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Supreme Court of Pennsylvania.

BERRY
v.
SUGAR NOTCH BOROUGH.

May 8, 1899.

Appeal from court of common pleas, Luzerne county.

Action by Bryan C. Berry against Sugar Notch borough. Judgment for defendant, and plaintiff appeals. Affirmed.

West Headnotes

Municipal Corporations ⚖705(11)
268k705(11) Most Cited Cases
(Formerly 272k82)

That a motorman was running his car at a higher rate of speed than allowed by law when a tree fell down on the car, injuring him, was not the proximate cause of the accident, in that, if he had been going at the legal rate, the tree would have fallen before he arrived at the spot.

Municipal Corporations ⚖800(1)
268k800(1) Most Cited Cases

Where a dangerous tree is blown down and injures a motorman of a passing car, he can recover irrespective of the fact that he was violating a speed ordinance, the speed not causing the accident.

Municipal Corporations ⚖801(1)
268k801(1) Most Cited Cases

Where a tree, which a borough has permitted to remain standing notwithstanding its dangerous condition, is blown down and strikes a passing street car thereby injuring the motorman, his right of recovery is not defeated by the fact that he was exceeding the speed limit.

Municipal Corporations ⚖801(2)
268k801(2) Most Cited Cases

The fact that a motorman ran a car faster than permitted by borough ordinance will not prevent his recovering for injuries received by the falling on his car of a decayed tree which had been allowed to stand on the street.

Municipal Corporations ⚖802.1
268k802.1 Most Cited Cases
(Formerly 268k802)

A motorman who is injured by a falling tree negligently left standing in the highway is not barred from recovering because the speed of his car exceeded the borough ordinance.
***347 **240** S. J. Strauss and Chas. B. Lenahan, for appellant.

John McGahren, Andrew M. Freas, and Michael H. McAniff, for appellee.

FELL, J.

The plaintiff was a motorman in the employ of the Wilkesbarre & Wyoming Valley Traction Company, on its line running from Wilkesbarre to the borough of Sugar Notch. The ordinance by virtue of which the company was permitted to lay its track and operate its cars in the borough of Sugar Notch contained ***348** a provision that the speed of the cars while on the streets of the borough should not exceed eight miles an hour. On the line of the road, and within the borough limits, there was a large chestnut tree, as to the condition of which there was some dispute at the trial. The question of the negligence of the borough in permitting it to remain must, however, be considered as set at rest by the verdict. On the day of the accident the plaintiff was running his car on the borough street in a violent windstorm, and as he passed under the tree it was blown down, crushing the roof of the car, and causing the plaintiff's injury. There is some conflict of testimony as to the speed at which the car was running, but it seems to be fairly well established that it was considerably in excess of the rate permitted by the borough ordinance. We do not think that the fact that the plaintiff was running his car at a higher rate of speed than eight miles an hour affects his right to recover. It may be that in doing so he violated the ordinance by virtue of which the company was permitted to operate its cars in the streets of the borough, but he certainly was not, for that reason, without rights upon the streets. Nor can it be said that the speed was the cause of the accident, or contributed to it. It might have been otherwise if the tree had fallen before the car reached it, for in that case a high rate of speed might have rendered it impossible for the plaintiff to avoid a collision which he either foresaw or should have foreseen. Even in that case the ground for denying him the right to recover would be that he had been guilty of contributory negligence, and not that he had violated a borough ordinance. The testimony, however, shows that the tree fell upon the car as it passed beneath. With this phase of the case in view, it was urged on behalf of the appellant that the speed was the immediate cause of the plaintiff's injury, inasmuch as it was the particular speed at which he was running which brought the car to the place of the accident at the moment when the tree blew down. This argument, while we cannot its ingenuity, strikes us, to say the least, as being somewhat sophistical. That his speed brought him to the place of the accident at the moment of the accident was the merest chance, and a thing which no foresight could have predicted. The same thing might as readily have happened to a car running slowly, or it might have been that a high speed ***349** alone would have carried him beyond the tree to a place of safety. It was also argued by the appellant's counsel that, even if the speed was not the sole efficient cause of the accident, it at least contributed to its severity, and materially increased the damage. It may be that it did. But what basis could a jury have for finding such to be the case? and, should they so find, what guide could be given them for differentiating between the injury done this man and the injury which would have been done a man in a similar accident on a car running at a speed of eight miles an hour or less? The judgment is affirmed.

43 A. 240, 191 Pa. 345

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