City of Elizabeth City and Farm Bureau Mutual Automobile Insurance Co. v. Hoover

241 N.C. 569 (1955) | Cited 0 times | Supreme Court of North Carolina | March 2, 1955

Plaintiffs by their first assignment of error challenge the order making the original plaintiff's insurance carrier a party to the action. The assignment is without merit. The order bringing in the Insurance Company was entered in the exercise of the court's discretion as allowed by the rule explained and applied in Burgess v. Trevathan, 236 N.C. 157, 72 S.E.2d 231.

Next, the plaintiffs seek to challenge the sufficiency of the evidence to support the verdict of the jury as to the issue of contributory negligence. However, this question is not presented by the record. There was no exception to the submission of the issue and no requested instruction thereon. The question as to the sufficiency of the evidence to justify the submission of an issue to the jury may not be raised for the first time on appeal. Burcham v. Wolfe, 180 N.C. 672, 104 S.E. 651; 3 Am. Jur., Appeal and Error, section 384.

Here there was only the formal motion to set the verdict aside as being contrary to the law and the evidence, and a like motion to set the verdict aside on the issue of contributory negligence. These motions were addressed to the discretion of the court and, on this record, no abuse of discretion having been shown, the denials of the motions are not subject to review. No error of law has been made to appear. Braid v. Lukins, 95 N.C. 123.

Our examination of the other exceptions brought forward discloses no error of law. The verdict and judgment will be upheld.

No error.

Disposition

No error.