

SUPREME COURT OF OREGON

Morast v. James, 304 Or. 571

748 P.2d 84 (1987) · No. S34543 · Decided December 30, 1987

SUMMARY

The Oregon Supreme Court held that evidence concerning a plaintiff's failure to use an available safety belt presents a comparative fault issue rather than a mitigation-of-damages issue. The court affirmed the Court of Appeals' decision reversing the judgment and remanded for a new trial with the safety-belt defense submitted as comparative fault.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Oregon
DECIDED	December 30, 1987
DOCKET	S34543
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Court of Appeals decision reversing a judgment following a jury verdict for plaintiff that awarded no damages.
STANDARD OF REVIEW	Review of the legal correctness of a jury instruction; the court reviewed the safety-belt defense as a question of law.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; binding precedent in Oregon.
PARTIES	Shirley A. James v. Jacqueline Morast

TOPICS

- comparative fault
- damages
- evidence
- appellate procedure
- personal injury

PRACTICE AREAS

- torts
- personal injury
- appellate procedure

QUESTIONS PRESENTED

1. Whether a plaintiff's failure to use an available and operational safety belt is properly treated as failure to mitigate damages.
2. Whether the trial court's safety-belt jury instruction was legally erroneous.
3. Whether the safety-belt defense should be submitted as a question of comparative fault rather than mitigation of damages.

HOLDINGS

1. A safety-belt defense based on a plaintiff's failure to use an available and operational safety belt is a matter of comparative fault, not mitigation of damages.
2. The trial court's instruction was erroneous because it submitted the safety-belt defense as mitigation of damages rather than as comparative fault.

KEY QUOTATIONS

"This safety belt defense is one of comparative fault, not mitigation of damages." (304 Or. at 575)

FACTUAL BACKGROUND

Plaintiff was injured when the automobile in which she was riding was struck by an automobile driven by defendant. An available and fully operational safety belt was present, but plaintiff was not wearing it. Defendant presented expert testimony that use of the safety belt would have reduced or eliminated plaintiff's injuries. The jury returned a verdict for plaintiff but awarded no damages.

PROCEDURAL HISTORY

Plaintiff sued after being injured in an automobile collision, alleging defendant negligently failed to stop at a red light. The trial court instructed the jury that it could consider plaintiff's failure to wear an available safety belt as failure to mitigate damages, while also instructing that nonuse was not negligence or contributory negligence. The jury found for plaintiff but awarded no damages. The Court of Appeals reversed, holding that evidence of nonuse of an available and operational safety belt was inadmissible to prove failure to mitigate damages. The Oregon Supreme Court affirmed the Court of Appeals but held that the instruction was erroneous for a different reason and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The decision of the Court of Appeals was affirmed, and the case was remanded to the trial court for a new trial. On retrial, the trial judge was directed to submit the safety-belt defense to the jury as a question of comparative fault in accordance with *Dahl v. BMW*.

CASES CITED

- Morast v. James, 87 Or. App. 368, 742 P.2d 665 (1987)
- Dahl v. BMW, 304 Or. 558, 748 P.2d 77 (1987)

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