SUTTON v. WEBB.

Opinion delivered June 1, 1931.

1. JURY—EXAMINATION.—In an action for personal and property injuries received in an automobile collision, jurors may properly be examined as to whether they have been connected as employees or otherwise with any insurance company carrying automobile liability insurance, in order that the right of challenge may be exercised more intelligently.
2. TRIAL—ABSTRACT INSTRUCTIONS.—Giving instructions in a personal injury case which permitted the jury to find against defendant without consideration of plaintiff's alleged contributory negligence was not error where there was no substantial testimony tending to show any contributory negligence on plaintiff's part.
3. DAMAGES—INJURY TO AUTOMOBILE.—In an action for injuries to plaintiff's automobile injured in a collision, an instruction that the measure of damages would be the difference between its value before and after the accident, allowing the jury to consider the cost of repairing the car, and to find, if the evidence warranted doing so, any amount of damage exceeding the cost of repairs, *held* not error.
4. NEGLIGENCE—VIOLATION OF STATUTES—INSTRUCTION.—The jury were properly told that violation of statutes relating to the rate of speed and to driving on the wrong side of the street might be considered with all other facts disclosed by the evidence in determining whether defendant was guilty of negligence.
5. DAMAGES—PERSONAL INJURIES.—Where plaintiff had previously suffered from arthritis in her arm, she was entitled to recover

for injury to her arm inflicted by defendant's negligence, without regard to whether the damage might not have been so great but for the arthritis.

Appeal from Sebastian Circuit Court, Fort Smith District; *J. Sam Wood,* Judge; affirmed.

STATEMENT OF FACTS.

This appeal comes from a judgment for damages for personal injuries suffered by appellee and the destruction of her car in a collision with the automobile of appellant, alleged to have been caused by his negligence.

From the record it appears that appellee, about 9 o'clock on the evening of Monday, September 1, 1930, was driving eastward on Rogers Avenue in the city of Fort Smith in her Dodge cabriolet coupe automobile at a reasonable rate of speed in the exercise of due care, and was run down, it was alleged, by appellant on the same highway driving west in a large Cadillac automobile, injuring her and damaging her car.

It was alleged that appellant was driving at a high and dangerous rate of speed; carelessly and negligently drove his car onto the left of the highway beyond the center thereof in attempting to pass around a large float, which was an exhibit in the American Legion parade, and was driving in the same direction as the defendant on Rogers Avenue; and that, in so doing, he negligently and carelessly drove his car into the car of plaintiff in a congested section of the town and in congested traffic without any regard for traffic, and in the collision practically destroyed plaintiff's car and injured her, "shattering her nervous system, * * * wrenching her back and spinal column and left arm, bruising her head, shoulders and neck;" causing her to suffer intense pain and anguish of mind, which she still suffers and will continue in the future to suffer; that she has been unable to work and will be unable for sometime in the future to do so; and that she sustained damages in the sum of $5,000. She also alleged $500 damages for the destruction of her car.

The answer denied each allegation of negligence; alleged that plaintiff was driving at a negligent and careless rate of speed on the wrong side of the street, and she could have driven her car on the right side of the street, and that her own negligence, solely and alone, caused her injury.

The testimony tended to show that appellant was driving at the rate of about 40 miles an hour; that he turned out to his left across the center of the street, attempting to pass a large float in the American Legion parade, and ran into the car of appellee, which was moving slowly near the curb on her side of the street in front of the hospital. Appellant was unable to stop his car until after striking appellee's car and another one, and running up into the yard of the Bishop's house. It also conduced to show the injuries alleged to have been suffered by appellee and the destruction of her car. There was no evidence of any negligence on the part of appellee in the handling of her car.

When the jury was being impaneled, counsel for appellee was permitted, over appellant's objection, to ask the jurors upon their *voir dire*: "Is any one of you, member of the panel, now, or have you been connected, as employee, or otherwise, with any insurance company carrying automobile liability insurance?" Certain instructions given the jury at appellee's request over appellant's objection, are assigned as error here, and the verdict is complained of as excessive. From the judgment on the verdict against him, appellant prosecutes this appeal.

Joseph R. Brown and *James B. McDonough,* for appellant.

Hardin & Barton, for appellee.

KIRBY, J., (after stating the facts). It is first insisted that the court erred in permitting the jurors to be questioned on their *voir dire* as to whether any of them was connected, as employees or otherwise, with any insurance company writing automobile liability insurance. It being apparently the sole purpose in asking the question

to create a false impression upon the minds of the jurors that appellant was protected by insurance against damages from such injuries, so that they might the more readily render a verdict against him therefor. Counsel for appellee, however, had the right to inquire of the prospective jurors whether they were related to either of the parties and whether they had been in the employ of any insurance company writing liability insurance, in order to more intelligently exercise appellee's right of challenging the jurors, under the rule already announced by this court in *Bourland* v. *Caraway, ante* p. 851, and cases cited there.

Neither was error committed in the giving of certain instructions complained of, in which it was claimed that the jury was permitted thereby to find against appellant without consideration of appellee's alleged contributory negligence. There was no substantial testimony tending to show any contributory negligence on the part of appellee, nor warranting the jury's consideration of such issue; and the court also gave, at appellant's request, a correct instruction on contributory negligence, which was not in conflict with the other instructions as expounded.

The court's instruction on the measure of damages to appellee's car was not erroneous as contended by appellant. Appellant had attempted to have appellee's damaged car repaired and reconditioned, and showed the amount of the cost of such repair. The instruction complained of correctly declared the measure of damages to the car "would be the difference between its value before and after the accident, or after any repairs which the defendant placed on it," allowing the jury to take into consideration the cost, if any shown by the evidence, of repairing the car, "along with the other evidence in the case." This only allowed the jury to take into consideration the testimony about the necessary cost of reconditioning and repairing the car and to find, if the evidence warranted its doing so, any amount of damages more than the cost of the repairs made by appellant, and no

specific objection was made to the instruction, which, if not as clearly stated as might have been, would doubtless have been corrected to meet any objection on that account. The instruction is not in conflict with the law as announced in *Madison-Smith Cadillac Co.* v. *Wallace,* 181 Ark. 715, 27 S. W. (2d) 524.

There was no error in the giving of the instruction quoting the statute and showing the rate of speed allowed for driving motor vehicles on the highway, or on the wrong side thereof, since the jury was specifically directed that if they believed from the evidence that appellant violated the statutes referred to in the instructions, or either of them, "then you are instructed that such violation or violations, if any, are evidence of negligence and may be considered by the jury together with all the other facts and circumstances as disclosed by the evidence in the case in arriving at whether or not the defendant was guilty of negligence." The instruction only told the jury that the violation of these statutes, if shown, was only evidence of negligence that might be considered with all the other facts and circumstances as disclosed by the evidence in determining whether the defendant was guilty of negligence. *Herring* v. *Bollinger,* 181 Ark. 929, 29 S. W. (2d) 676.

Neither was error committed in the giving of the instruction numbered 9, relating to the measure of damages for pain and suffering of body and mind. *St. L., I. M. & S. Ry. Co.* v. *Dallas,* 93 Ark. 215, 124 S. W. 259; *Ward* v. *Blackwood,* 48 Ark. 407, 3 S. W. 624; and *Simms Oil Co.* v. *Durham,* 180 Ark. 366, 21 S. W. (2d) 861.

We are also of the opinion that the verdict is not excessive for the personal injuries shown to have been sustained by appellee, although the testimony does show that she suffered from arthritis, preventing to some extent the free and proper use of the injured arm, before the collision, but the jury could have found from the evidence that the injury was sufficient to have caused the impaired condition of the arm without regard to the

affliction which was not merely an aggravation thereof. Moreover, appellee was entitled to recover damages for the injury inflicted by appellant's negligence without regard to whether the damage might not have been so great but for the arthritis with which she was afflicted.

We find no error in the record, and the judgment is affirmed.