

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7757

JEAN S. MOORE, As Conservator for
JAMES STEVEN MOORE, a/k/a JIM S. MOORE,

Plaintiff-Appellee,

VERSUS

THE KROGER COMPANY, ET AL.,

Defendants,

THE KROGER COMPANY and CLAUDE BROWN, JR.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-WC90-126-D)

(February 24, 1994)

Before HIGGINBOTHAM and DUHÉ, Circuit Judges and STAGG¹, District Judge.

PER CURIAM:²

Defendants, Kroger and Brown, appeal a jury verdict in favor of Plaintiff-Appellee who sustained devastating injury in a motor vehicle accident. The jury found Appellants twenty percent at fault in causing the collision between a vehicle following

¹ District Judge of the Western District of Louisiana, sitting by designation.

² 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellants' vehicle, and the Plaintiff's vehicle which was proceeding in the opposite direction. Four issues are raised on appeal: 1) sufficiency of the evidence to support the jury verdict; 2) propriety of the court's jury instruction on the duties imposed by Mississippi law on preceding and following drivers; 3) whether the district court erred by refusing to bifurcate the liability and damage aspects of the trial; and 4) whether the district court allowed Plaintiff's counsel to improperly cross-examine Appellant Brown. We find no error and affirm.

Our review of the record firmly convinces us that, based upon that record, a reasonable jury could have found as this jury did. The jury's choices based upon the conflicting evidence were entirely reasonable. Likewise, the jury charge adequately traced the contours of Mississippi law regarding the respective duties and responsibilities of leading and following drivers to each other and to third parties lawfully using the roadways.

Decisions whether to bifurcate trials are peculiarly within the province of the trial court and we find no abuse of the trial court's discretion here. Appellants argue simply that there was a risk of prejudice because of the nature and extent of Plaintiff's injuries, but the existence of such risk (which is present in every personal injury case to a greater or lesser degree) is not enough to show abuse of discretion. Further, there is no evidence that this jury was swayed by sympathy in its liability determination.

Appellants' argument that permitting rigorous cross-examination of Appellant Brown, particularly with extensive use of

his prior deposition testimony, was somehow error is not convincing. Rigorous examination under the watchful eye of an experienced trial judge is part of the bedrock of our adversary system of justice. While we acknowledge that it is possible to err in this regard, there was no error here.

The judgment of the district court is

AFFIRMED.