

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

JEREMY NAGEL,

Plaintiff,

v.

BRUCE EDWARD WEHNER,
QUEST LINER, INC.,

Defendants.

NO. LACV029479

INSTRUCTIONS TO THE JURY

FILED
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CLERK OF DISTRICT COURT
SIOUX COUNTY, IOWA

INSTRUCTION NO. 1

MEMBERS OF THE JURY:

This action arises from an incident that happened at the South Feed Mill in Boyden, Iowa, on January 15, 2020. The defendant, Bruce Wehner, a commercial truck driver for Quest Liner, Inc., was attempting to deliver Lysine to the Feed Mill. At some point, the Quest Liner truck got stuck. As Mr. Wehner was moving the truck out of its stuck position, Mr. Nagel slipped on some ice and fell under the semi. The truck ran over Mr. Nagel's feet. Mr. Nagel claims that Mr. Wehner was negligent and that Mr. Wehner's negligence caused Mr. Nagel's injuries. Quest Liner and Mr. Wehner deny Mr. Nagel's claims, and claim Mr. Nagel's own negligence was the cause of Mr. Nagel's injuries.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Iowa Civil Jury Instruction 100.1

INSTRUCTION NO. 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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.

Iowa Civil Jury Instruction 100.2

INSTRUCTION NO. 3

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, 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 rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Iowa Civil Jury Instruction 100.4

INSTRUCTION NO. 4

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.

Iowa Civil Jury Instructions 100.9

INSTRUCTION NO. 5

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.

Iowa Civil Jury Instructions 100.3

INSTRUCTION NO. 6

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.

Iowa Civil Jury Instruction 100.12

INSTRUCTION NO. 7

During this trial, you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath and in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Iowa Civil Jury Instruction 100.6

INSTRUCTION NO. 8

You have heard evidence claiming Ryan Reiser made statements before this trial while under oath which were inconsistent with what Ryan Reiser said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe Ryan Reiser. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Iowa Civil Jury Instruction 100.14

INSTRUCTION NO. 9

You have heard evidence claiming Mr. Nagel and/or Mr. Wehner made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Mr. Nagel and/or Mr. Wehner had made it under oath during the trial.

If you find such a statement was made and was inconsistent with Mr. Nagel's or Mr. Wehner's testimony during the trial you may also use the statement as a basis for disregarding all or any part of their testimony during the trial, but you are not required to do so. You should not disregard Mr. Nagel's and/or Mr. Wehner's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Iowa Civil Jury Instruction 100.15

INSTRUCTION NO. 10

The fact that Questliner, Inc. is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Iowa Civil Jury Instructions, 100.20.

INSTRUCTION NO. 11

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

Iowa Civil Jury Instruction 400.1

INSTRUCTION NO. 12

Plaintiff claims the defendant Bruce Wehner was at fault in one or more of the following particulars:

1. By failing to keep a proper lookout.
2. By failing to maintain control of the semi truck he was driving.

These grounds of fault have been explained to you in other instructions.

To recover on his claim, Plaintiff must prove all of the following propositions.

1. That the defendant Bruce Wehner was at fault.
2. That the defendant Bruce Wehner's fault was a cause of the plaintiff's damage.
3. The amount of damage caused by the defendant Bruce Wehner's fault.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of Comparative Fault, as explained in Instruction 13.

Iowa Civil Jury Instruction 400.5

INSTRUCTION NO. 13

The defendants claim the plaintiff was at fault in one or more of the following particulars:

1. Failing to maintain a proper lookout for his own safety;
2. Failing to maintain balance;
3. Positioning himself too close to a semi-tractor trailer which was being pulled by another vehicle;
4. Failing to notify or warn Defendant, Bruce Wehner, of his close proximity;
5. Taking an unsafe path to assist with unhooking the Defendant's tow when a safer path was available to him.

To succeed on their defense of comparative fault, the defendants must prove both of the following propositions:

1. The plaintiff was at fault.
2. The plaintiff's fault was a cause of the plaintiff's damage.

If the defendants have failed to prove either of these propositions, the defendants have not proved their defense. If the defendants have proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

Iowa Civil Jury Instruction 400.6

INSTRUCTION NO. 14

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

Iowa Civil Jury Instruction 700.3.

INSTRUCTION NO. 15

You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiff's claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

Iowa Civil Jury Instruction, 700.3A.

INSTRUCTION NO. 16

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

Iowa Civil Jury Instruction 700.8

INSTRUCTION NO. 17

Control - Common Law. A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed, and stop it reasonably fast.

A violation of this duty is negligence.

Iowa Civil Jury Instruction 600.7

INSTRUCTION NO. 18

"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.

Iowa Civil Jury Instructions, 700.2.

INSTRUCTION NO. 19

"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 the operation of the driver's vehicle in relation to what the driver saw or should have seen. A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.

Iowa Civil Jury Instruction 600.72

INSTRUCTION NO. 20

"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.

Iowa Civil Jury Instruction 700.12

INSTRUCTION NO. 21

Rescue Doctrine. A person who reasonably believes property is in imminent and serious danger may choose to risk his own safety to attempt a rescue. The rescuer is not negligent if his conduct is that of an ordinarily prudent person under existing circumstances. The rescuer is not required to reach the same conclusion that others, by the exercise of hindsight and time for deliberation, might be able to suggest as a better course of conduct. While the rescuer need not make the wisest choice, he is negligent if the rescue itself is unreasonable or if the rescuer acts unreasonably in the course of it. If the rescuer's conduct was a normal or natural response to the apparent peril, the defendant's action in creating the peril is a cause of the rescuer's harm.

The amount of risk a rescuer reasonably can undertake increases with the value of the object of the rescue.

Iowa Civil Jury Instruction 700.13

INSTRUCTION NO. 22

If you find Jeremy Nagel is entitled to recover damages, you shall consider the following items:

1. The loss of function of the body from the date of the injury to the present time.

Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

2. The loss of function of the body in the future.

3. Physical and mental pain and suffering from the date of 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 and/or loss of enjoyment of life.

4. Physical and Mental pain and suffering in the future.

The amount you determine cannot be measured by an 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 a party 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.

The amounts, if any, you find for each of the above items will be used to answer the questions in the verdict form.

Iowa Civil Jury Instruction 200.1

INSTRUCTION NO. 23

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Jeremy Nagel is 50 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Jeremy Nagel's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Iowa Civil Jury Instruction 200.37

INSTRUCTION NO. 24

Damages may be the fault of more than one person or thing. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff, Jeremy Nagel, and the Defendant, Bruce Wehner, 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. Defendants, Questliner, Inc. and Bruce Wehner are to be treated as a single party for the purpose of determining their percentage of fault.

Iowa Civil Jury Instruction 400.2 (as modified)

INSTRUCTION NO. 25

After you have compared the conduct of all parties, if you find the Plaintiff, Jeremy Nagel, was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff, Jeremy Nagel, 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.

Iowa Civil Jury Instruction 400.3

INSTRUCTION NO. 26

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

Iowa Civil Jury Instructions, 200.38

INSTRUCTION NO. 27

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.

Iowa Civil Jury Instruction 100.21

INSTRUCTION NO. 28

I am giving you one verdict form. During the first three hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for three hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only five of you agree upon the answers to the questions. In that case, the verdict must be signed by all five jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

Iowa Civil Jury Instruction 300.1

INSTRUCTION NO. 29

Upon retiring you shall select a foreman or forewoman. 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.

Iowa Civil Jury Instruction 100.18