Supreme Court of Florida

HAROLD RIDLEY, et ux.,
Petitioners,

vs.

SAFETY KLEEN CORPORATION, etc.,
Respondent.

No. 86,280

[March 27, 1997]

CLARIFIED ON DENIAL OF REHEARING

PER CURIAM.

We agree with the assertion by the petitioners that the only issues requiring a retrial are the claim by the Ridleys that all of Mr. Ridley's injuries were caused by Safety Kleen's negligence and the claim by the respondent, Safety Kleen, that Mr. Ridley was comparatively negligent in not wearing a seat belt. The Ridleys sued Calhoun County and Safety Kleen. Safety Kleen counterclaimed against the county and Mr. Ridley. Safety Kleen lost the counterclaim, and that claim need not be retried.

On the Ridleys' claim, the county was exonerated and Safety Kleen was found 100 percent at fault in causing the accident. The jury also found that Mr. Ridley's failure to wear a seat belt did not contribute to his injuries. Although we have held that the trial court erred in failing to give an instruction on the effect of Mr. Ridley's alleged violation of a traffic statute requiring the use of a seat belt, we see no need for a retrial on the claim against the county or Safety Kleen based upon their alleged negligence in causing the underlying accident. Based upon a verdict on the negligence of the parties unaffected by the seat belt issue, the Ridleys are entitled to a preemptory instruction on Safety Kleen's negligence as to the accident and to the absence of negligence on Mr. Ridley's part as to the accident. Accordingly, any retrial should be limited to the issue of the alleged comparative negligence of Mr. Ridley in failing to wear a seat belt, and, if he is found to be comparatively negligent, the issue of the percentage of fault attributable to Mr. Ridley in causing his injuries and the percentage of fault attributable to the negligence of Safety Kleen in causing such injuries. A special interrogatory verdict should be used to facilitate the presentation of these issues to the jury.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING, WELLS and ANSTEAD, JJ., concur.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance
First District - Case No. 94-1819

(Calhoun County)

William D. Hall, Jr. of Barrett, Hoffmann & Hall, Tallahassee, Florida; and Gordon D. Cherr of McConnaughhay, Roland, Maida & Cherr, P.A., Tallahassee, Florida,

for Petitioners

Francis J. Carroll, Jr. of Boehm, Brown, Rigdon, Seacrest & Fischer, P.A., Daytona Beach, Florida,

for Respondent

Jack W. Shaw, Jr. of Brown, Obringer, Shaw, Beardsley & DeCandio, Jacksonville, Florida,

for Florida Defense Lawyers Association, Amicus Curiae

Wendy F. Lumish and Paul L. Nettleton of Popham, Haik, Schnobrich & Kaufman, Ltd., Miami, Florida,

for Product Liability Advisory Council, Inc., Amicus Curiae