

Shipper Avoids Liability for Death Based on Negligent Selection of Carrier

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McComb, vs. Bugarin Trucking Shandy-Shamrock Division, Central Steel and Wire Company et al, 214 US Dist Lexis 24157 (Feb. 2014). In this case McComb, brought suit on behalf of his daughter's estate asserting wrongful death against several defendants including the driver, Bugarin, Shandy Transportation, the trucking company under whose authority Bugarin was operating, and Central Steel and Wire Company, the shipper and manufacturer whose steel Bugarin was hauling at the time of the accident.

FACTS:

On December 28, 2010, the driver, Bugarin, was operating under the authority of Shandy Transportation hauling a load of steel plate weighing 46,480 pounds from Indiana, to another Central Steel facility in Wisconsin. En route, Bugarin who was on an unfamiliar roadway failed to notice a major intersection as he approached. The intersection was not readily apparent because, due to a power outage the intersection street lights were off, stop lights were not working and lights of nearby businesses were off. As a result only the headlights of passing cars were available for lighting in the area. Just after passing the intersection the driver noticed the car driven by the Plaintiff's daughter directly in front of him and only then did he apply the brakes, which was too late. As a result of the collision the woman was killed.

Post accident investigation disclosed that: the driver was driving within the speed limit, all four (4) trailer brakes were out of adjustment, a break chamber on the right side of the first drive axle was loose, a shock absorber was missing, the brakes automatic slack adjusters had been replaced by manual adjusters, Bugarin had failed to conduct a pre-trip inspection, and that all of these violations existed prior to the collision. The investigator concluded that the improperly adjusted brakes were a "minor contributing factor," but that neither road conditions, Bugarin's speed, nor the decedent's car played any role causing the collision, and had a pre-trip investigation been conducted the violations would have required repair before driving.

In the police report it was concluded that the only major contributing cause of the accident was

lack of traffic lights at the intersection. Neither the state trooper, nor the investigator provided any opinion as to whether the identified violations (by implication reflected in the scores) had any impact on the accident.

Facts further disclosed that Central Steel, which had a 20 year business relationship with the carrier, (Shandy) selected the carrier based on the following: All drivers were owner operators under full-time leases, proof of insurance, operating authority status, and the safety rating required to be "satisfactory." As of the date of the accident the carrier, had a "Satisfactory" rating although it was ten-years old. According to a footnote, no argument was presented about the fact that the safety rating was 10 years old. The court dealt with Safe Stat Scores and identified the FMCSA disclaimer that was then contained on the FMCSA website indicating that, "..... the safe stat scores were provided for purposes other than identifying and prioritizing carriers for FMCSA and the Safety Improvement Enforcement Program may produce unintended results and not be suitable for certain uses."

This case is a light in the darkness to those cases in which liability has been imposed based on "deep pockets," and allows for some optimism even where CSA scores are deficient.

Plaintiff argued that during the period between 2008 and 2010, the date of the accident, Shandy's vehicle maintenance CSA value was consistently deficient. Neither party submitted any other information regarding CSA values. Central Steel checked Federal Motor Carrier rankings but did not check Safe Stat Scores. The Court calculated what the CSA scores would have been by converting the Safe Stat Score to the CSA score and found that Shandy's rating indicated that 81.23% of other carriers had higher scores for vehicle maintenance.

The thrust of the Plaintiff's claim was based on the theory of negligent selection, where it argued that Central Steel knew or should have known that Shandy and Bugarin were incompetent, unsafe and unfit to haul a loads assigned to them due to the fact that they had been assigned a deficient safety rating by FMCSA for vehicle maintenance. Plaintiff argued that the Defendant's failure to inquire into Shandy's and Bugarin's competence as carriers was the proximate cause of his daughter's death. The court then dealt with the central issue of the case, whether in fact the injury would have occurred absent the Defendant's conduct. Defendant Central Steel pointed out the Plaintiff had failed to offer any evidence that the Defendant's contractors particular incompetence (for vehicle maintenance) was the reason for McComb's death. Even McComb agreed that the brake failure did not cause the accident, and it was not the alleged application of deficient brakes that caused the accident. The Court stated that in order to prove a negligent selection claim there must be a showing that the contractor's particular incompetence caused the accident. Citing the restatement of Torts the Court quoted "In order that the employer may be subject to liability it is therefore necessary that harm shall result from some quality in the contractor

which made it negligent for the employer to entrust the work with him." The court refused to accept a broader interpretation of liability asserted by Plaintiff who argued that but for the Defendant's selection of the carrier, the accident would not have happened.

In conclusion, the court agreed with Defendant and dismissed the case on Summary Judgment because the Plaintiff failed to establish the Defendant's selection of the contractor was the proximate cause of the accident.

With this straight forward opinion, we can only wish that this analysis had been made in the many other negligent selection cases in which both brokers and shippers have been held liable. This case is a light in the darkness to those cases in which liability has been imposed based on "deep pockets," and allows for some optimism even where CSA scores are deficient. The case places, "proximate cause" back where it should be, as a material required element, in the proof of negligence.

(Underlining is writers emphasis.)

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