Leichtamer v. American Motors Corp.
424 N.E.2d 568
Supreme Court of Ohio
August 5, 1981

Brown, Justice

This litigation arises out of a motor vehicle accident which occurred on April 18, 1976. On that date, Paul Vance and his wife, Cynthia, invited Carl and Jeanne Leichtamer, brother and sister, to go for a ride in the Vance's Jeep Model CJ-7. The Vances and the Leichtamers drove together to the Hall of Fame Four-Wheel Club, of which the Vances were members. The Vances were seated in the front of the vehicle and the Leichtamers rode in the back. The club, located near Dundee, Ohio, was an "off-the-road" recreation facility. The course there consisted of hills and trails about an abandoned strip mine.

While the Vance vehicle was negotiating a double-terraced hill [proceeding *down* the hill], an accident occurred. The hill consisted of a 33-degree slope followed by a 70-foot-long terrace and then a 30-degree slope. Paul Vance drove over the brow of the first of these two slopes and over the first flat terrace without incident. As he drove over the brow of the second hill, the rear of the vehicle raised up relative to the front and passed through the air in an arc of approximately 180 degrees. The vehicle landed upside down with its front pointing back up the hill. This movement of the vehicle is described as a pitch-over.

The speed that the Vance vehicle was travelling at the time of the pitch-over was an issue of dispute. The Leichtamers, who are the only surviving eyewitnesses to the accident, described the vehicle as travelling at a slow speed. Carl Leichtamer described the accident as occurring in this fashion:

> "Well, we turned there and went down this trail and got to the top of this first hill. . . . And Paul looked back and made sure that everybody had their seat belt fastened. That it was fastened down; and he pulled the automatic lever down in low and he put it in low wheel, four wheel, too. . . . And then he just let it coast like over the top of this hill and was using the brake on the way down, too. We came to the level-off part. He just coasted up to the top of the second hill, and then the next thing I remember is the back end of the Jeep going over. . . . When we got to the top of the second hill, the front end went down like this (demonstrating) and the back end just started raising up like that (demonstrating)."

John L. Habberstad, an expert witness for American Motors Corporation, testified that the vehicle had to be travelling between 15 and 20 miles per hour. This conclusion was based on evidence adduced by American Motors that the vehicle landed approximately 10 feet from the bottom of the second slope, having traversed about 47 feet in the air and having fallen approximately 23.5 feet.

The pitch-over of the Jeep CJ-7, on April 18, 1976, killed the driver, Paul Vance, and his wife, Cynthia. Carl Leichtamer sustained a depressed skull fracture. The tail gate of the vehicle presumably struck Jeanne Leichtamer. Jeanne was trapped in the vehicle after the accident and her position was described by her brother as follows: "She was like laying on her stomach although her head was sticking out the jeep and the—she was laying on her stomach like and the tailgate of the jeep like, was laying lower, just a little bit lower or right almost on her shoulders and then the back seat of the jeep was laying on her lower part of her back. . . . [H]er legs were twisted through the front seat." Jeanne Leichtamer is a paraplegic as a result of the injury.

Carl and Jeanne Leichtamer, appellees, subsequently sued American Motors Corporation, American Motors Sales Corporation and Jeep Corporation, appellants, for "enhanced" injuries they sustained in the accident of April 18, 1976. The amended complaint averred that the permanent trauma to the body of Jeanne Leichtamer and the other injuries to her brother, Carl, were causally related to the displacement of the "roll bar" on the vehicle. Appellees claimed that Paul Vance's negligence caused the accident, but alleged that their injuries were "substantially enhanced, intensified, aggravated, and prolonged" by the roll bar displacement.

Paul Vance purchased his Jeep CJ-7 four-wheel-drive motor vehicle from a duly licensed factory-authorized dealer, Petty's Jeep & Marine, Inc., owned and operated by Norman Petty. Vance purchased the vehicle on March 9, 1976. The vehicle came with a factory-installed roll bar. The entire vehicle was designed and manufactured by Jeep Corporation, a wholly owned subsidiary of American Motors. American Motors Sales Corporation is the selling agent for the manufacturer. Appellees did not claim that there was any defect in the way the vehicle was manufactured in the sense of departure by the manufacturer from design specifications. The vehicle was manufactured precisely in the manner in which it was designed to be manufactured. It reached Paul Vance in that condition and was not changed.

The focus of appellees' case was that the weakness of the sheet metal housing upon which the roll bar had been attached was causally related to the trauma to their bodies. Specifically, when the vehicle landed upside down, the flat sheet metal housing of the rear wheels upon which the roll bar tubing was attached by bolts gave way so that the

single, side-to-side bar across the top of the vehicle was displaced to a position 12 inches forward of and 14½ inches lower than its original configuration relative to the chassis. The movement of the position of the intact roll bar resulting from the collapse of the sheet metal housing upon which it was bolted was, therefore, downward and forward. The roll bar tubing did not punch through the sheet metal housing, rather the housing collapsed, taking the intact tubing with it. That this displacement or movement of the intact roll bar is permitted by the thin nature of the sheet metal wheel housing to which it is attached and the propensity of the bar to do so when the vehicle lands upside down is central to appellees' case.

The appellants' position concerning the roll bar is that, from an engineering point of view, the roll bar was an optional device provided solely as protection for a side-roll.

The other principal element of appellees' case was that the advertised use of the vehicle involves great risk of forward pitch-overs. The accident occurred at the Hall of Fame Four-Wheel Club, which had been organized, among others, by Norman Petty, the vendor of the Vance vehicle. Petty allowed the club to meet at his Jeep dealership. He showed club members movies of the performance of the Jeep in hilly country. This activity was coupled with a national advertising program of American Motors Sales Corporation, which included a multimillion-dollar television campaign. The television advertising campaign was aimed at encouraging people to buy a Jeep, as follows: "Ever discover the rough, exciting world of mountains, forest, rugged terrain? The original Jeep can get you there, and Jeep guts will bring you back."

The campaign also stressed the ability of the Jeep to drive up and down steep hills. One Jeep CJ-7 television advertisement, for example, challenges a young man, accompanied by his girlfriend: "[Y]ou guys aren't yellow, are you? Is it a steep hill? Yeah, little lady, you could say it is a steep hill. Let's try it. The King of the Hill, is about to discover the new Jeep CJ-7." Moreover, the owner's manual for the Jeep CJ-5/CJ-7 provided instructions as to how "[a] four-wheel-drive vehicle can proceed in safety down a grade which could not be negotiated safely by a conventional two-wheel-drive vehicle." Both appellees testified that they had seen the commercials and that they thought the roll bar would protect them if the vehicle landed on its top.

Appellees offered the expert testimony of Dr. Gene H. Samuelson that all of the physical trauma to the body of Jeanne Leichtamer were causally related to the collapse of the roll bar support. These injuries—fractures of both arms, some ribs, fracture of the dorsal spine, and a relative dislocation of the cervical spine and injury to the spinal cord—were described by Samuelson as permanent. He also testified that the physical trauma to the body of Carl Leichtamer was causally related to the collapse of the roll bar.

Appellants' principal argument was that the roll bar was provided solely for a side-roll. Appellants' only testing of the roll bar was done on a 1969 Jeep CJ-5, a model with a wheel base 10 inches shorter than the Jeep CJ-7. Evidence of the test was offered in evidence and refused. With regard to tests for either side-rolls or pitch-overs on the Jeep CJ-7, appellants responded to interrogatories that no "proving ground," "vibration or shock," or "crash" tests were conducted.

The jury returned a verdict for both appellees. Damages were assessed for Carl Leichtamer at $10,000 compensatory and $100,000 punitive. Damages were assessed for Jeanne Leichtamer at $1 million compensatory and $1 million punitive. . . .

I(A)

Appellants' first three propositions of law raise essentially the same issue: that only negligence principles should be applied in a design defect case involving a so-called "second collision." In this case, appellees seek to hold appellants liable for injuries "enhanced" by a design defect of the vehicle in which appellees were riding when an accident occurred. This cause of action is to be contrasted with that where the alleged defect causes the accident itself. Here, the "second collision" is that between appellees and the vehicle in which they were riding.

Appellants assert that the instructions of law given to the jury by the trial court improperly submitted the doctrine of strict liability in tort as a basis for liability. The scope of this review is limited to the question of whether an instruction on strict liability in tort should have been given. For the reasons explained herein, we answer the question in the affirmative.

I(B)

The appropriate starting point in this analysis is our decision in *Temple v. Wean United, Inc.* (1977). In *Temple*, this court adopted Section 402A of the Restatement of Torts 2d, thus providing a cause of action in strict liability for injury from a product in Ohio.

. . . [T]he vast weight of authority is in support of allowing an action in strict liability in tort, as well as negligence, for design defects. We see no difficulty in also applying Section 402A to design defects. As pointed out by the California Supreme Court, "[a] defect may emerge from the mind of the designer as well as from the hand of the workman." A distinction between defects resulting from manufacturing processes and those resulting from design, and a resultant difference in the burden of proof on the injured party, would only provoke needless questions of defect classification, which would add little to the resolution of the underlying claims. A consumer injured by an

unreasonably dangerous design should have the same benefit of freedom from proving fault provided by Section 402A as the consumer injured by a defectively manufactured product which proves unreasonably dangerous.

Strict liability in tort has been applied to design defect "second collision" cases. While a manufacturer is under no obligation to design a "crash-proof" vehicle, an instruction may be given on the issue of strict liability in tort if the plaintiff adduces sufficient evidence that an unreasonably dangerous product design proximately caused or enhanced plaintiff's injuries in the course of a foreseeable use. Here, appellants produced a vehicle which was capable of off-the-road use. It was advertised for such a use. The only protection provided the user in the case of roll-overs or pitch-overs proved wholly inadequate. A roll bar should be more than mere ornamentation. The interest of our society in product safety would best be served by allowing a cause in strict liability for such a roll bar device when it proves to be unreasonably dangerous and, as a result, enhances the injuries of the user.

I(C)

We turn to the question of what constitutes an unreasonably dangerous defective product.

Section 402A subjects to liability one who sells a product in a "defective condition, unreasonably dangerous" which causes physical harm to the ultimate user. Comment *g* defines defective condition as "a condition not contemplated by the ultimate consumer which will be unreasonably dangerous to him." Comment *i* states that for a product to be unreasonably dangerous, "[t]he article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics."

With regard to design defects, the product is considered defective only because it causes or enhances an injury. "In such a case, the defect and the injury cannot be separated, yet clearly a product cannot be considered defective simply because it is capable of producing injury." Rather, in such a case the concept of "unreasonable danger" is essential to establish liability under strict liability in tort principles.

The concept of "unreasonable danger," as found in Section 402A, provides implicitly that a product may be found defective in design if it is more dangerous in use than the ordinary consumer would expect. Another way of phrasing this proposition is that "a product may be found defective in design if the plaintiff demonstrates that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner."

Thus, we hold a cause of action for damages for injuries "enhanced" by a design

defect will lie in strict liability in tort. In order to recover, the plaintiff must prove by a preponderance of the evidence that the "enhancement" of the injuries was proximately caused by a defective product unreasonably dangerous to the plaintiff.

Affirmed.