Conway v. O'Brien

United States Court of Appeals for the Second Circuit

April 29, 1940

No. 287

Before L. HAND, AUGUSTUS N. HAND. and PATTERSON, Circuit Judges.

L. HAND, Circuit Judge.

This is an appeal from a judgment entered upon a verdict, holding the defendant, O'Brien, liable for a collision between a motor car which he was driving and another car, driven by one Wilson, upon a little travelled country road in Vermont. The plaintiff was a passenger in O'Brien's car, and her right of action for injuries depends upon the "Guest-Occupant" law of Vermont (Public Laws of Vermont § 5113), by which the operator of a motor is not liable for injuries to "any occupant of the same" unless the operator receives pay for carrying the occupant, "or unless such injuries are caused by the gross or willful negligence of the operator".

The only point we shall consider is whether the evidence of the defendant's "gross * * * negligence" was enough to support a verdict. The collision happened just south of a covered bridge crossing a small river . . . .

O'Brien's car was going at only fifteen miles an hour (as to this there was curiously enough no dispute) but he did not blow his horn, or do anything to avoid collision until he saw Wilson emerge, when he swung sharply to the right so that the collision was between the left . . . wheels of each car. . . .

The degree of care demanded of a person by an occasion is the resultant of three factors: the likelihood that his conduct will injure others, taken with the seriousness of the injury if it happens, and balanced against the interest which he must sacrifice to avoid the risk. . . .

It is of course always careless to drive on the wrong side of the road on a curve, where one cannot see ahead; it is careless to do so even at so low a speed as fifteen miles; another car may be coming fast, and a collision may be inescapable. But few who have driven a motor, do not at times take the chance, when going slowly on a back country road; most of us rely more than we should upon our alertness to become aware of, and our deftness to avert, oncoming danger; we should not, but we do; and in the hierarchy of guilt such carelessness does not stand high.

O'Brien conceded that he knew the spot well and that it ought to be taken at a "snail's pace" if another car was coming; what he did was to assume the risk, and it was not a great one. Nor was he so totally without excuse as in other situations which themselves would be border-line - a car climbing a hill on the wrong side, for example, which has no reason not to keep to the right; O'Brien was in a position where it saved him trouble to cut the curve. Had he been driving twice as fast, or on a much travelled highway, we might think otherwise; but on that road and at

that speed it seems to us that his fault was only a routine dereliction, not grave enough to fall within the statute. . . .

Hence it is proper here to dismiss the complaint.

Judgment reversed; complaint dismissed.

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