

ORIGINAL

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

FRANCESCO SGAMBELLONE,

Plaintiff,

vs.

STATE OF IOWA,

Defendant.

LAW NO. LACV135736

JURY INSTRUCTIONS

MEMBERS OF THE JURY:

This case arises out of a February 21, 2016 incident in Black Hawk County, Iowa involving Plaintiff Francesco Sgambellone and the State of Iowa.

In this trial, Plaintiff Francesco Sgambellone seeks compensation for damages that he claims to have suffered because of the incident. Defendant State of Iowa denies any fault for Francesco Sgambellone's injuries. Defendant State of Iowa also contests the nature and extent of the damages claimed by Francesco Sgambellone. The Defendant State of Iowa also contends Plaintiff Francesco Sgambellone was at fault.

Do not consider this summary as proof of any claim. I will now explain the general principles of law that apply to this case. You will then reach a verdict in this case by applying those principles of law to the evidence you received in this court room.

INSTRUCTION NO. 1

100.2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 2

100.3

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

100.5

Certain testimony has been entered into evidence by video deposition. A video deposition is testimony taken under oath before the trial and preserved by video. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

100.9

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 6

100.12

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 7

100.11

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 8

To recover damages, Francesco Sgambellone must prove each of the following three numbered propositions:

- (1) The defendant was negligent in one or more of the following ways:
 - a. Failure to maintain a proper lookout; OR
 - b. Failure to maintain a clear view of the direction of travel; OR
 - c. Failure to yield the right of way to a pedestrian; OR
 - d. Failure to maintain control of the forklift; OR
 - e. Failure to operate the forklift at a reasonable speed under the circumstances; OR
 - f. Entrusting the forklift to Trent Ames who was not properly trained; OR
 - g. Failing to properly train Trent Ames.
- (2) The negligence was a cause of any item of Francesco Sgambellone's damages.
- (3) The amount of Francesco Sgambellone's damages.

If Francesco Sgambellone has failed to prove each of the three numbered propositions listed above, he is not entitled to damages. If Francesco Sgambellone has proved the three numbered propositions listed above, he is entitled to compensation for damages in some amount.

INSTRUCTION NO. 9

You have received evidence that the Occupational Safety and Health Administration required the following:

1. That UNI ensure Trent Ames was competent to operate a forklift safely as demonstrated by the successful completion of training and evaluation. 1910.178(1)(1)(i);
2. That UNI train Trent Ames on pedestrian traffic in areas where the vehicle will be operated. 1910.178(1)(3)1910.178(1)(3)(ii)(D)
3. That UNI evaluate Trent Ames' forklift operator performance at least once every three years. 1910.178(1)(4)(iii);
4. That UNI certify that Trent Ames has been trained and evaluated. The certification shall include the name of the operator, the date of the training, the date of the evaluation, and the identity of the person(s) performing the training or evaluation. 1910.178(1)(6);
5. That Trent Ames keep the forklift under control at all times. 1910.178(n)(1);
6. That Trent Ames should sound the horn at all locations where his vision was obstructed. 1910.178(n)(4);
7. That Trent Ames look in the direction of, and keep a clear view of the path of travel 1910.178(n)(6); and
8. That Trent Ames operate the forklift at a speed that will permit it to be brought to a stop in a safe manner under the existing travel conditions. 1910.178(n)(8).

Conformity with the forgoing OSHA regulations is evidence that UNI was not negligent and non-conformity with these OSHA regulations is evidence that UNI was negligent. Such evidence is relevant and you should consider it, but it is not conclusive proof.

INSTRUCTION NO. 10

700.2

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 10.1

400.1

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 12

730.1

An employer is liable for the negligent acts of an officer, agent or employee if the acts are done in the scope of the employment.

INSTRUCTION NO. 13

2910.2

The plaintiff and the State of Iowa have equal rights in court. This means you are to decide this case as though it were a case between two individuals.

INSTRUCTION NO. 14

700.3

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

INSTRUCTION NO. 15

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Francesco Sgambellone and State of Iowa and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 16

After you have compared the conduct of all parties, if you find the plaintiff, Francesco Sgambellone, was at fault and his fault was more than 50% of the total fault, the plaintiff cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

INSTRUCTION NO. 17

The State of Iowa claims Francesco Sgambellone was at fault in one or more of the following particulars:

- a. failure to maintain proper lookout; or,
- b. standing in or near the fork lift lane.

These grounds of fault will be explained to you in other instructions.

The State of Iowa must prove both of the following propositions:

- 1. Francesco Sgambellone was at fault in one or more ways listed above.
- 2. Mr. Sgambellone's fault was a cause of his damage.

If the State of Iowa has failed to prove either of these propositions, the State of Iowa has not proved its defense. If the State of Iowa has proved both of these propositions, then you will assign a percentage of fault against Francesco Sgambellone and include his fault in the total percentage of fault found by you answering special verdicts

INSTRUCTION NO. 18

700.8

The mere fact that an accident occurred or a party was injured does not mean a party was negligent.

If you find Plaintiff Francesco Sgambellone is entitled to recover damages, you shall consider in determining an amount that will fully compensate Francesco Sgambellone for the damages he suffered:

1. The reasonable and necessary hospital and doctor charges, prescriptions, and other medical services from the date of injury to the present time.
2. The present value of reasonable and necessary hospital and doctor charges, prescriptions, and other medical services which will be incurred in the future.
3. The reasonable value of lost wages from the date of injury to the present time.
4. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
5. Loss of function of the body and mind from the date of injury to the present time. Loss of body and mind is the inability of a particular part of the body or mind to function in a normal manner.
6. The present value of future loss of function of the body and mind.
7. Physical and mental pain and suffering from the date of the injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
8. The present value of future physical and mental pain and suffering.

The amount you assess for loss of function of body and mind, physical and mental pain and suffering and future earning capacity cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence.

Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the Defendants as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiffs for future losses.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Francesco Sgambellone is 32.3 more years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about their health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 22

200.38

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 23

100.21

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Occasionally, jurors want to ask questions after they begin deliberating. If that should occur, please consider the following:

- A. Words not defined in these instructions should be given their ordinary meanings.
- B. There will be no additional evidence and no additional instructions on the law. These instructions contain all the law you need to decide the case.
- C. I will meet with you after you reach a verdict, if I can. At that time I will be happy to answer your questions about the trial process.
- D. If you ask me a question during your deliberations, your foreperson must reduce the question to writing and give it to the court attendant who will deliver it to me. I must then contact the lawyers and conduct a hearing with them, but not in your presence. After that, I will send you a written answer consistent with subparagraphs (A) and (B).

If, after considering these matters, you still wish to ask me a question, follow the procedure outlined here. Then save your written question and written answer I send you and return them with your Verdict Form when you have completed your deliberations and returned a verdict.

The court attendant who has been working with me on this case is in the same position I am. The court attendant has taken an oath not to communicate with you except to ask you if you have agreed upon a verdict. Please do not put the court attendant on the spot by asking him/her any questions. You should direct any questions to the court and not to the court attendant.


INSTRUCTION NO. 26

I am giving you a verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict forms must be signed by your presiding officer.

After deliberating for six (6) hours, excluding meals or recesses outside your jury room, a verdict can be returned if seven of you agree upon the answers to these questions. In that case, the verdict forms must be signed by all seven jurors who agree.

When you have agreed upon the verdicts and appropriately signed them, inform the Court Attendant.

Dated this 9th day of April 2021.


David P. Odekirk
Judge, First Judicial District of Iowa