Whiteman v. Seashore Transportation Co.

231 N.C. 701 (1950) | Cited 6 times | Supreme Court of North Carolina | April 12, 1950

The appellant Seashore Transportation Company assigns error in the ruling of the court below in allowing the motion of the defendant Construction Company for nonsuit as to plaintiff's causes of action against the Construction Company. This motion was interposed and ruled upon at the close of plaintiff's evidence. As the evidence which

had been offered by the plaintiff had failed to show actionable negligence on the part of defendant Construction Company, we think the movent was entitled to the allowance of its motion, in so far as the plaintiff was concerned, and the plaintiff did not except or appeal. We perceive no error therein of which the appellant can complain. However, in view of the appellant's pleading the court properly held open the question of the Construction Company's negligence as it might affect appellant's claim for contribution. Subsequently, appellant introduced evidence tending to show negligence on the part of the Construction Company's flagman in that he gave an improper signal to the driver of the bus, but there was evidence contra, and appellant's contentions were submitted to the jury under an appropriate issue and answered against the appellant. Tarkington v. Printing Co., 230 N.C. 354, 53 S.E.2d 369; Charnock v. Taylor, 223 N.C. 360, 26 S.E.2d 911. Since plaintiff's evidence was sufficient to support the finding of negligence on the part of the appellant, and the only relief sought by appellant against the Construction Company was for contribution or indemnity, as to which it had its day in court, the adverse determination of the fact leaves appellant no ground for complaint on that score.

The appellant assigns error in the ruling of the trial court in respect to the issues submitted and the court's failure to submit other issues tendered, but we think those submitted were sufficient to embrace all essential questions in controversy and to afford each party opportunity to present its case to the jury. Potato Co. v. Jeanette, 174 N.C. 236, 93 S.E. 795; Lewis v. Hunter, 212 N.C. 504, 193 S.E. 814.

The appellant brought forward in its assignments of error numerous exceptions noted to the judge's charge to the jury on the issues submitted. While there are some expressions used by the court which may be open to criticism, when we consider the entire charge contextually we find it free from prejudicial error. Braddy v. Pfaff, 210 N.C. 248, 186 S.E. 340. "The charge must be considered contextually and not disjointedly." Milling Co. v. Highway Com., 190 N.C. 692 (697), 130 S.E. 724. The case seems to have been submitted to the jury fairly and in substantial accord with well settled principles of law. The burden was on the appellant not only to show error but also to show that the error complained of was material and prejudicial, and that the result was affected thereby. Collins v. Lamb, 215 N.C. 719, 2 S.E.2d 863.

Whiteman v. Seashore Transportation Co.

231 N.C. 701 (1950) | Cited 6 times | Supreme Court of North Carolina | April 12, 1950

The statutes relative to the speed of motor vehicles on the highway confer authority upon the State Highway & Public Works Commission to declare a speed limit applicable to a particular place in the highway, which shall become effective and obligatory when appropriate signs are erected, as appears to have been done in this case. G.S. 20-141 (b); G.S. 20-141 (5) (d). It may be noted that the statutes establishing

limits to the speed of motor vehicles on the highway were amended by Chapter 1067, Session Laws 1947, which declares that speed in excess of the limits so fixed shall be "unlawful," rather than merely " prima facie evidence" that such speed was not reasonable or prudent. In view of the statutes in force at the time of the collision, the exception to the charge in this connection is untenable. Holland v. Strader, 216 N.C. 436, 5 S.E.2d 311; Conley v. Pearce-Young-Angel Co., 224 N.C. 211, 29 S.E.2d 740.

The evidence here was not such as to call for the application as a matter of law of the doctrine of insulating negligence (Gas Co. v. Montgomery Ward & Co., ante, 270, 56 S.E.2d 689; Warner v. Lazarus, 229 N.C. 27, 47 S.E.2d 496; Butner v. Spease, 217 N.C. 82, 6 S.E.2d 808), or to require specific instructions to the jury on the question whether the negligence, if any, of the Transportation Company in respect to speed was insulated by the subsequent intervention of the active negligence of the Construction Company in giving an improper signal to the bus driver, as the conflicting views as to responsibility for the injury were submitted to the jury for determination, from the evidence, of the ultimate fact of proximate cause. As was said in Gas Co. v. Montgomery Ward, supra, "the doctrine of insulating negligence is after all an application of the definition of proximate cause." Butner v. Spease, supra; Lee v. Upholstery Co., 227 N.C. 88, 40 S.E.2d 688; McIntyre v. Elevator Co., 230 N.C. 539, 53 S.E.2d 528.

After an examination of the entire record, we reach the conclusion that the verdict and judgment should not be disturbed.

No error.

Disposition

No error.