Smith v. Grubb

238 N.C. 665 (1953) | Cited 6 times | Supreme Court of North Carolina | November 25, 1953

From an examination of the allegations of the two complaints, which in this respect are identical, wherein the plaintiffs have stated the facts constituting their causes of action against the defendants Grubb and Creameries, Inc., we think it affirmatively appears that the negligence of these defendants, if any, was insulated by the active negligence of Delma Smith, and that the demurrers ore tenus should have been sustained, and further that on plaintiffs' evidence, which was substantially in accord with the allegations, judgment of involuntary nonsuit was properly entered.

As Chief Justice Stacy observed in Butner v. Spease, 217 N.C. 82, 6 S.E.2d 808, "The application of the doctrine of insulating negligence of one by the subsequent intervention of the active negligence of another, as a matter of law, is usually fraught with some knottiness. However, the principle is a wholesome one, and must be applied in proper instances." Gas Co. v. Montgomery Ward & Co., 231 N.C. 270 (275), 56 S.E.2d 689.

"The test by which the negligent conduct of one is to be insulated as a matter of law by the independent negligent act of another, is reasonable unforeseeability on the part of the original actor of the subsequent intervening act and resultant injury." Butner v. Spease, supra. "The new, independent, efficient intervening cause must begin to operate subsequent to the original act of negligence and continue to operate until the instant of injury." Hinnant v. R.R., 202 N.C. 489 (494), 163 S.E. 555.

"The test by which to determine whether the intervening act of an intelligent agent which has become the efficient cause of an injury shall be considered a new and independent cause, breaking the sequence of events put in motion by the original negligence of the defendant, is whether the intervening act and the resultant injury is one that the author of the primary negligence could have reasonably foreseen and expected." Balcum v. Johnson, 177 N.C. 213, 98 S.E. 532.

In the case at bar it is apparent that the negligence of Grubb would have produced no injury to the plaintiffs but for the subsequent active negligence of Delma Smith's driver. The plaintiffs' driver had seen the Grubb automobile where it was stopped on the highway, and had driven slowly and stopped 15 feet away. The negligence of Grubb had become passive and had ceased to be capable of causing any injury to the plaintiffs which could reasonably have been foreseen. No injury would have resulted to the plaintiffs but for the subsequent intervening negligence of a third person who carelessly drove into the rear of plaintiffs' truck. The

intervening acts of Delma Smith's driver acted as a nonconductor and insulated the negligence of

Grubb.

This principle, inherent in the law of negligence and proximate cause, has been upheld in numerous decisions of this Court, among which we cite. Hooks v. Hudson, 237 N.C. 695, 75 S.E.2d 758; Garner v. Pittman, 237 N.C. 328, 75 S.E.2d 111; Hollifield v. Everhart, 237 N.C. 313, 74 S.E.2d 706; Godwin v. Nixon, 236 N.C. 632, 74 S.E.2d 24; McLaney v. Motor Freight, Inc., 236 N.C. 714, 74 S.E.2d 36; Clark v. Lambreth, 235 N.C. 578, 70 S.E.2d 828; Gas Co. v. Montgomery Ward & Co., supra; Warner v. Lazarus, 229 N.C. 27, 47 S.E.2d 496; Butner v. Spease, supra; Smith v. Sink, 211 N.C. 725, 192 S.E. 108; Harton v. Tel. Co., 146 N.C. 429, 59 S.E. 1022. This principle, however, is not applicable where the facts alleged and shown are sufficient to justify the view that the several acts of negligence on the part of different defendants concurred in contributing to the injury complained of. Karpf v. Adams, 237 N.C. 106, 74 S.E.2d 325; Bumgardner v. Fence Co., 236 N.C. 698, 74 S.E.2d 32; Hall v. Coble Dairies, 234 N.C. 206, 67 S.E.2d 63; Price v. City of Monroe, 234 N.C. 666, 68 S.E.2d 283; Barber v. Wooten, 234 N.C. 107, 66 S.E.2d 690; Cunningham v. Haynes, 211 N.C. 456, 199 S.E. 627; Smith v. Sink, 210 N.C. 815, 188 S.E. 631.

We think a correct result has been reached.

Judgment affirmed.

Disposition

Judgment affirmed.