IN THE COURT OF APPEALS OF IOWA

No. 1-537 / 91-0433

FILED
APR 28 1992
CLERK SUPREME COURT

RHONDA L. HENSLEY, A Minor by her Mother and Next Friend, **REBECCA HENSLEY,**

Appellee,

vs.

410

RONALD M. WEAVER, SANDRA LEE WEAVER, MAY TRUCKING COMPANY, and JOHN DOE,

Appellants.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge.

Defendant appeals a judgment of the district court, following a jury trial, finding one of its trucks caused an accident resulting in injuries to the plaintiff. **AFFIRMED.**

Daniel B. Shuck of Eidsmoe, Heidman, Redmond, Fredrigill, Patterson & Schatz, Des Moines, for appellant May Trucking.

Ronald Wheeler, Des Moines, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

On August 4, 1989, the defendant Sandra Lee Weaver was driving a 1970 pickup truck northbound on Highway 65 in Lucas County near Humeston. Riding in the car with her was her three-year-old granddaughter, plaintiff Rhonda Hensley. As Weaver rounded a curve, she saw a semitrailer truck traveling southbound halfway in her lane. Weaver drove the truck onto the shoulder of the highway to avoid hitting the semi. In the process, the pickup rolled over several times, coming to rest on its top. The top of the car was pushed against the seat where Rhonda had been sitting.

The mother of Rhonda, Rebecca Hensley, brought the present action in Polk County against the Weavers and May Trucking Company for damages incurred by Rhonda as a result of the accident. Prior to trial May moved for a change of venue to Lucas County, the site of the accident and plaintiff's residence at the time of the accident. The trial court denied the motion.

CHANGE OF VENUE: May asserts the trial court abused its discretion when it denied the trucking company's motion for change of venue from Polk to Lucas County. The decision whether to grant or deny a motion for change of venue rests in the sound discretion of the trial court. Locksley v. Anestesiologists of Cedar Rapids, 333 N.W.2d 451, 454 (Iowa 1983). We review for an abuse of discretion. In order to

show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

May argues that the trial court abused its discretion in failing to grant its motion for change of venue. May contends that at the time the motion was made, the Weavers resided in Lucas County, Rhonda resided with her grandmother in Lucas County, the accident occurred there, and all the material witnesses resided in Lucas County.

Ms. Hensley filed a petition alleging personal injury. Regarding venue of such actions, Iowa Code section 616.18 provides:

> Actions arising out of injuries to a person or damage to property may be brought in the county in which the Defendant or one of the Defendants is a resident or in the county in which the injury or damage is sustained.

Defendant May is a foreign corporation which at the time this action arose was doing business in Iowa. At that time the company's only Iowa office was in Polk County. Iowa Code section 616.14 provides:

> When a corporation, company, or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located.

Based upon the clear meaning of the above statutes, the

action could be properly brought in either Lucas County, the place of the accident, or Polk County, the residence of the defendant. We find no merit in May's argument. We affirm the trial court on this issue.

SUFFICIENCY OF EVIDENCE: May next asserts the evidence presented by Hensley was insufficient for a jury to reasonably infer that a May Trucking Company vehicle was present at the time of the alleged accident.

In Iowa both circumstantial and direct evidence are equally probative. Harsha v. State Savings Bank, 346 N.W.2d 791, 800 (Iowa 1984). We find the circumstantial evidence presented in this case was sufficient to engender a jury issue on the presence of a May Trucking Company truck.

At trial Clinton Porterfield testified that he was the first person behind Weaver's pickup, following her approximately 100 yards behind. Porterfield testified that as he rounded the curve in the highway he saw a semitruck moving southbound near the point where the Weaver vehicle lost control and saw the Weaver vehicle roll over several times. Porterfield further testified that the tires of the truck were on the center line as the truck passed him. Porterfield came upon the Weaver vehicle shortly thereafter. He stated he observed no other trucks in the area at the time of the accident. When shown a photograph of a May truck, Porterfield stated the colors were similar to the one seen at the accident site.

Witness Diane Danner testified specifically that she observed a May Trucking Company semitruck. The truck she observed was less than a mile down the road from the accident parked on the roadway shoulder. Ms. Danner not only owned a semitruck with her husband, but had at one time specifically studied the May Trucking Company trucks and visited the terminal office regarding employment. Danner testified she was driving northbound on the highway when she came upon a semitruck stopped on the shoulder of the road with the driver out of the vehicle. She inquired as to whether the driver of the truck need assistance and proceeded on the highway until she observed the Weaver vehicle. Danner testified she had a clear view of the semitruck and that she had no question in her mind it was a May truck. We find there was sufficient evidence upon which the jury could reasonably infer a May Trucking Company vehicle was involved in the accident. We affirm the trial court on this issue.

DAMAGES: May asserts the damages awarded to Hensley are excessive and are unsupported by the evidence presented at trial.

Rhonda was taken to a hospital in Des Moines where it was diagnosed she had suffered several fractures of her left leg. Rhonda had a pin placed in her knee and was eventually placed in a body cast for a month. Rhonda developed a severe rash due to the fact her cast became

soaked with urine. After several more months of casts, it was diagnosed that Rhonda had difficulty raising her left foot and toes, called drop-foot, due to a peroneal nerve injury.

The jury returned a verdict attributing sixty percent of the fault against May Trucking and forty percent against the Weavers, whose claim had been settled prior to trial. The jury awarded Rhonda $13,765 in past medicals, $720 for future medicals, $15,000 for loss of mind and body, and $10,000 for pain and suffering, for a total of $39,485. May was assessed $23,691 of the total damages. We find no merit to May's argument that the damages were excessive. We have considered all other issues presented and affirm the trial court.

The parties will pay their own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.