

WORLICK HOWARD *v.* TRI-STATE INSURANCE
CO

5-6072

486 S.W. 2d 77

Opinion delivered November 6, 1972

1. TRIAL—INSTRUCTIONS TO THE JURY—MISLEADING INSTRUCTIONS.—
An erroneous instruction which is likely to mislead the jury is prejudicial.
2. TRIAL—INSTRUCTION ON SUDDEN EMERGENCY—SUFFICIENCY OF EVIDENCE.—The giving of AMI (civil) 614 (sudden emergency) held error where there was no testimony of either driver finding himself in an emergency situation and taking action accordingly, and other instructions had advised the jury as to the emergency status of a fire truck.

Appeal from Greene Circuit Court, A. S. Todd Harrison, Judge; reversed and remanded.

Mooney & Boone, for appellant.

Kirsch, Cathey, Brown & Goodwin, for appellee.

LYLE BROWN, Justice. This case originated from an intersection collision between Worlick Howard, appellant, and a fire truck owned by the city of Paragould and insured by appellee, Tri-State Insurance Company. The sole point on appeal is that the trial court erred in giving AMI (Civil) 614 (sudden emergency).

The testimony as to the occurrence was very brief and was given by appellant and the truck driver. Appellant testified that he was proceeding on Highland Street; that he entered North Third Street; and that the stop signs were in his favor. "I never saw the fire truck before the accident. I did not know what hit me. The next I knew I was in the hospital." The truck driver testified that he was answering a fire call and had his regulation lights and siren turned on. Of the impact he said: "I was not going over 25 miles per hour when the accident happened . . . I looked to the right. I didn't see anything and looked left and when I looked back I seen him and we hit just like that [instantaneously]"

We find not one iota of testimony of either driver finding himself in an emergency situation and taking action accordingly. The giving of the instruction was therefore error. *Smith v. Alexander*, 245 Ark. 567, 433 S.W. 2d 157 (1968). An erroneous instruction which is likely to mislead the jury is prejudicial. *Johnston v. Pennington*, 105 Ark. 278, 150 S.W. 863 (1912). In the case at bar the jury was by other instructions advised as to the emergency status of a fire truck. The jury therefore may well have believed that the truck driver, under AMI 614, enjoyed some special privilege.

Reversed and remanded.