Garner v. Pittman

75 S.E.2d 111 (1953) | Cited 20 times | Supreme Court of North Carolina | March 18, 1953

When the evidence offered by plaintiff upon the trial in Superior Court, as revealed by the record of case on appeal, is taken in the light most favorable to her, we are of opinion that the case comes within the principles enunciated in Smith v. Sink, 211 N.C. 725, 192 S.E. 108; Powers v. Sternberg, 213 N.C. 41, 195 S.E. 88; Butner v. Spease, 217 N.C. 82, 6 S.E.2d 808; Reeves v. Staley, 220 N.C. 573, 18 S.E.2d 239, and Matheny v. Motor Lines, 233 N.C. 673, 65 S.E.2d 361, and is insufficient to require that an issue of negligence as to defendant Sipe be submited to the jury. All the evidence offered by plaintiff Sipe be submitted to the jury. All the evidence offered by plaintiff manifests that defendant Pittman was negligent. Indeed, the uncontradicted evidence is that he admitted that "it was all his fault." If defendant Sipe were negligent, it is clear that it was insulated by the negligence of Pittman, and that his, Pittman's, negligence was the sole proximate cause of the collision. This conclusion finds support in Harton v. Tel. Co., 146 N.C. 429, 59 S.E. 1022, and other cases cited in Reeves v. Staley, supra at page 582.

In an action for recovery for injury to person or damage to property, resulting from alleged actionable negligence, the plaintiff must show: First, that there has been a failure on the part of defendant to exercise proper care in the performance of some legal duty which the defendant owed plaintiff under the circumstances in which they were placed; and, second, that such negligent breach of duty was the proximate cause of the injury or damage, -- a cause that produced the result in continuous sequence, and without which it would not have occurred, and one from

which any man of ordinary prudence could have foreseen that such result was probable under all the facts as they existed. See Ramsbottom v. R.R., 138 N.C. 38, 50 S.E. 448; Whitt v. Rand, 187 N.C. 805, 123 S.E. 84, and numerous later cases.

And the principle prevails in this State that what is negligence is a question of law, and when the facts are admitted or established, the court must say whether it does or does not exist. "This rule extends and applies not only to the question of negligent breach of duty, but to the feature of proximate cause," Hoke, J., in Hicks v. Mfg. Co., 138 N.C. 319, 50 S.E. 703; Reeves v. Staley, supra, and cases there cited.

In the case of Lineberry v. R.R., 187 N.C. 786, 123 S.E. 1, in opinion by Clarkson, J., this Court said: "It is well settled that where the facts are all admitted, and only one inference may be drawn from them, the court will declare whether an act was the proximate cause of the injury or not." Again, in Russell v. R.R., 118 N.C. 1098, 24 S.E. 512, it is stated that "Where the facts are undisputed and but a single inference can be drawn from them, it is the exclusive duty of the court to determine whether

an injury has been caused by the negligence of one or the concurrent negligence of both of the parties."

Furthermore, it is proper in negligence cases to sustain a demurrer to the evidence and enter judgment as of nonsuit: "1. When all the evidence taken in the light most favorable to the plaintiff fails to show any actionable negligence on the part of the defendant . . . 2. When it clearly appears from the evidence that the injury complained of was independently and proximately produced by the wrongful act, neglect, or default of an outside agency or responsible third person . . ." Smith v. Sink, supra, and cases cited. See also Reeves v. Staley, supra, and cases cited. Also Mintz v. Murphy, 235 N.C. 304, 69 S.E.2d 849, and Clark v. Lambreth, 235 N.C. 578, 70 S.E.2d 828.

"Foreseeability is the test of whether the intervening act is such a new, independent and efficient cause as to insulate the original negligent act. That is to say, if the original wrongdoer could reasonably foresee the intervening act and resultant injury, then the sequence of events is not broken by a new and independent cause, and in such event the original wrongdoer remains liable," as expressed by Brogden, J., in Hinnant v. R.R., 202 N.C. 489, 163 S.E. 555. See Reeves v. Staley, supra, and cases cited.

Too, it is a rule of law even in the absence of statutory requirements, that the operator of a motor vehicle must exercise ordinary care, that is, that degree of care which an ordinarily prudent person would exercise under similar circumstances. And in the exercise of such duty it is incumbent upon the operator of a motor vehicle to keep same under control, and to keep a reasonably careful lookout, so as to avoid collision with

persons and vehicles upon the highways. 5 Am. Jur., Automobiles, Sections 165, 166, 167.

Also it is provided by statute, G.S. 20-156 (a), that "the driver of a vehicle entering a public highway from a private road or drive shall yield the right of way to all vehicles approaching on such public highway." And in order to comply with this statute, the driver of such vehicle is required to look for vehicles approaching on such public highway, and this "is required to be done at a time when his precaution may be effective," as expressed by Stacy, C.J., in Harrison v. R.R., 194 N.C. 656, 140 S.E. 598, citing cases.

Likewise, in Matheny v. Motor Lines, supra, involving a motor vehicle collision at an intersection, in opinion by Devin, C.J., it is said: "Generally when the driver of an automobile is required to stop at an intersection he must yield the right of way to an automobile approaching on the intersecting highway . . . and unless the approaching automobile is far enough away to afford reasonable ground for the belief that he can cross in safety he must delay his progress until the other vehicle has passed."

Moreover, the operator of an automobile traveling upon a public highway in this State is under no duty to anticipate that the driver of an automobile entering the public highway from a private road or

drive will fail to yield the right of way to all vehicles on such public highway, as required by the statute, G.S. 20-156 (a), and, in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption, even to the last moment, that the driver of the automobile so entering the public highway from a private road or drive will, in obedience to the statute, yield the right of way. See Reeves v. Staley, supra.

Applying these principles to the evidence in the case in hand, it is clear that defendant Pittman, driver of the automobile in which plaintiff was riding, in entering Market Street, a public highway, from a private road or drive, failed to "yield the right of way" to the automobile of defendant Sipe, as it was his duty to do, G.S. 20-156 (a), when he saw, or by the exercise of due care, would have seen it approaching on Market Street. All the evidence shows that the view from the entrance to the private road or drive to the river bridge, the direction from which the automobile of defendant Sipe was approaching, was unobstructed for a distance of 200 to 300 feet. Yet defendant Pittman stated to defendant Sipe at the time, and testified on the witness stand that he did not see the Sipe automobile until the moment of impact. Plaintiff saw it when it was 100 feet away. The evidence of the conduct of defendant Pittman makes him guilty of negligence as a matter of law. Such negligence, if the sole proximate cause of the injury and damage of which plaintiff complains,

will bar recovery by plaintiff from Sipe, even though she be only a guest in the Pittman automobile. See Powers v. Sternberg, supra; Miller v. R.R., 220 N.C. 562, 18 S.E.2d 232; Reeves v. Staley, supra. The defendant Sipe was under no duty to anticipate that defendant Pittman, in entering the public highway from a private road or drive would fail to yield the right of way to his automobile approaching on the public highway; and in the absence of anything which gave or should give notice to the contrary, he was entitled to assume and to act on the assumption, even to the last moment, that defendant Pittman would not only exercise ordinary care for his own safety as well as that of plaintiff riding in his car, but would act in obedience to the statute, and stop before entering the line and lane of motor vehicles then traveling on the street. As in Reeves v. Staley, supra, the evidence points to the emergency caused by the failure of defendant Pittman to yield the right of way and stop. Such a situation was not reasonably foreseeable by defendant Sipe. All the evidence further shows that Sipe was operating his automobile on his right-hand side of the street before and at the time of the collision.

Plaintiff contends, however, that there is evidence tending to show that the speed of the Sipe automobile was fifty miles per hour, reduced to 30 or 35 miles per hour, and, therefore, under the circumstances, unlawful. Even so, it is clear from the evidence that its speed would have resulted in no injury or damage to plaintiff but for the negligent act of defendant Pittman. See Cox v. Freight Lines, 236 N.C. 72. Hence, the proximate cause of the collision must be attributed to the palpable negligence of Pittman, as in Butner v. Spease, supra, and Reeves v. Staley, supra.

The cases relied upon by plaintiff are distinguishable.

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The judgment below is

Affirmed.

Disposition

Affirmed.