

SUPREME COURT OF TENNESSEE

Anne Payne v. CSX Transportation, Inc.

467 S.W.3d 413 (Tenn. 2015) · No. E2012-02392-SC-R11-CV · Decided July 1, 2015

SUMMARY

The Tennessee Supreme Court addressed a Federal Employers' Liability Act claim brought by Anne Payne after the death of her husband, a railroad employee who alleged that workplace exposure to asbestos, diesel exhaust, and radioactive materials contributed to his lung cancer. The court held that the plaintiff's expert proof was properly admitted, but that the trial court erred in granting a new trial and in assessing damages. It affirmed the Court of Appeals as modified and remanded for a new trial limited to damages.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Gary R. Wade, J.; Sharon G. Lee, C.J.; Cornelia A. Clark, J.; Jeffrey S. Bivins, J.; Holly Kirby, J.
JURISDICTION	Tennessee
DECIDED	July 1, 2015
DOCKET	E2012-02392-SC-R11-CV
DISPOSITION	remanded
PROCEDURAL POSTURE	The Tennessee Supreme Court granted CSX permission to appeal from the Court of Appeals' decision reversing summary judgment and remanding for the trial court to select between two jury damage awards. The Supreme Court affirmed the Court of Appeals' judgment as modified and remanded for a new trial limited to damages.
STANDARD OF REVIEW	JNOV and jury-instruction issues are reviewed de novo. Evidentiary rulings and the grant of a new trial are reviewed for abuse of discretion, although a definite and firm conviction that the trial court committed a clear error of judgment warrants reversal. The trial court's thirteenth-juror determination concerning the weight of the evidence must be properly performed.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	CSX Transportation, Inc. v. Anne Payne

TOPICS

negligence

comparative fault

expert testimony

damages

appellate procedure

PRACTICE AREAS

torts

employment law

personal injury

evidence

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the trial court properly granted a new trial based on alleged evidentiary and instructional errors.
2. Whether the plaintiff's lay and expert evidence concerning asbestos, diesel exhaust, radioactive materials, and causation was admissible.
3. Whether the trial court improperly instructed the jury after it returned its original verdict and allowed the jury to amend the award based on contributory negligence.
4. Whether the Court of Appeals could remand for the trial court to select between the original \$8.6 million verdict and the amended \$3.2 million verdict.
5. Whether the proper remedy was a new trial limited to damages or a new trial on all issues.

HOLDINGS

1. The plaintiff's expert proof concerning exposure levels and whether workplace exposure to asbestos, diesel exhaust, and radioactive materials contributed to Payne's lung cancer was properly admissible; the substitute judge erred by excluding it and granting summary judgment to CSX.
2. When a railroad's violation of a safety statute or regulation contributes to the employee's injury, FELA does not permit the employee's contributory negligence to reduce the damages award.
3. The trial judge erred by giving supplemental instructions after the jury returned its original verdict and by inviting the jury to reconsider and reduce its damages award.
4. The appropriate remedy was a new trial limited to the amount of damages, not a new trial on liability and not a remand requiring the trial court to choose between the two prior awards.

KEY QUOTATIONS

"We hold that the plaintiff's expert proof was properly admitted at trial, but that the original judge erred by granting the railroad's motion for a new trial based on evidentiary and instructional issues, and committed prejudicial error in assessing the amount of damages to be awarded." (at 413)

"Because the jury found the Defendant to be negligent per se, a finding of liability that was not rejected by Judge Wimberly, FELA does not allow for the reduction or apportionment of damages based on contributory negligence." (at 438)

"In our view, Judge Wimberly erred by providing additional instructions and inviting the jury to reconsider its initial award, which was based upon a substantially accurate statement of the law." (at 440)

"Because these errors do not in any way affect the jury's determination of liability by virtue of the Defendant's negligence per se, the appropriate remedy is to remand for a new trial as to damages only." (at 444)

FACTUAL BACKGROUND

Winston Carrol Payne worked for CSX and its predecessor railroads from 1962 until 2003 as a switchman, switch foreman, and brakeman. He developed lung cancer after retirement and alleged that long-term workplace exposure to asbestos, diesel exhaust, and radioactive materials contributed to his illness, in addition to cigarette smoking. Multiple expert and lay witnesses presented competing evidence concerning the exposures and causation. Payne died before trial, and his widow Anne Payne was substituted as plaintiff.

PROCEDURAL HISTORY

Anne Payne's decedent sued CSX under FELA for occupational exposure to asbestos, diesel exhaust, and radioactive materials. A jury found CSX negligent and negligent per se, awarded \$8.6 million, and attributed 62% fault to the employee; after the trial judge instructed the jury on the effect of negligence per se, the jury amended the award to \$3.2 million at 100%. The trial court later granted CSX a new trial, recused, and a substitute judge excluded the plaintiff's causation experts and granted summary judgment to CSX. The Court of Appeals reversed and directed the original judge to enter either the \$8.6 million or \$3.2 million award. The Supreme Court held that the expert proof was admissible, the supplemental instructions were erroneous, and a new trial limited to damages was required.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand for a new trial limited to damages. The jury must determine fair, full, and adequate compensatory damages caused by CSX's negligence, without reducing the award for Payne's contributory negligence. The trial judge must then perform the required thirteenth-juror review of the damages verdict.

CASES CITED

- Norfolk Southern Railway v. Sorrell, 549 U.S. 158, 165 (2007)
- Rogers v. Missouri Pacific Railroad, 352 U.S. 500, 506-07 (1957)
- Grand Trunk Western Railway v. Lindsay, 233 U.S. 42, 49-50 (1914)
- CSX Transportation, Inc. v. McBride, 131 S. Ct. 2630, 2638, 2643 n.12, 2644 (2011)
- Shenker v. Baltimore & Ohio Railroad, 374 U.S. 1, 7 (1963)
- Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 699 (Tenn. 2011)
- Meals ex rel. Meals v. Ford Motor Co., 417 S.W.3d 414, 420 (Tenn. 2013)
- Gasoline Products Co. v. Champlin Refining Co., 283 U.S. 494, 499 (1931)
- Crane v. Consolidated Rail Corp., 731 F.2d 1042, 1050 (2d Cir. 1984)
- Payne v. CSX Transportation, Inc., No. E2012-02392-COA-R3-CV, 2013 WL 6857947, at *1, *9-10, *17-20 (Tenn. Ct. App. Dec. 27, 2013)

