

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

RICKY LOVE,  
Plaintiff,  
vs.  
LISA FLYGSTAD,  
Defendant.

NO. LACV051012

INSTRUCTIONS

2020 FEB 13 PM 4:12  
CLERK OF DISTRICT COURT  
STORY COUNTY IOWA

FILED

Statement of the Case

MEMBERS OF THE JURY:

In this case, motor vehicles operated by the Plaintiff Ricky Love and the Defendant Lisa Flygstad collided on East Riverside Drive in Ames on November 29, 2016. Plaintiff Ricky Love was operating a street sweeper to clear the road. Just prior to the collision, Defendant Lisa Flygstad was driving in the same direction behind the plaintiff. Plaintiff Rick Love alleges that Defendant Lisa Flygstad negligently operated her vehicle. He further alleges that as a result of her negligence, he was injured. Defendant Lisa Flygstad denies that she is at fault for the collision and denies that the accident was a cause of the injuries claimed. She further alleges that Plaintiff Ricky Love was negligent in his operation of his vehicle.

Do not consider this summary as any proof.

**INSTRUCTION NO. 1**

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 the fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

**INSTRUCTION NO. 2**

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.

**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;  
and
- (4) Any other matter admitted (e.g. Answers to Interrogatories,  
matters of which judicial notice was taken, etc.).

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

The following are not evidence:

- (1) Statements, arguments, questions and comments by the lawyers;
- (2) Objections and rulings on objections;
- (3) Testimony I told you to disregard; and
- (4) Anything you saw or heard about this case outside the courtroom.

**INSTRUCTION NO. 4**

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider the testimony as if it had been given in Court.

**INSTRUCTION NO. 5**

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 in writing. Consider interrogatories and answers to them as if the questions have been asked and answered here in court.

**INSTRUCTION NO. 6**

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 witness’ testimony.

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

- (1) Whether the testimony is reasonable and consistent with other evidence you believe;

- (2) The witness' appearance, conduct, age, intelligence, memory and knowledge of the facts; and
- (3) The witness' interest in the trial, their motive, candor, bias and prejudice.

**INSTRUCTION NO. 7**

You have heard evidence that Ricky Love made statements before this trial while under oath and not under oath.

If you find a statement was made, you may regard the statement as evidence in this case, the same as if Ricky Love had made the statement under oath during the trial.

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

**INSTRUCTION NO. 8**

You have heard evidence that Lisa Flygstad made statements before this trial while under oath and not under oath.

If you find a statement was made, you may regard the statement as evidence in this case, the same as if Lisa Flygstad had made the statement under oath during the trial.

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

INSTRUCTION NO. 9

If you find Plaintiff Ricky Love is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges and prescriptions from the date of injury to the present time.
2. Loss of function of the mind and body from the date of injury to the present time.  
Loss of mind and body is the inability of a particular part of the mind or body to function in a normal manner.
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 or the loss of enjoyment of life.
4. The present value of future physical and mental pain and suffering. Future Physical and Mental Pain and Suffering are defined as and calculated using the present value of future physical and mental pain and suffering.
5. The present value of future loss of function of the mind and body. Past loss of function of the full mind and body is defined as loss of function of the mind and body from the date of injury to the present time. Loss of function of the mind and body is the inability of a particular part of the mind and body to function in a normal manner.

The amount you assess for loss of function of the mind and body and physical and mental pain and suffering in the past and future 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 Defendant 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 special verdicts.

**INSTRUCTION NO. 10**

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

**INSTRUCTION NO. 11**

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 the Plaintiff and Defendant 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. 12**

After you have compared the conduct of all parties, if you find the Plaintiff, Ricky Love, was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff, Ricky Love, 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. 13**

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 Plaintiff for future losses.

**INSTRUCTION NO. 14**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Ricky Love is an additional 25.5 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Ricky Love's health, habits, occupation, and lifestyle, when deciding issues of future damages.

**INSTRUCTION NO. 15**

The Plaintiff claims the Defendant, Lisa Flygstad, was at fault in one or more of the following particulars:

- a. In not traveling at a reasonable and proper speed; or
- b. In not maintaining control of her vehicle; or
- c. In not maintaining a proper lookout.

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

The Plaintiff must prove all of the following propositions:

- 1. The Defendant was at fault. In order to prove fault, the Plaintiff must prove:
  - a. Lisa Flygstad drove at a speed which was not reasonable and proper for the conditions; or
  - b. Lisa Flygstad failed to maintain control of her vehicle; or
  - c. Lisa Flygstad failed to keep a proper lookout.

2. The Defendant's fault was a cause of the Plaintiff's damage.
3. The amount of damage.

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 elsewhere in these instructions.

**INSTRUCTION NO. 16**

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this duty is negligence.

**INSTRUCTION NO. 17**

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.

**INSTRUCTION NO. 18**

"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 violation of this duty is negligence.

**INSTRUCTION NO. 19**

The Defendant, Lisa Flygstad, claims the Plaintiff, Ricky Love, was at fault for one or more of the following particulars:

- a. In failing to yield when entering the highway;
- b. In failing to have a visible light on his vehicle;
- c. In failing to have a reflective warning device on his vehicle; and
- d. Creating hazardous condition on highway.

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

The Defendant must prove both of the following propositions:

1. The Plaintiff was at fault. In order to prove fault, the Defendant must prove:

- a. Ricky Love failed to yield when entering the highway; or
- b. Ricky Love failed to have a visible light on his vehicle; or
- c. Ricky Love failed to have a reflective warning device on his vehicle; or
- d. Ricky Love created a hazardous condition on the highway.

2. The Plaintiff's fault was a cause of the Plaintiff's damage.

If the Defendant has failed to prove either of these propositions, the Defendant has not proven her defense. If the Defendant has 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.

**INSTRUCTION NO. 20**

The driver of a vehicle shall stop or yield to the entrance of a through highway and shall yield the right of way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway that they are a danger. Then the driver, having yielded, may proceed cautiously and carefully enter the through highway.

A violation of this law is negligence.

**INSTRUCTION NO. 21**

All vehicles shall be equipped with a white light visible from 500 feet to the front of the vehicle and with a red light visible from 500 feet to the rear.

A violation of this law is negligence.

**INSTRUCTION NO. 22**

Every slow moving vehicle operated on a highway at a speed of 35 mph or less shall be identified with a reflective device visible from the rear.

A violation of this law is negligence.

**INSTRUCTION NO. 23**

A driver on the highway is under a duty not to operate his vehicle in such a way as to create a hazard on the highway. A driver on the highway must keep the highway free from all obstructions.

A violation of this law is negligence.

**INSTRUCTION NO. 24**

"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. 25**

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

**INSTRUCTION NO. 26**

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

**INSTRUCTION NO. 27**

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 percentage of fault and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

**INSTRUCTION NO. 28**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that

has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

**INSTRUCTION NO. 29**

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.

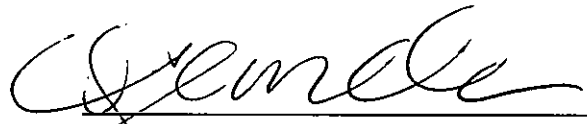
**INSTRUCTION NO. 30**

I am giving you one verdict form with six (6) questions which explains the sequence in which the questions are answered. If you agree to the answers, the verdict form shall be signed by the person you select as a foreperson.

After deliberating six (6) hours from \_\_\_\_\_ o'clock \_\_. M., excluding meals or recesses outside your jury room, then it is necessary that only seven (7) of you agree to the verdict. In that case, the verdict must be signed by all seven (7) jurors.

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

Submitted this 18<sup>th</sup> day of February, 2020.

  
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Amy M. Moore  
District Court Judge