

4/3/01

SUPREME COURT OF LOUISIANA

No. 00-C-2628

TERRY LASYONE

Versus

STATE OF LOUISIANA, DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

LEMMON, J., Concurring in Part and Dissenting in Part

I concur in holding the Department partially liable. While the dissenters would hold plaintiff strictly to his uneducated estimates of time, speed and distance, the trier of fact heard and observed plaintiff on cross-examination about these matters, and concluded that the accident occurred roughly in the manner described by plaintiff. Moreover, while the heavy truck at a moderate speed clearly would have gone over or through the guardrail if struck at a right angle to the rail, the trier of fact apparently concluded that plaintiff glanced off the rail at a much lesser angle while trying to move to the right, and did not strike the rail after making a hard right turn.

Nevertheless, I disagree that this case should be analyzed on the basis of strict liability and with any suggestion that the result would be different if the accident had occurred after the legislative abolition of strict liability.¹

As the majority notes, the essential difference between a case of simple negligence and a case of strict liability is that the plaintiff in the former case has the additional burden of proving the defendant's knowledge of the harm-causing

¹I also disagree with some language quoted from earlier opinions that the Department's duty to maintain highways in a reasonably safe condition is owed to motorists exercising reasonable care. As the majority notes in disagreeing with the court of appeal on the point, that duty is owed to all motorists. The motorist's failure to use proper care, while relevant to contributory negligence, does not in any manner affect the determination of the Department's negligence.

hazardous or defective condition for which the defendant was responsible. Kent v. Gulf States Utilities Co., 418 So.2d 493 (La. 1982). In the present case, the Department clearly knew of the guardrail that it constructed and either knew or should have known that the placement of the guardrail violated prevailing safety standards. Plaintiff proved that the placement of the guardrail violated applicable safety standards, and the Department failed to produce evidence that the placement of the guardrail was warranted by the presence of a steep embankment. Because the Department was negligent in placing the guardrail at that location and that negligence was a contributing cause of plaintiff's injury, I concur in the determination that the Department was partially at fault.

On the other hand, I dissent from the allocation of fifty percent of the fault to the Department, whose negligence pales greatly in comparison to that of plaintiff. I would not fix the Department's fault at any amount higher than twenty-five percent.