

SUPREME COURT OF NEW HAMPSHIRE

Giroux v. Gagne

108 N.H. 394 (1967) · No. No. 5681 · Decided December 29, 1967

SUMMARY

The New Hampshire Supreme Court upheld the denial of nonsuit and directed-verdict motions in a motor-vehicle collision case, finding sufficient evidence for the jury to determine whether Gagne's failure to take evasive action constituted causal negligence. The court also upheld the admission of testimony concerning the speed and identity of Gagne's vehicle before the collision and affirmed limiting retrial to damages after the damages verdicts were set aside.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Grimes, J.
JURISDICTION	New Hampshire
DECIDED	December 29, 1967
DOCKET	No. 5681
DISPOSITION	other
PROCEDURAL POSTURE	Appeal by exceptions from rulings in a negligence action arising from a motor-vehicle collision, including denial of motions for nonsuit and directed verdict, admission of evidence concerning the defendant's speed before the collision, and limitation of a retrial after damages verdicts were set aside.
STANDARD OF REVIEW	The Supreme Court reviewed the sufficiency of the evidence supporting denial of nonsuit and directed verdict, the admission of evidence for abuse of discretion, and the trial court's decision to limit retrial for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Edgar Giroux, administrator, et al. v. Armand Gagne

TOPICS

- negligence
- evidence
- motion for directed verdict
- motion for new trial
- civil procedure

PRACTICE AREAS

torts

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether the evidence supported denial of Gagne's motions for nonsuit and directed verdict on liability.
2. Whether the trial court abused its discretion by admitting Fortier's testimony concerning the speed and conduct of a green Oldsmobile observed before the collision.
3. Whether the trial court abused its discretion by admitting Lemay's uncertain identification and speed testimony concerning a green car observed before the collision.
4. Whether the trial court properly limited retrial to damages after setting aside the damages verdicts rather than ordering a new trial on liability.

HOLDINGS

1. The evidence was sufficient for the jury to find that Gagne's failure to pull farther and sooner to the right, and his failure to brake or sound his horn, constituted causal negligence; therefore, denial of the motions for nonsuit and directed verdict was proper.
2. The trial court did not abuse its discretion by admitting Fortier's testimony about the green Oldsmobile's speed and conduct before the collision.
3. The trial court did not abuse its discretion by admitting Lemay's testimony, even though his identification of the green car was indefinite and uncertain.
4. The trial court properly exercised its discretion by limiting retrial to damages because the liability and damages issues were separable and no error requiring retrial on liability was shown.

KEY QUOTATIONS

"The jury could find that, in the time and space that he had, it was causal negligence for him not to have pulled to the right sooner and farther than he said he did." (108 N.H. 396)

"From this evidence, the jury could find that the speed of the green Oldsmobile continued to exceed sixty miles per hour to the scene of the accident." (108 N.H. 398)

"The propriety of limiting a retrial generally rests in the discretion of the Trial Court." (108 N.H. 399)

"Exceptions overruled. All concurred." (108 N.H. 399)

FACTUAL BACKGROUND

A collision occurred at dusk on wet Route 101 when the Levesque vehicle crossed into the lane occupied by the Gagne vehicle. Gagne testified that he was traveling 45 to 50 miles per hour, did not brake or sound his horn, and turned right to avoid the collision. A state trooper testified that the point of contact was near the center of the road and opined that Gagne was not turning right at impact; other witnesses testified that a green Oldsmobile matching Gagne's vehicle had been traveling at speeds exceeding 60 miles per hour before the accident.

PROCEDURAL HISTORY

The trial court denied motions for nonsuit and directed verdict. It admitted testimony from Fortier and Lemay concerning a green Oldsmobile observed before the collision. The trial court set aside the verdicts as to damages but declined to order a new trial on liability; the Supreme Court of New Hampshire overruled the defendant's exceptions.

DISPOSITION

other

CASES CITED

- Mooney v. Chapdelaine, 90 N.H. 415
- Mack v. Hoyt, 94 N.H. 492
- Lyman v. Railroad, 66 N.H. 200
- Dimock v. Lussier, 86 N.H. 54
- Cedergren v. Hadaway, 91 N.H. 270
- Comins v. Scrivener, 214 F.2d 810 (10th Cir. 1954)
- Missouri Pacific Transport. Co. v. Mitchell, 199 Ark. 1045
- Lampesis v. Comolli, 102 N.H. 306, 308
- Lampesis v. Comolli, 101 N.H. 491, 492

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