

Summary of SC95777, *Robert L. Johnson v. Auto Handling Corp. & Cottrell Inc.*

Appeal from the St. Louis County circuit court, Judge Thomas J. Prebil

Argued and submitted January 18, 2017; opinion issued June 27, 2017, and modified on the Court's own motion August 22, 2017

Attorneys: Johnson was represented during arguments by Michael T. Blotevogel, Roy C. Dripps and Charles W. Armbruster III of Armbruster, Dripps, Winterscheidt & Blotevogel in Maryville, Illinois, (800) 917-1529. Auto Handling was represented by Paul L. Wickens and William F. Logan of Foland, Wickens, Eisfelder, Roper & Hofer PC in Kansas City, (816) 472-7474. Cottrell was represented by William Ray Price Jr., Thomas B. Weaver and Jeffery T. McPherson of Armstrong Teasdale LLP in St. Louis, (314) 621-5070.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A defendant company appeals a judgment against it in a product liability case, and an injured man cross-appeals the circuit court's direction of a verdict in favor of the other defendant. In a 6-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment and remands (sends the case back) for a new trial. The circuit court erred in directing a verdict on the injured man's claim of negligent inspection and maintenance. It also erred in how it submitted the man's claim of negligence against the other company by submitting it under a general negligence instruction rather than the instruction for a claim of negligent design, manufacture or failure to warn. The instruction also should have asked the jury to decide ultimate facts rather than evidentiary facts. Because the negligence claims are based on the same facts and similar issues of law, the errors so affected the verdicts that retrial of all of the appealed claims is required.

Facts: Automobile transport tractor trailer driver Robert Johnson suffered an alleged injury resulting from a fall he experienced when an idler broke as he used it to tighten down a vehicle he was transporting on the trailer using a manual chain and ratchet tie-down system incorporated in the trailer manufactured and sold by Cottrell. Johnson brought defective design and failure-to-warn product liability claims in negligence and strict liability against Cottrell. He also brought several negligence claims against Auto Handling, a company allegedly contracted by Johnson's employer to repair and maintain the tractor trailers in its fleet. At trial, Johnson presented evidence that the design of the manual system Cottrell used to secure vehicles to the trailer was long known to be dangerous and that safer alternatives were available. His expert testified the original weld attaching the idler was defective because it used a weaker, shallower weld, and at some point post-manufacture, someone attempted a repair weld that was itself defective, despite being a deeper and stronger weld. Johnson also produced evidence that Auto Handling periodically undertook preventive maintenance inspections of the tractor trailer and that the defective idler weld was not apparent to a driver conducting daily pre-drive inspections from the top but should have been discovered by Auto Handling mechanics who inspected the tractor trailer from the maintenance pit below.

At the close of Johnson's case, the circuit court sustained Auto Handling's motion for directed verdict as to all claims against it. The court submitted to the jury Johnson's claims against Cottrell – his negligent product liability claims as well as his strict liability claims of design defect and failure to warn. The jury returned a verdict in Cottrell's favor on the design defect claim – a verdict Johnson does not appeal. It returned verdicts against Cottrell on the other two claims, assigning a percentage of fault to Johnson and assessing a total value of damages. The circuit court entered judgment against Cottrell on the negligence claim, reducing the total damages by the fault the jury assessed to Johnson. Cottrell appeals the judgment against it, and Johnson cross-appeals the directed verdict in favor of Auto Handling and the circuit court's refusal to admit evidence of accidents involving manual chain and ratchet tie-down systems other than those involving a failed idler.

JUDGMENT REVERSED AND REMANDED FOR RETRIAL.

Court en banc holds: (1) The circuit court did not err in directing a verdict in favor of Auto Handling on the claim it performed the defective repair weld, as there was insufficient evidence to support submission of the claim that it was Auto Handling that attempted the repair weld. Similarly, the circuit court did not err in directing a verdict in Auto Handling's favor as to the negligent failure-to-warn claim because one who undertakes a repair and returns the product in a dangerously defective condition can only be held liable as a "supplier" for failure to warn of dangerous conditions caused by the work performed. The trial court erred, however, in directing a verdict in Auto Handling's favor for the negligent maintenance and inspection claim. Johnson presented evidence he brought the rig to the Wentzville facility that employed only Auto Handling mechanics for preventive maintenance. Therefore, the case is remanded for retrial against Auto Handling.

(2) The circuit court committed reversible error in submitting the negligent product liability claims against Cottrell using an instruction other than the one approved for negligent manufacture, design or failure-to-warn claims in product liability. Furthermore, the modified instruction submitted evidentiary detail rather than ultimate facts as required by Rule 70.02(b) and the Missouri approved instruction. The instruction did not accurately state the law and misled the jury by permitting it to return a verdict against Cottrell based on evidentiary facts that do not themselves comprise a legal theory of liability. The instruction also failed to submit essential elements of either negligent design defect or failure to warn. Johnson failed to show the failure to use the applicable approved instruction was not prejudicial.

(3) Because the strict liability failure-to-warn claim was so intertwined with the facts and evidence submitted in the erroneous negligence instruction against Cottrell and the negligent failure-to-warn claim against Auto Handling, retrial on all of these theories is required.