

PEDRO KIHLENG, Plaintiff
v.
SILBANUS LUCIOS, Defendant
Civil Action No. 3-73
Trial Division of the High Court
Ponape District
January 21, 1975

Action for damages to plaintiff's truck, which defendant was driving when it overturned. The Trial Division of the High Court, Brown, Associate Justice, held that where defendant was intoxicated, speeding and driving recklessly he was negligent and liable.

1. Torts—Negligence—Elements

Before liability could be imposed upon person who allegedly damaged plaintiff's truck while driving it, plaintiff had to prove negligence on defendant's part, that such negligence was the proximate cause of the damage, and the amount of damages plaintiff was entitled to recover.

2. Torts—Negligence—Evidentiary Standards

Burden of proof in negligence action was preponderance of the evidence, that is, evidence which, when fairly considered, produced the stronger impression and had the greater weight and was more convincing as to its truth when weighed against the opposing evidence.

3. Torts—Negligence—Elements

Negligence is the doing of something which a reasonably prudent man would not do, or the failure to do something which a reasonably prudent man would do, guided by those considerations which ordinarily regulate human affairs.

4. Civil Procedure—Trial—Fact Questions

Negligence is generally a question of fact and for the trier of fact to decide.

5. Torts—Negligence—Particular Cases

Where defendant drove plaintiff's truck at high speed and in an erratic and reckless manner and while intoxicated, he did not act as a reasonably prudent man and was negligent.

6. Torts—Negligence—Proximate Cause

Proximate cause is the active and efficient cause that sets in motion a train of events which bring about a result without the intervention of any force started and working actively from a new and independent source.

7. Civil Procedure—Trial—Fact Questions

Proximate cause is generally a question of fact.

8. Torts—Damages—Before and After Value

Proper measure of damages where defendant negligently damaged plaintiff's truck was the difference between the fair market value immediately before and after the accident where the cost of repair exceeds the value of the truck before the accident.

<i>Assessor:</i>	YOSTER CARL
<i>Interpreter:</i>	HERBERT GALLEN
<i>Reporter:</i>	MISSY F. TMAN
<i>Counsel for Plaintiff:</i>	JOANES EDMUND
<i>Counsel for Defendant:</i>	JOHNNY MAKAYA

BROWN, *Associate Justice*

On December 22, 1970, plaintiff purchased and took delivery of a new Datsun pickup truck, its price being One Thousand Eight Hundred (\$1,800.00) Dollars, and has owned and possessed it continuously ever since.

On January 14, 1973, plaintiff's son, Simeon, drove the former to Uh Municipality and was directed by his father to return to the family home in Kolonia, place the vehicle in the garage, and not use it until two days later, when he was to return to Uh to meet plaintiff and drive him back to Kolonia.

Upon returning to Kolonia and placing the vehicle in the garage, Simeon remained at home in the company of a friend, Joseph Donre. A short time later, defendant came by the home and asked for a ride to his house, and this request was granted. Simeon drove plaintiff's pickup truck, but it was not used to drive defendant to his home. Instead, the three occupants, later joined by others, drove through the streets of Kolonia and consumed a considerable amount of alcohol. At some point in time during the evening, Simeon fell asleep, and defendant then was the driver.

As defendant, who by his own admission was drunk, drove the vehicle along a road, he traveled at a high rate of speed and swerved the pickup truck from one side of the

road to the other. Not surprisingly, the vehicle overturned and was extensively damaged.

Thereafter, plaintiff filed this action wherein he seeks to recover for property damage to his vehicle, basing his claim upon the theory of negligence, and alleging that repair parts of a wholesale value of One Thousand One Hundred Thirty (\$1,130.00) Dollars must be purchased and labor costs of Four Hundred (\$400.00) Dollars must be expended for repairs.

[1, 2] Before liability may be imposed upon the defendant, the plaintiff must prove the following by a preponderance of the evidence: (1) that the defendant was negligent, (2) that such negligence was a proximate cause of the damage to plaintiff's vehicle, and (3) the amount of damages, if any, to which plaintiff is entitled to recover from defendant. It will be noted that plaintiff does not have the burden of proving his case beyond a reasonable doubt, as in a criminal case; instead, his burden of proof is a lesser one, that is, by a preponderance of the evidence. By this is meant evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto. *S. Yamamoto v. Puget Sound Lumber Co.*, 146 P. 861, 863 (Wash.).

[3, 4] Negligence is the doing of something which a reasonably prudent man would not do, or the failure to do something which a reasonably prudent man would do, guided by those considerations which ordinarily regulate human affairs. *Fouch v. Werner*, 279 P. 183 (Cal. App.), *Tucker v. Lombardo*, 303 P.2d 104. Here, as is usually the case, negligence is a question of fact to be decided by the trier of fact.

[5] The great preponderance of the evidence adduced at trial established that defendant was intoxicated and drove

plaintiff's vehicle at high speed and in an erratic and reckless manner. It is more than clear that defendant's acts were not those of a reasonably prudent man, and defendant's acts were negligent.

[6, 7] Proximate cause in the active and efficient cause that sets in motion a train of events which bring about a result without the intervention of any force started and working actively from a new and independent source. *Pierce v. Pacific Mutual Life Insurance Company of California*, 109 P.2d 322, 327-328 (Cal.). It is the efficient cause, the one that necessarily sets the other causes in operation. *Gilbert v. New Mexico Const. Co.*, 44 P.2d 489, 495 (N.M.). Like negligence, proximate cause is generally held to be a question of fact. *Fennessey v. Pac. G. & E. Co.*, 124 P.2d 51 (Cal.).

Here, the evidence greatly preponderated in favor of plaintiff's contention that the negligence of the defendant proximately caused the damage to plaintiff's pickup truck; no other finding is conceivable under the circumstances.

[8] Negligence and proximate cause having been established, the final matter for determination is the amount of damages to which plaintiff is entitled. In this case, the proper measure of damages is the difference between the fair market value of plaintiff's vehicle immediately before the accident and its fair market value immediately thereafter. *Crain v. Sumida*, 211 P. 479 (Cal. App.). The basing of damages upon the cost of repair cannot be considered here, for, as will be seen below, the estimated reasonable cost of repair well exceeded the total value of the vehicle immediately before the accident.

Testimony was received concerning the vehicle's fair market value before and after the accident, and, as is to be expected in most cases such as this, there was some difference of opinion on the subject, although the various figures

presented reflected surprising similarity. The figures that appeared most realistic and logical were those that estimated the fair market value of the vehicle immediately before the accident as between Eight Hundred (\$800.00) Dollars and Nine Hundred (\$900.00) Dollars and its fair market value immediately after the accident as between Fifty (\$50.00) Dollars and One Hundred (\$100.00) Dollars. After carefully considering all testimony which bore upon the question of damages as well as the fact that the vehicle was operable after the accident, albeit damaged, it is concluded that the sum of Seven Hundred (\$700.00) Dollars constitutes fair and reasonable damages herein.

Accordingly, it is hereby:

Ordered, adjudged, and decreed that

1. Plaintiff have judgment against defendant; that
2. Plaintiff be, and he is awarded damages in the amount of Seven Hundred (\$700.00) Dollars, together with interest at the rate of six (6%) percent per annum from the date of this judgment; and that
3. Plaintiff be, and he is awarded his costs incurred herein.