

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3772

RONDA A. OUBRE, Individually and on
behalf of her minor son,
Bryant David Oubre, ET AL.,

Plaintiffs-Appellees,

CURTIS PAUL OUBRE,

Plaintiff-Appellant
Cross-Appellee,

versus

LESLEY HOLBERT and SCHNEIDER NATIONAL
CARRIERS, INC.,

Defendants-Appellees,
Appellants-Cross Appellants.

TAMELA BERGERON DEVUN, Individually and
on behalf of the Minors,
Michelle Eckliff and Rita Bergeron,
ET AL.,

Plaintiffs,

MICHELLE ECKLIFF and RITA BERGERON,

Plaintiffs-Appellants
Cross-Appellees,

versus

SCHNEIDER NATIONAL CARRIERS, INC.,

Defendant-Appellee
Cross-Appellant.

Appeals from the United States District Court for the
Eastern District of Louisiana
(CA 91 1427 I c/w 91 2787 I)

(October 18, 1993)

Before SNEED*, REYNALDO G. GARZA, and JOLLY, Circuit Judges.

PER CURIAM:**

This appeal arises from an automobile accident between a tractor trailer unit driven by Lesley Holbert, an employee of Schneider National Carriers, Inc., and a van driven by Mark Oubre. Curtis Oubre, the appellant, was a passenger. The appellants Michelle Eckliff and Rita Bergeron are the illegitimate children of the deceased driver, Mark Oubre. The case was tried to a jury in the Eastern District of Louisiana.

In apportioning fault, the jury assigned Mark Oubre sixty percent negligence, Schneider National Carriers thirty percent, and the State of Louisiana ten percent (for their failure to post a low clearance notice at the last available detour as required by state statute). The jury also found that Curtis Oubre sustained damages in the amount of \$34,100 and awarded him thirty percent of that

*Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

amount, the portion attributable to the defendant, Schneider National Carriers, Inc.

After reviewing the briefs, the relevant parts of the record, and after hearing argument of counsel, we are convinced that this appeal presents no reversible error except in one respect. In particular we find that the jury's apportionment of fault was supported by the evidence, and the amount of damages calculated by the jury was not inadequate; the district court did not abuse its discretion in the admission of any evidence complained of herein, or in excluding any evidence, particularly, the testimony of Michelle Eckliff and Rita Bergeron; and the district court did not abuse its discretion in failing to submit a jury question addressing Eckliff's and Bergeron's asserted loss of parental care, guidance, affection, and services. We do think, however, that the district court erred in reducing the award to the plaintiff, Curtis Oubre, to reflect only the thirty percent fault that had been assigned to the defendant, Schneider National Carriers, Inc.

In the circumstances of this case, it is clear to us that under article 2324 of the Louisiana Civil Code, Oubre is entitled to fifty percent of his recoverable damages, which in this case means that his award should be increased from \$10,230 to \$17,050. See LA. CIV. CODE ANN. art. 2324 (West Supp. 1993). The case is therefore remanded to the district court for entry of judgment in favor of Curtis Oubre in the amount of \$17,050.

Finally, we find no reversible error alleged in the cross-appeal complaining that (1) the trial court erred in allowing certain testimony from State Trooper Harmann and (2) the jury erred in failing to find Curtis Oubre at fault for his injuries. The judgment of the district court is therefore

AFFIRMED in part, REVERSED in part, and
REMANDED for entry of judgment.