

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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TIA SHERMAN and
KEITH SHERMAN,

Plaintiff,

v.

VERMONT MUTUAL INS. CO.

Defendant.

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Case No. 5:17-cv-64

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them.

I. Part One – General Instructions

ROLE OF THE COURT

You must accept the law as I explain it to you. You should not single out any one instruction as alone stating the law. Instead, you should consider my instructions as a whole.

If any attorney has stated a legal principle which differs from my instructions, you must follow my instructions.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law should be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you in these instructions.

ROLE OF THE JURY

As members of the jury, you are the sole and exclusive judges of the facts. You should make decisions about the facts based only on the testimony you have heard in court and the exhibits which were admitted by the judge. You will receive copies of these exhibits in the jury room. If you find it to be necessary, you may return to the courtroom to have the testimony of any witness read back to you by the court reporter.

As jurors and judges of the facts in the case, you determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony and draw whatever reasonable inferences you believe are supported by the facts as you have determined them. You determine the weight of the evidence. You are to perform this duty of finding the facts without bias towards any party.

You should reach your judgment impartially and fairly, without prejudice or sympathy, solely upon the evidence in the case and without regard to the consequences of your decision.

JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the

evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

ALL PERSONS EQUAL BEFORE THE LAW

This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be treated as equals in a court of justice.

EVIDENCE

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, and any stipulations submitted by the parties.

Some witnesses testified in the form of video depositions which were recorded by the attorneys before the trial. Testimony in this matter is permitted by the law, and you should not give such testimony any more or less weight than live testimony just because it was recorded before the trial.

EXPERT WITNESSES

Both sides have provided testimony from witnesses who qualified as experts. An expert witness is a person who has special knowledge, experience, training or education in his or her profession or area of study. Because of this expertise, an expert witness may offer his or her opinion about one or more of the issues in the case. In determining the weight to be given to these opinions, you should consider the qualifications, experience, possible bias, and credibility of each expert and the reasons given in support of his or her opinions.

DEMONSTRATIVE EXHIBITS

The defense has displayed charts and a video animation to you in the course of testimony by the expert witness Mr. Boynton. We call these “demonstrative exhibits” because they are used to demonstrate in visual form the opinions and conclusions of the witness. You will not receive these exhibits in the jury room. These exhibits were admitted as illustrations only to assist you in understanding the expert’s testimony. They are not offered or admitted into evidence as a recreation of actual events.

CREDIBILITY OF WITNESSES

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

IMPEACHMENT OF A WITNESS

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a matter, or by evidence that at some other time the witness said or did something inconsistent with the witness’s present testimony. It is your exclusive province to give the testimony of each witness such credibility or weight that you think it deserves.

USE OF DEPOSITION TESTIMONY

Some testimony in this case was presented to you through deposition testimony. These witnesses were questioned under oath by both attorneys before the trial. Their testimony is entitled to the same consideration and should be judged as to credibility and importance in the same way as if the witness had been present here in court.

OBJECTIONS

During the trial, I have ruled on objections made by the attorneys. These are legal issues for the court to resolve and are not for your concern or consideration. It is the duty and job of the attorneys to make objections and you should not hold that against either side.

ARGUMENTS

The opening statements and closing arguments of the attorneys and other statements which they made during the course of the trial are not evidence. You should consider the evidence from the witnesses and the exhibits in making your decisions about the facts in this case. The statements and arguments are the attorneys' efforts to organize and describe the evidence for you. Both of the attorneys have given the case a good deal of thought and attention. I ask that you consider their arguments carefully. In the end, however, it is the evidence admitted at the trial which must govern your decision-making.

THE PARTIES

The parties to this case are:

1. Plaintiff Tia Sherman and her husband Keith Sherman
2. Defendant Vermont Mutual Insurance Co.

Vermont Mutual Insurance Co. issued an auto insurance policy to the plaintiffs which was in effect on June 4, 2013. The parties agree that in this case, the plaintiffs are entitled under the terms of this policy to make their claim against Vermont Mutual Insurance Co. for any injuries caused by negligence of Jessica Wolfe while she operated a Chevrolet pickup truck on June 4, 2013 in Hinsdale, New Hampshire.

Ms. Sherman alleges that Ms. Wolfe operated her vehicle in a negligent manner. Vermont Mutual denies that Ms. Wolfe was negligent and alleges that Ms. Sherman was negligent in the operation of her Hyundai automobile.

The parties agree that if you find that Ms. Wolfe was negligent, then Vermont Mutual will be held liable for any resulting damage. The parties have agreed to present only the issue of negligent operation to you. You will not be asked to make any decision concerning the extent of Ms. Sherman's injuries or the dollar amount of her damages.

BURDEN OF PROOF

The plaintiff Tia Sherman has the burden of proof by a preponderance of the evidence on each element of her claim. A "preponderance of the evidence" means the more convincing evidence. It does not mean the most witnesses. If you conclude that the evidence is equally balanced, Ms. Sherman cannot succeed on her claims. In order to meet her burden of proof, she must persuade you that on balance the evidence on the issue you are considering tips to some degree in her favor. As you consider each element of Ms. Sherman's claim, you must consider whether the evidence is sufficient to meet this standard of "more likely true than not."

In this case, Vermont Mutual has raised an affirmative defense of comparative negligence. In addition to denying that Ms. Wolfe was negligent, Vermont Mutual claims that the motor vehicle collision was caused by negligence on the part of Ms. Sherman and that Ms. Sherman's negligence exceeds any negligence which may be attributed to Ms. Wolfe. Vermont Mutual bears the burden of proving this defense of comparative negligence by a preponderance of the evidence.

ELEMENTS OF THE CLAIM OF NEGLIGENCE

As the operator of a motor vehicle, Ms. Wolfe had a duty to drive with reasonable care at all times. A driver must take reasonable measures to ensure that he or she does not cause a collision with another vehicle. For example, a driver must maintain a reasonably safe speed and stopping distance and maintain control of his or her vehicle within the appropriate lane of travel.

In order to prove the claim of negligent operation, Ms. Sherman must establish each of the following elements by a preponderance of the evidence:

A. Breach of the standard of care

Ms. Sherman must prove by a preponderance of the evidence that Ms. Wolfe breached her duty to drive with reasonable care.

B. Causation

Ms. Sherman must also prove by a preponderance of the evidence that negligent operation by Ms. Wolfe was a cause of the collision between the two vehicles. This question has two components.

First, Ms. Sherman must prove that “but for” such negligence the collision would not have occurred. In other words, she must prove that in the absence of negligence by Ms. Wolfe, the collision would not have taken place.

Second, Ms. Sherman is required to show that an act or acts of negligence by Ms. Wolfe was a substantial factor in causing the collision. A collision may have several causes. Some of these causes are very direct and obvious. Others are more remote. The law does not require that the negligent act or acts be the sole cause of the collision. Several factors may combine to cause a collision. You must decide whether any negligence by Ms. Wolfe was too remote or unconnected to the collision to satisfy the requirement of causation.

ELEMENTS OF THE CLAIM OF COMPARATIVE NEGLIGENCE

If you determine that Ms. Wolfe was not negligent or that any negligence on her part was not a substantial factor in causing the collision, your deliberations are over and you may return a verdict in favor of Vermont Mutual. But if you determine that Ms. Wolfe was negligent and that her negligence was a substantial factor in causing the collision, you must also consider the defense of comparative negligence. This defense has the following elements.

A. Breach of Duty of Care

Like Ms. Wolfe, Ms. Sherman also has a duty to drive with reasonable care at all times. She has the same legal obligation to maintain control of her vehicle, to operate at a safe speed, and to remain within the appropriate lane of travel.

You must decide whether Ms. Sherman violated her duty of care in operating her automobile.

B. Causation

You must also decide whether negligent operation by Ms. Sherman was a cause of the collision. The same principles of causation which I described concerning the claim against Vermont Mutual apply to the defense of comparative negligence brought against Ms. Sherman.

C. Comparison of Negligence

If you find that both drivers were negligent and that both caused the collision in the manner I have just described, then you must decide how to divide this negligence in percentage terms between the two drivers. For example, one driver might be 20 percent at fault and the other driver might be 80 percent at fault. This is an illustration only. I do not mean to suggest any particular division of fault. The apportionment of shared fault is a factual matter which is entirely up to the jury to decide. Any recovery by Ms. Sherman will be reduced by the

percentage of negligence (if any) which you assign to her. If her negligence exceeds 50 percent, she will recover nothing.

PLAINTIFFS' ONLY OPPORTUNITY TO RECOVER

Tia Sherman and her husband have only one day in Court to make their claim against Vermont Mutual Insurance Co. They cannot commence another lawsuit at a later date against Vermont Mutual Insurance Co. or against Ms. Wolfe.

FINAL INSTRUCTIONS

This completes my instructions to the jury. You will retire now to the jury room to deliberate in private about the issues in the case. I will provide a verdict form to guide you in your deliberations. You will also receive the exhibits which were admitted into evidence. I will also provide six copies of these instructions.

I appoint _____ as your foreperson. She shall be responsible for making sure that the deliberations occur in an orderly fashion and that every juror has an opportunity to participate.

Any verdict which you return must be unanimous. This means that you cannot answer a question on the verdict form unless and until all jurors agree on the answer.

If you need to communicate with me, please do so in writing. I will confer with the lawyers about your written question and send back a written response. Please advise the court officer after you reach a verdict but do not tell him or her or anyone else what the verdict is until you return to the courtroom at which time I will receive the verdict form directly from your

foreperson. The foreperson should keep possession of the verdict form in an envelope provided for the purpose until you return to the courtroom.

Dated at Rutland, in the District of Vermont, this 6 day of January, 2019



Geoffrey W. Crawford, U.S. District Judge