

COURT OF APPEAL OF LOUISIANA, THIRD CIRCUIT

Munar v. State Farm Ins. Co.

972 So. 2d 1273 (3d Cir. 2007) · No. CA 2007-611 · Decided December 19, 2007

SUMMARY

The Louisiana Court of Appeal, Third Circuit, addressed liability arising from a pedestrian-vehicle accident after a bus passenger was discharged at a location other than her usual stop. The court reversed the finding that the Lafayette City-Parish Consolidated Government owed passenger-related duties after the passenger safely disembarked, reallocating fault as 80% to Maria Munar and 20% to Kurt Schmersahl. The court affirmed the damages award and denied Schmersahl's request for appellate attorney fees.

CASE DETAILS

COURT	Court of Appeal of Louisiana, Third Circuit
WRITING FOR THE COURT	Billy Howard Ezell; Ulysses Gene Thibodeaux, Chief Judge; Sylvia R. Cooks, Judge; Oswald A. Decuir, Judge; Billy Howard Ezell, Judge; James T. Genovese, Judge
JURISDICTION	Louisiana
DECIDED	December 19, 2007
DOCKET	CA 2007-611
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeal from a bifurcated personal-injury trial. The trial court found Lafayette City-Parish Consolidated Government fifteen percent at fault, the jury found Maria Munar seventy-five percent at fault and Kurt Schmersahl ten percent at fault, and the trial court granted Munar a judgment notwithstanding the verdict on damages. Munar and the governmental defendant appealed, and Schmersahl answered seeking attorney fees on appeal.
STANDARD OF REVIEW	Factual findings are reviewed for manifest error or clear wrongness; evidentiary rulings for abuse of discretion; denial of a JNOV for manifest error; damage awards for abuse of discretion; and assessment of costs for abuse of discretion.
PRECEDENTIAL VALUE	published precedential Louisiana Court of Appeal decision

PARTIES

Lafayette City-Parish Consolidated Government, Maria M. Munar v.
State Farm Insurance Company, Kurt W. Schmersahl, Jr.

TOPICS

negligence duty of care comparative fault evidence appellate procedure

PRACTICE AREAS

torts personal injury premises and transportation liability evidence appellate procedure

QUESTIONS PRESENTED

1. Whether Lafayette City-Parish Consolidated Government owed Munar a passenger-carrier duty after she safely disembarked from the bus at a safe location.
2. Whether the trial court abused its discretion by excluding evidence of Schmersahl's prior automobile accidents.
3. Whether the jury's allocation of fault was manifestly erroneous or clearly wrong.
4. Whether the trial court erred in denying Munar's JNOV motion on liability.
5. Whether the trial court abused its discretion in awarding \$39,047 in damages.
6. Whether the trial court abused its discretion in allocating trial costs.
7. Whether Schmersahl was entitled to attorney fees for work performed on appeal.

HOLDINGS

1. A common carrier's heightened passenger duty and contract to transport for hire end when a passenger freely and safely disembarks at a safe location. After that point, the former passenger is owed only ordinary care. Because Munar safely exited the bus and reached the intersection without incident, the governmental defendant was not liable for the subsequent accident.
2. The trial court did not abuse its discretion by excluding evidence of Schmersahl's prior accidents because the evidence did not establish a habit or pattern and posed a risk of unfairly prejudicing the jury.
3. The jury's finding that Munar was seventy-five percent at fault was reasonably supported by the record and was not manifestly erroneous. After removing the governmental defendant's fifteen percent allocation, the court reassigned fault so that Munar was eighty percent at fault and Schmersahl was twenty percent at fault.
4. The trial court properly denied Munar's motion for JNOV on liability because the evidence did not point so strongly in her favor that reasonable persons could not reach a contrary verdict.
5. The trial court did not abuse its discretion by awarding \$39,047, consisting of \$20,000 in general pain and suffering damages, \$7,500 for future loss of enjoyment of life, and \$11,547 in medical expenses.
6. The trial court's original cost assessment was not an abuse of discretion, but the appellate court rendered judgment modifying costs to reflect the revised fault allocation: eighty percent to Munar and twenty

percent to Schmersahl.

7. Schmersahl was not entitled to attorney fees for work performed on appeal because he was neither entitled to nor awarded attorney fees in the trial court.

KEY QUOTATIONS

“once a passenger freely disembarks at his chosen destination free from harm, his status as passenger, and the public carrier's contract to transport for hire, cease.” (1276-1277)

“the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one.” (1278)

“where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong.” (1278)

“JNOV is warranted only when the, facts and inferences, viewed in the light most favorable to the party opposing the motion, is so strongly and overwhelmingly in favor of the moving party that, reasonable men could not arrive at a contrary verdict” (1279)

FACTUAL BACKGROUND

Maria Munar, a sixty-nine-year-old woman, was riding a Lafayette Transit bus to English lessons. The bus driver missed her designated stop and discharged her approximately 150 feet beyond it, at a safe location where she exited without complaint. Munar walked back toward the intersection, waited approximately thirty seconds, and entered the roadway despite seeing Kurt Schmersahl approaching; Schmersahl struck her while turning, causing injuries to her wrist and right leg or foot.

PROCEDURAL HISTORY

Munar sued Schmersahl and Lafayette City-Parish Consolidated Government after Schmersahl struck her while she was crossing a street. In the bifurcated trial, the trial judge assigned fifteen percent fault to the governmental defendant and awarded damages against it, while the jury assigned seventy-five percent fault to Munar and ten percent to Schmersahl and awarded no damages. The trial court denied Munar's JNOV motion as to liability but granted it as to damages, awarding \$39,047 subject to comparative fault. The court of appeal reversed the governmental defendant's liability, reassigned the remaining fault, affirmed the damages determination, modified costs, and denied Schmersahl's request for appellate attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The opinion states that judgment is rendered rather than directing a conventional remand: the governmental defendant's fifteen-percent liability is reversed; Munar is assigned eighty percent fault and Schmersahl twenty

percent liability; trial costs are assessed eighty percent to Munar and twenty percent to Schmersahl; all other aspects of the trial judgment are affirmed. Schmersahl's request for appellate attorney fees is denied.

CASES CITED

- Gill v. Doe, 479 So. 2d 36 (La. App. 4 Cir. 1985)
- King v. King, 253 La. 270, 217 So. 2d 395 (1968)
- Amos v. St. Martin Parish Sch. Bd., 00-808, p. 3 (La. App. 3 Cir. 12/6/00), 773 So. 2d 300, 302
- Teer v. Continental Trailways, Inc., 341 So. 2d 1306, 1308 (La. App. 3 Cir. 1977)
- Deason v. Greyhound Corp., 106 So. 2d 348 (La. App. 1 Cir. 1958)
- McIntosh McElveen, 04-1041, pp. 9-10 (La. App. 3 Cir. 2/2/05), 893 So. 2d 986, 994, writ denied, 05-528 (La. 4/29/05), 901 So. 2d 1069
- Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989)
- Stobart v. State through Dep't of Transp. and Dev., 617 So. 2d 880, 882 (La. 1993)
- Peterson v. Gibraltar Savings and Loan, 98-1601, 98-1609, pp. 5-6 (La. 5/18/99), 733 So. 2d 1198, 1203, rehearing in part, 751 So. 2d 820
- Anderson v. New Orleans Public Service, Inc., 583 So. 2d 829 (La. 1991)
- Scott v. Hospital Service District No. 1, 496 So. 2d 270 (La. 1986)
- Delaney v. Whitney National Bank, 96-2144, 97-0254 (La. App. 4 Cir. 11/12/97), 703 So. 2d 709, writ denied, 98-123 (La. 3/20/98), 715 So. 2d 1211
- Guillot v. Doe, 03-1754, pp. 5-6 (La. App. 3 Cir. 6/30/04), 879 So. 2d 374, 379-80
- Greene v. Greene, 94-79, p. 4 (La. App. 3 Cir. 10/5/94), 643 So. 2d 891, 894
- State ex rel. Guste v. Nicholls College Found., 592 So. 2d 419 (La. App. 1 Cir. 1991), writ denied, 593 So. 2d 651 (La. 1992)