

Annette Myers Lowans, Plaintiff, v. John H. Koons, Jr., and John H. Koons, Sr., Defendants Franklin County Branch Civil Action - Law No.: A.D. 1996 - 544

*Lowans v. Koons*

*Summary Judgment -- Negligence -- Motor Vehicle Accident -- Reasonable Inspection*

1. Mere ownership of a vehicle involved in an accident does not provide a basis for liability for damages.
2. The owner of a motor vehicle is only liable for those defects which are known or discoverable by reasonable inspection.
3. Where the owner inspected his vehicle a month before the accident and no defect was found at the time, the conduct of the owner is reasonable and the court will dismiss a negligence action against him.
4. If a person acted with ordinary prudence and judgment, he is not negligent although danger might have been avoided if he had acted in a different manner.
5. Where all evidence presented to the court points to reasonable efforts by the owner to inspect his allegedly malfunctioning truck, and Plaintiff fails to produce evidence that the truck owner knew or should have known of a defective turning signal, the negligence claim against the owner will be dismissed.
6. If Plaintiff fails to establish one of the elements of actionable negligence, the defendant has valid grounds for summary judgment.

*Michael J. Toms, Esquire, Attorney for Plaintiff*  
*John N. Keller, Esquire, Attorney for Defendants*

#### OPINION AND ORDER

Walker, P.J., December 18, 1997:

##### A. Factual Background

This automobile accident case comes before the Court on a motion for summary judgment by defendant John H. Koons, Sr. (hereafter, "Koons Senior"). The underlying claim arises out of a collision between the vehicle driven by Annette Myers Lowans ("Plaintiff") and a truck operated by John H. Koons, Jr. ("Koons Junior") and owned by Koons Senior. On the afternoon of September 15, 1995, the Koons 1970 Mack truck was traveling southbound on Route 316 and the plaintiff was driving behind the truck in her 1983 Chevrolet Celebrity. As the vehicles approached the intersection of Five Forks Road and Route 316, Koons Junior drove the truck into the left lane in preparation for a right-hand turn onto Five Forks Road. The plaintiff, not knowing

that Koons Junior was making a right-hand turn, proceeded southbound on Route 316 in an attempt to pass the Koons truck on the right side. Before Plaintiff could pass the truck, Koons Junior turned to the right and the vehicles collided.

In her Complaint, Plaintiff alleges that the defendants were negligent, *inter alia*, because they failed to maintain the truck in proper working order. More specifically, Plaintiff asserts that the Koons truck's rear turning signal was not functioning and, as a result, she was not warned that the truck was making a right turn off Route 316 at the time and place of the accident.

Defendant, Koons Senior, asks this court to dismiss the claim against him on the basis that he did not know that the turning signal on the truck was inoperative. In support of his motion for summary judgment, he presents the testimony of his mechanic, Robert Hamner. Mr. Hamner testified at his deposition that he inspected the Koons truck one month before the accident, and all the turning signals were operating properly at the time. (Hamner depo., pp. 6-7). Koons Senior argues that Mr. Hamner's testimony shows that he could not have known that the rear turning signals on his truck were malfunctioning on the day of the accident, and therefore, Plaintiff cannot hold him liable for the September 15, 1997 collision.

In response to the summary judgment motion, Plaintiff argues that, as the owner of the truck which allegedly caused the accident, Koons Senior is responsible for insuring that the turning signals in his truck are working properly. Plaintiff asserts that Koons Senior was aware of a problem with the truck's lighting system because work orders produced by Mr. Hamner indicate that some work was performed on the truck's lights. Further, Plaintiff contends that the jury should decide the liability of the owner of a defective automobile when such a vehicle is involved in an accident.

In consideration of the briefs submitted by the parties and statements made by counsel at oral argument, and for the reasons set forth below, we grant the motion for summary judgment of Defendant John H. Koons, Sr.

##### B. Discussion

Motion for summary judgment may properly be granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Pa. R.C.P. Rule No. 1035.2; *Hopewell Estates, Inc. v. Kent*, 435 Pa. Super. 471, 646 A.2d 1192 (1994). Summary judgment should be granted only in cases that are free and clear of doubt. *Id.* On a motion for summary judgment, the record and any inferences therefrom must be viewed in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the movant. *Coleman v. Coleman*, 444 Pa. Super. 196, 663 A.2d 741 (1995), *alloc. denied*, 543 Pa. 722, 673 A.2d 330. The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact. *First Wisconsin Trust Co. v. Strausser*, 439 Pa. Super. 192, 653 A.2d 688 (1995).

Viewing the evidence in the light most favorable to Plaintiff, we are compelled to find that Koons Senior cannot be held liable for the accident at issue in this case. Under Pennsylvania law, mere ownership of a vehicle involved in an accident does not provide a basis for liability for damages. *Headman v. Berman Leasing Co.*, 352 F. Supp. 211 (E.D. Pa. 1972). In this case, Plaintiff contends that the accident occurred because the Koons truck's turning signals were not working. However, an owner of a motor vehicle is only liable for those defects which are known or discoverable by reasonable inspection. *Evans v. Goldfine Truck Rental Service*, 241 Pa. Super. 329, 361 A.2d 643 (1976). In this case, there is no evidence that Koons Senior was aware of the turning signal problem, and it cannot be argued that Koons Senior acted unreasonably in the maintenance and inspection of his vehicle. He had his vehicle inspected one month before the accident, and at the time of the inspection, the turning signals were working properly. Further, Mr. Hamner testified that the only work he did on the truck lighting system related to the truck's marker lights, not the turning signals. (Hamner depo., p. 8, ln. 18-21). This evidence supports Koons Senior's contention that he was not aware of any problem with the turn signals prior to the accident.

Plaintiff argues that "[a]s the owner of the truck, Koons, Sr. should have acted as expected of the reasonable individual; he should have made periodic inspections of the truck, checking to make sure that the turn signal lights were operable before allowing the truck to be used on the public roadways." (Plaintiff's Brief, p. 3). We find that Koons Senior's inspection of the truck a month before the accident was reasonable and we refuse to make Koons Senior an insurer against any possible defect that his truck might have had. "If a person has acted with ordinary prudence and judgment, he is not negligent although danger might have been avoided if he had acted in a different manner." *Moran v. Pittsburgh-Des Moines Steel Co.*, 85 F. Supp. 255, 268 (W.D. Pa. 1949), *reversed on other grounds* 183 F.2d 467. "The law holds men to prudence of conduct but not to infallibility of judgment... No man's foresight is required to equal his critic's hindsight." *Richardson v. Pennsylvania Railroad*, 338 Pa. 155, 157, 12 A.2d 583, 585 (1940).

Plaintiff has failed to produce any evidence that shows that Koons Senior knew or should have known that the rear turn signal on his truck was not working. All the evidence presented to the Court points to reasonable efforts by Koons Senior to inspect his truck for possible problems. Absent a showing that Koons Senior knew or should have known of the defect, Plaintiff's claim against this defendant cannot be allowed to proceed. *Evans, supra*. If the plaintiff fails to establish one of the essential elements of actionable negligence, the defendant has valid grounds for summary judgment. *Braxton v. Com. Dept. of Transp.*, 160 Pa. Cmwlth. 32, 634 A.2d 1150 (1993), *allocatur denied* 539 Pa. 682, 652 A.2d 1326.

Based on the foregoing, the motion for summary judgment of defendant John H. Koons, Sr. is hereby granted.

#### ORDER OF COURT

December 18, 1997, the motion of Defendant John H. Koons, Sr. for summary judgment is hereby granted.