CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Romine v Johnson Controls 3/17/14

Strict Products Liability; Prop. 51 Apportionment; *Howell* admissible damages

Plaintiff and her boyfriend were stopped in her Nissan Frontier pickup at the bottom of a freeway offramp in a line of cars. A speeding car exited the freeway and failed to slow, striking the last vehicle in the line of cars. A chain reaction collision followed, in which Plaintiff's vehicle was struck by the vehicle behind her which had been accelerated to 42 miles per hour by the initial impact. Plaintiff was wearing her seatbelt, but her seat fell back in the collision. She tried to move after the multiple impacts had ceased, but could not. A paramedic concluded she had suffered a spinal injury, and she was diagnosed with two spinal vertebral fractures and dislocations in her neck. Despite surgery and extensive therapy she was left with only a small amount of function in her hands, and was deemed quadriplegic.

Plaintiff's lawsuit included various products liability claims against the manufacturers of the involved vehicles and some of their component parts, including the vehicle manufacturer, Nissan, the seatbelt manufacturer, and the recliner mechanism manufacturer. Before trial, she settled with most of the defendants but elected to proceed on some of the strict products liability theories against Ikeda Engineering Corporation which participated in design of the seat, and Vintec Company, which

manufactured her seat. Plaintiff's reconstruction expert testified that as the seat back fell backwards, it created slack in the lap and shoulder harnesses, allowing the plaintiff to "ramp" up the seat towards the back of the vehicle. Plaintiff's structural engineering expert recreated the event in a test which caused similar damage to the small gears ("locking pawls") that adjust the seat back, and the test dummy moved into and up the seat back, in a manner the expert described as "ramping." Plaintiff's biomechanic testified she would not have suffered the same injuries if her seatback had not reclined.

Defendants' engineering expert testified the force of the accident significantly exceeded the design level of the Frontier's seat. The defense biomechanic testified the rear end impact from the car stopped behind the Frontier caused the plaintiff's neck injuries. The parties stipulated to various facts, including an agreement that plaintiff's total past medical bills were $667,905, and all of the medical treatment was reasonable and necessary. They also stipulated there was no manufacturing defect in the Frontier's front driver's seat, and the only question for the jury was whether the design of the seat was defective.

The jury returned a verdict for plaintiff of $24,744,764, which included $18,000,000 in past and future general damages. The jury allocated 80 percent fault to the speeding driver, and 20 percent for plaintiff's harm to the defendants. The award for past medical expense was reduced by stipulation to $462,608, and the trial court offset the judgment for pretrial settlements with a resulting judgment against defendants of $4,444,042. Thereafter the trial court awarded plaintiff $162,884 in costs for a total judgment of $4,606,926. Plaintiff's request for expert fees and prejudgment interest pursuant to CCP section 998 was denied based on the trial court's finding she did not receive a judgment more favorable than her settlement offer.

Defendants appealed, contending among other things, that the trial court improperly excluded evidence in connection with the apportionment

of fault among other manufacturers, and erred in permitting plaintiff to introduce the full amount billed for her past medical care rather than the amount her medical care providers accepted. Defendants contend the trial court erred in excluding evidence that would have allowed the jury to apportion fault among Nissan and the component part manufacturers, Autoliv and Faurecia. Defendants argue they could not be held liable for completed products or component parts that others manufactured.

The defense argued that the evidence showed Nissan determined the specifications for the seat and defendants designed the seat according to those specifications. Nissan chose the recliner mechanism manufacturer and required defendants to use that manufacturer and that part in the seat. The driver of the adverse vehicle, Nissan, the seatbelt manufacturer, and the manufacturer of the recliner all settled with plaintiff before trial. Defense counsel argued that the driver and all those entities were potentially liable for some portion of fault and defendants had the right to present evidence of their fault. Plaintiff's counsel argued that although there could be apportionment of fault between defendants and the other driver that started the chain reaction, there could be no apportionment among the other defendants because they were all strictly liable—jointly and severally—for the defective product, whether the product was defined as the car, the seat, or the recliner.

After reserving its ruling, the trial court later gave its "tentative thoughts" on apportionment, stating, "There will be no comparative liability as to anybody in the chain, other than the product we're now dealing with. We're not going to compare the fault of any of the other persons involved in the chain….That's my ruling" The next day prior to opening statement, plaintiff's counsel objected to defense counsel's request to tell the jury that the seatbelt was not defendant's product and they were not responsible for another party's product. The trial court refused the request, indicating the only comparative fault for discussion was that of the other driver.

The Second District Court of Appeal, Division Five, noted that under the doctrine of strict products liability, all defendants in the chain of distribution are jointly and severally liable, meaning that each defendant can be held liable to the plaintiff for all damages the defective product caused. (*Bostick v Flex Equipment Co. Inc.* (2007) 147 Cal.App.4th 80) Courts have permitted comparative fault in certain situations in strict products liability cases. Thus, in *Daly v. General Motors Corp.* (1978) 20 Cal.3d 725, 736-737, the Supreme Court held that the plaintiff's recovery in an action for strict products liability may be reduced in proportion to the plaintiff's comparative fault, and in *Safeway Stores, Inc. v. Nest-Kart* (1978) 21 Cal.3d 322, 330, it held that liability may be apportioned between a defendant whose liability was based on strict products liability and another defendant whose liability was based on negligence.

In 1986, the voters adopted Proposition 51 (the Fair Responsibility Act of 1986), an initiative measure that amended Civil Code section 1431 and added Civil Code sections 1431.1 through 1431.5. (*Bostick,* p. 84) Proposition 51 made liability for noneconomic damages several only instead of joint and several. (Civ. Code, § 1431.2) Proposition 51 was adopted to address the "deep pocket" effect of joint and several liability in which defendants who were perceived to have substantial financial resources or insurance were added to lawsuits even though there was little or no basis for finding them at fault because they could be held financially liable for all damages if they were found to share even a fraction of fault. (Civ. Code, § 1431.1.) Nevertheless, in actions subject to Proposition 51, all defendants remain jointly and severally liable for economic damages. (*DaFonte v. Up–Right, Inc.* (1992) 2 Cal.4th 593, 600.) In a non-strict products liability case to which Proposition 51 applies, it is error for a trial court not to allow the jury to assess the comparative fault of defendants who settled before trial. (*Roslan v. Permea, Inc.* (1993) 17 Cal.App.4th 110, 112-113.) Likewise, it is error to exclude evidence of the culpability of defendants who settled before trial to allow the jury to make that assessment.

Since its enactment, a split in authority of sorts has developed over Proposition 51's application to strict products liability actions. (*Garcia v. Duro Dyne Corp.* (2007) 156 Cal.App.4th 92) In *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618 (*Wimberly*) and *Bostick*, at pages 92-93, the courts held that Proposition 51 does not apply in a strict products liability action when a single defective product produced a single injury to the plaintiff. That is, all defendants in the stream of commerce of that single product remain jointly and severally liable. In *Arena v. Owens-Corning Fiberglas Corp.* (1998) 63 Cal.App.4th 1178, (*Arena*) and *Wilson v. John Crane, Inc.* (2000) 81 Cal.App.4th 847 (*Wilson*), the courts held, in strict products liability asbestos exposure actions, that Proposition 51 applies when there are multiple products that caused the plaintiff's injuries and there is evidence that provides a basis to allocate fault for noneconomic damages between the defective products.

The DCA concluded that this action was not specifically covered by either the *Wimberly*/*Bostick* line of cases or the *Arena*/*Wilson* line of cases. Although plaintiff's injuries may be viewed as indivisible, and thus as a single injury, those injuries may not have been caused by a single defective product, taking the case out of the *Wimberly*/*Bostick* line of cases. First, there was evidence from which the jury could have concluded that plaintiff's injuries were caused by a defective recliner mechanism. Second, there was evidence that plaintiff's injuries were caused by a design defect in plaintiff's seat belt that allowed plaintiff to "ramp" up her vehicle's seatback because the seat belt was designed in such a manner that it slackened when the seatback collapsed. Finally, the trial court's ruling precluding evidence on apportionment of fault prevented defendants from introducing evidence that Nissan was at fault for plaintiff's injuries. The Justices also found the action does not fit precisely within the *Arena*/*Wilson* line of cases because, although there was evidence plaintiff may have suffered her injuries as a result of multiple defective products, there was no evidence that her injuries were divisible for purposes of allocating fault for her noneconomic damages.

Notwithstanding the lack of a precise fit, the Appellate Court found that the analysis in support of the *Arena*/*Wilson* line of cases was persuasive. In *Wilson*, at page 858, the court stated, "The perceived evil to be eliminated by Proposition 51 was the imposition of liability for noneconomic damages far out of proportion to the defendant's share of responsibility for those damages. We see no reason to believe that the voters thought that evil was any less or different when the defendant was a manufacturer held strictly liable for a defective product, particularly when the statute would unquestionably apply to a manufacturer held liable for negligence. The voters chose to use a legal term of art ('comparative fault') which, as we have seen, embraces all such claims." Accordingly the court held that Civil Code section 1431.2 applies to strict products liability actions. (*Wilson*, at p. 859.)

Here, the trial court ruled that defendants could not present evidence in support of their theory that liability should be apportioned among Nissan and the other parts manufacturers. Even though some evidence was admitted from which the jury could have concluded that others were at fault for plaintiff's injuries, the court's special verdict form, consistent with its ruling on apportionment of fault, only provided for apportionment between the adverse driver and the appellant defendants. That was error. Accordingly, The Justices remanded the matter for retrial solely on the issue of apportionment of fault. In that apportionment, Ikeda may be found at fault for plaintiff's injuries and assigned a proportionate share of plaintiff's noneconomic damages, but not on a strict products liability theory. The Court concluded that the liability of the defendants has been found by the jury and that liability shall not be retried—only the allocation of damages.

Defendants also contended that the jury's verdict was improperly inflated because the trial court erroneously admitted evidence of the full amount billed for plaintiff's past medical care, rather than the amount plaintiff's medical care providers accepted. Defendants moved *in limine* that evidence of the full amount that plaintiff's medical care providers

billed for plaintiff's medical care be excluded and evidence of the amount that her medical providers accepted as full payment be admitted. The trial court denied the motion. Thereafter, the parties stipulated before the jury that plaintiff's medical care had been reasonable and necessary and that plaintiff's medical bills for past medical care totaled $777,905. As part of its special verdict, the jury awarded plaintiff $777,905 in past medical expenses. In the judgment, pursuant to the stipulation of the parties, the trial court reduced that award to $462,608.68, the amount accepted by plaintiff's medical care providers.

Plaintiff contends that defendants have forfeited appellate review of this issue by virtue of the stipulation that went to the jury that plaintiff's past medical bills totaled $777,905, the full amount billed. The Justices disagreed. Having received an adverse ruling on their motion *in limine*, defendants did not forfeit review by stipulating that plaintiff's past medical care was reasonable and necessary and that the bills for that medical care totaled $777,905. That is, by stipulating that the billed cost of plaintiff's past medical care was a certain sum, defendants did not forfeit their claim that the jury should not have heard that sum.

In *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 555 (*Howell*)) the Supreme Court held, in an opinion rendered on the same day the jury rendered its verdict in this case, that "a plaintiff may recover as economic damages *no more* than the reasonable value of the medical services received and is not entitled to recover the reasonable value if his or her actual loss was less." It stated that if a medical care "provider has, by prior agreement, accepted less than a billed amount as full payment, evidence of the full billed amount is not itself relevant on the issue of past medical expenses." The Supreme Court did not express an opinion about whether evidence of the full amount billed was relevant or admissible on "other issues, such as noneconomic damages or future medical expenses."

The court in *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308 addressed the issues left open by the court in *Howell*. The court held that

evidence of the full amount billed for a plaintiff's medical care is not relevant to damages for future medical care or noneconomic damages and its admission is error. (*Corenbaum*, p. 1319.) The court held that the trial court's erroneous admission of such evidence was prejudicial in that case because the record "clearly demonstrated" that the damages awards were based on the full amount billed and not on the lesser amount the plaintiff's medical providers had accepted as full payment. The court reversed the award of compensatory damages and remanded for a new trial limited to the issue of compensatory damages. (*Corenbaum* at p. 1333-1334.)

The Justices concluded here, that although the trial court erred in this case by admitting evidence of the full amount billed for plaintiff's medical care, defendants have failed to show that the error was prejudicial. Defendants do not cite any evidence before the jury or any argument of plaintiff's counsel that plaintiff's claims for noneconomic damages or future medical expenses were based on or influenced by the stipulation that plaintiff's medical bills for past medical care totaled $777,905. As for those past full amount medical care bills, the jury's award of $777,905 was reduced post-verdict on stipulation of the parties to $462,608.68, the amount that plaintiff's medical care providers accepted. Accordingly, the jury's finding that plaintiff suffered damages of $24,744,764 is affirmed.

The judgment is reversed and the matter is remanded for a retrial. The jury's findings that defendants, except Ikeda, are liable and that plaintiff suffered damages of $24,744,764 are affirmed. The retrial is limited to the issue of apportionment of fault. In that apportionment, Ikeda may be found at fault for plaintiff's harm, but not on a strict products liability theory. The parties shall bear their own costs on appeal.

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