

# SUPREME COURT OF LOUISIANA

*No. 97-C-0293 c/w No. 97-C-0302*

DANNY P. AND MARY G. THOMPSON ET AL.

Versus

STATE OF LOUISIANA ET AL.

LEMMON, J., Dissenting

The record in this cases establishes that tall trucks frequently struck the tree limbs that were overhanging the highway, that limbs frequently were broken off in the trees and that broken limbs and vines often hung over the highway and were blown down by hard winds, that the Department knew of this situation (and perhaps even relied on the tall trucks to maintain vertical clearance), and that there was a hard wind blowing on the day of the accident. Furthermore, the trial judge accepted the testimony of the eyewitness that a limb from an overhanging tree struck plaintiff's vehicle and caused him to lose control and to strike other trees off the roadway. This evidence, viewed in the light most favorable to the party who prevailed before the trier-of-fact, provided sufficient support for the trial court's imposition of liability on the Department, based on findings that the overhanging limbs low enough to be struck by tall trucks constituted an unreasonably dangerous condition, that the Department knew of this dangerous condition, and that the Department failed to remedy this condition.

I accordingly dissent from the majority's decision affirming the judgment of the court of appeal which substituted that court's conclusions for the factual findings of the trial court that were supported in the record.