that such an objection was not adequate to preserve error.

It is incumbent on the objecting party to point out wherein he contends the instruction is wrong or has no factual support so the trial court may have an opportunity to correct any error. Miller v. International Harvester Co., 246 N.W.2d 298, 301 (Iowa 1976). This Williams failed to do. Consequently, he preserved nothing for review. Nor does Williams's elaboration on the objection in his motion for a new trial avail to either preserve or bolster the claimed error. State v. Buchanan, 207 N.W.2d 784, 787 (Iowa 1973).

III. As his final assignment Williams contends trial court erred in permitting Tetmeyer to amend his answer to include the allegation that he (Williams) was operating his motorcycle in excess of the 50 mile per hour speed limit. Both at trial and in this appeal Williams argues the amendment was not timely and that the added allegation did not conform to the evidence.

Trial courts are vested with considerable discretion in permitting amendments. The allowance of amendments to pleadings is the rule; denials are the exception. Ackerman v. Lauver, 242 N.W.2d 342, 345 (Iowa 1976); Galbraith v. George, 217 N.W.2d 598, 601 (Iowa 1974). The circumstantial evidence of Williams's speed was sufficient to justify allowance of the amendment, and to support submission of the issue to the jury. See Goettelman v. Stoen, 182 N.W.2d 415, 418-19 (Iowa 1970); Walker v. Sedrel, 260 Iowa 625, 632-33, 149 N.W.2d 874, 878 (1967). For example, the jury could find excessive speed from the force of the impact as portrayed by photographic exhibits admitted into evidence; high speed also could be inferred from the considerable distance Williams traveled from where he was first observed by Tetmeyer to the point of impact. The jury was not required to accept Williams's estimate of his speed as a verity. Walker v. Sedrel, 260 Iowa at 633, 149 N.W.2d at 878. Further, Tetmeyer's amendment did not substantially change the issues. Trial court did not abuse its discretion in permitting the amendment.

AFFIRMED.