

62

BEN E. SIMS,
Plaintiff,

vs.

W. D. OWENS and
MRS. LAURA E. OWENS,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Now comes the plaintiff and demurs to plea Six,
and as grounds therefor assign the following:

1st. Because the averment "operating an automobile upon the said Stapleton-Loxley highway, in Baldwin County, Alabama, recklessly" is but the conclusion of the pleader.

2nd. Because the averment that plaintiff was operating an automobile "recklessly", is but the conclusion of the pleader.

3rd. Because there are no facts averred to show how or in what manner the plaintiff was operating his automobile as would constitute "recklessly".

And plaintiff demurs to plea Nine on the following grounds:

(a) Because it is not negligence per se to have four passengers on the front seat of an automobile.

(b) Because there is no averment of fact or facts in said plea to show that the lack of the free use of and access to the appliances was the cause of the alleged injuries.

(c) Because the averment "and that the presence of the three passengers on the front of the plaintiff so crowded the plaintiff that he did not have the free use of and access to the appliances necessary to the proper control of his car" is but the conclusion of the pleader and no facts are averred to support such conclusion.

J. T. Blackburn.
Attorneys for Plaintiff

W. N. Owens et al

62

Book

B. C. Sims

VS

W. N. Owens et al

Filed

February 28 1973

Kurtis Deed
Chl

BEN E. SIMS,

Plaintiff,

VS.

W. D. OWENS, ET AL,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

Come the Defendants and for answer to the Plaintiff's complaint, and to each count thereof, separately and severally says:

FIRST:

They plead in short by consent the general issue with right to file such further and additional special pleas as they may think necessary.

Beebe & Hare
Attorneys for Defendants.

No 62

RECORDED

Ben C. Sims

VS

W. D. Owens

Filed 10/31/34

M. A. Stone
clerk.

BEN E. SIMS,
Plaintiff,
VS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

W. D. OWENS and MRS.
LAURA E. OWENS,
Defendents.

AT LAW.

And now come the Defendents and each of them separately and severally, and for answer to the interrogatories heretofore propounded by the Plaintiff say:

For answer to first interrogatory they say:

That they were not engaged in any kind of business in Baldwin County, on and just prior to August 26th, 1933, in which trucks were operated by means of gasoline; that they were not, on and just prior to the said date engaged in, or interested in, the business of hauling wood, by means of automobile trucks, in Baldwin County, Ala.

For answer to second interrogatory they say:

That on and just prior to August 26th, 1933, they did not have in their employ any servants, agents who operated automobile trucks in Baldwin County; that they did not have a servant, agent or employee who, on said date, operated or was operating a truck on and along the highway between Loxley and Stapleton; that one of their trucks did not collide with any automobile on said date, on the said highway.

For answer to third interrogatory they say:

That they did not know the Plaintiff B. E. Sims; that they have been advised that one B. E. Sims was injured on or about August 26th, 1933, by an automobile truck, but the said truck was not driven by one of their agents, servants, or employees, at the time of the said accident; that they did not know whether the said Ben E. Sims lost his left arm as a result of the said

alleged collision.

For answer to the fourth interrogatory they say:

That they did not operate any trucks in Baldwin County, on and just prior to August 26th, 1933; that they know nothing of the said accident, except what they have heard; that they did not know the number of the tag on the truck which is supposed to have been in the collision; that they did not know who and/or remained, who secured said tag, and in whose name the said tag was issued, if at all.

For answer to the fifth interrogatory they say:

That they did not own or have any interest in any automobile truck or trucks that were being used or operated along over the public highway of Baldwin County, Alabama, on or just prior to August 26th, 1933, other than as stock holders of the Boat Yard Timber Company, a corporation; that no truck belonging to them was operated along the highway between Loxley and Stapleton in Baldwin County, Alabama, on said date; that they were not interested in any business for which any automobile trucks were used in Baldwin County, Alabama, on said date, other than as stock holders of the Boat Yard Timber Company, a corporation; that the driver of the said truck, at the time of the alleged collision, was one Frank Gully, an employee of the Boat Yard Timber Company, a corporation; that the said Frank Gully reported the said collision to W. D. Owens as representative of the Boat Yard Timber Company, a corporation; that the said truck, at the time of the alleged collision was being used by and for the Boat Yard Timber Company, a corporation.

W. D. Owens.
Laura E. Owens.

STATE OF ALABAMA

COUNTY OF ESCAMBIA.

Before me, the undersigned authority, in and for said County, in said State, personally appeared W. D. Owens and Laura E. Owens, who are known to me and who, having been by me first duly sworn, depose and say that they have read over and understand the above answers to the interrogatories propounded by the Plaintiff in the case of Ben E. Sims vs. W. D. Owens and Laura E. Owens, pending in the Circuit Court of Baldwin County, Alabama, at Law;

That said answers are true and correct to the best of their knowledge and belief.

E. D. Owens

Laura E. Owens

Sworn to and subscribed before
me this the 9th day of January,
1933.

E. D. Stou

Notary Public, Escambia County,
Alabama.

62 Jany 1935

BEN E. SIMS,
Plaintiff,

VS.

W. D. OWENS, and MRS.
LAURA E. OWENS,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

ANSWERS TO INTERROGATORIES.

Filed this 16 day of Jan.
1935.

Robert S. Duck
Clerk.



BEN E. SIMS,

Plaintiff,

VS.

W. D. OWENS and
MRS. LAURA E. OWENS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

And now come the Defendants and for answer to the Plaintiff's complaint, and to each count thereof, separately and severally, say:

ONE:

That they are not guilty.

TWO:

That the facts therein alleged are untrue.

THREE:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that, at the time of the alleged accident, he was operating an automobile upon the said Stapleton-Loxley highway, in Baldwin County, Alabama, while under the influence of liquor.

FOUR:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that, at the time of the alleged accident, he was operating an automobile upon the said Stapleton-Loxley highway, in Baldwin County, Alabama, while in an intoxicated condition.

FIVE:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that he was, at the time of the alleged accident, operating an automobile upon the said Stapleton-Loxley highway, in Baldwin County, Alabama,

in excess of forty-five miles an hour.

SIX:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that he was, at the time of the alleged accident, operating an automobile upon the said Stapleton-Loxley highway, in Baldwin County, Alabama, recklessly.

SEVEN:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that he was, at the time of the alleged accident, operating an automobile over or along the said Stapleton-Loxley highway, in Baldwin County, Alabama, on the left or wrong side thereof.

EIGHT:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that he was, at the time of the alleged accident, operating an automobile over or along the said Stapleton-Loxley highway, in Baldwin County, Alabama, in an opposite direction of the other automobile, and attempted to pass the other car without giving the other automobile at least one-half of the main traveled portion of the roadway.

NINE:

That the Plaintiff was guilty of negligence which proximately contributed to the injuries complained of, in that he was, at the time of the alleged accident, operating his automobile along the said highway from Stapleton to Loxley, in Baldwin County, Alabama, and at the time of the said alleged injuries there were ten parties riding in the Plaintiff's automobile, an ordinary five passenger car, four on the front seat, and that the presence of the three passengers on the front seat of the Plaintiff so crowded the Plaintiff that he did not have the free use of and access to the appliances necessary to the proper control of his car.

Becker & Hare
Attorneys for Defendants.

C 2
Civil Jury

RECORDED

Quick

BEN E. SIMS,

Plaintiff,

VS.

W. D. OWENS and
MRS. LAURA E. OWENS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

ANSWER.

Filed this 12 day of
February, 1935.

Robert L. Quick
Clerk.

SUMMONS.

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon W. D. Owens and Mrs. Laura E. Owens to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of Ben E. Simms.

Witness my hand, this 14th day of August, 1934.

M. D. Starn
Clerk.

BEN E. SIMMS,

Plaintiff

vs.

W. D. OWENS and MRS. LAURA E.
OWENS,

Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

ONE

Plaintiff claims of the defendants the sum of Ten Thousand (\$10,000.00) Dollars as damages for that on or about the 26th day of August, 1933, the servant, agent or employee of the defendants, who was then and there acting within the line and scope of his employment as such, so negligently operated a motor truck on and along the public highway in Baldwin County leading from Loxley to Stapleton, in said County, and at a point between Loxley and Stapleton on said highway, that the said truck ran upon or against an automobile in which the plaintiff was then and there riding, and as a proximate result of said negligence the plaintiff was thrown from the automobile in which he was riding, his left arm was so badly mangled that same had to be amputated, causing the plaintiff to suffer much pain, both in body and mind, causing him to incur a large expense for medical attention and hospital bills and to be permanently injured, all to his damage in the above said amount, hence this suit.

TWO

The plaintiff claims of the defendants the sum of Ten Thousand (\$10,000.00) Dollars as damages for that on or about the 26th day of August, 1933, and while the plaintiff was traveling along the road leading from Stapleton to Loxley, and which is one of the public high-ways of Baldwin County, Alabama, the defendants, acting by and through their servant, agent or employee, and who was then and there acting within the line and scope of his employment, so negligently operated a truck on and along said highway and at a point between the said Loxley and Stapleton that said truck ran upon or against the automobile

in which the plaintiff was riding, and as a proximate result of said negligence the plaintiff's left arm was so badly mangled that it had to be amputated, he suffered much pain both in body and mind, he incurred much expense for medical attention and hospital bills in the treatment of his said injury, and was permanently disabled, all to his damage in the above said amount, hence this suit.

THREE

Plaintiff claims of the defendants the sum of Ten Thousand (\$10,000.00) Dollars as damages for that on or about August 26th, 1933, and while the plaintiff was traveling on and along the public highway that leads from Loxley to Stapleton, and while going in a northerly direction toward Stapleton, the servant, agent or employee of the defendants, who was then and there acting within the line and scope of his employment, and who was going in a southerly direction on the said highway, so negligently operated a truck on and along the said highway that it ran upon or against the automobile in which the plaintiff was then and there riding upon said highway, and as a proximate result of said negligence the plaintiff's left arm was so badly mangled that it had to be amputated, causing him to suffer much pain both in body and mind, to incur a large expense in the treatment of his said injury, to be permanently disabled all to his damage in the above said amount, hence this suit.

J. B. Blackburn
Garson E. Dunton
ATTORNEYS FOR PLAINTIFFS

in which the plaintiff was riding, and as a proximate result of said negligence the plaintiff's left arm was so badly mangled that it had to be amputated, he suffered much pain both in body and mind, he incurred much expense for medical attention and hospital bills in the treatment of his said injury, and was permanently disabled, all to his damage in the above said amount, hence this suit.

THREE

Plaintiff claims of the defendants the sum of Ten Thousand (\$10,000.00) Dollars as damages for that on or about August 26th, 1933, and while the plaintiff was traveling on and along the public highway that leads from Loxley to Stapleton, and while going in a northerly direction toward Stapleton, the servant, agent or employee of the defendants, who was then and there acting within the line and scope of his employment, and who was going in a southerly direction on the said highway, so negligently operated a truck on and along the said highway that it ran upon or against the automobile in which the plaintiff was then and there riding upon said highway, and as a proximate result of said negligence the plaintiff's left arm was so badly mangled that it had to be amputated, causing him to suffer much pain both in body and mind, to incur a large expense in the treatment of his said injury, to be permanently disabled all to his damage in the above said amount, hence this suit.

J. B. Blackburn
Gordon Edington Leigh
ATTORNEYS FOR PLAINTIFFS

Plaintiff demands trial by jury of the above
said cause.

J. B. Blackburn
Gordon Edington Leigh
ATTORNEYS FOR PLAINTIFF

DOCKET RECORDED
JURY - Original
62.

SUMMONS AND COMPLAINT.

BEN E. SIMMS,
Plaintiff,

VS.

W. D. OWENS and MRS. LAURA E.
OWENS,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW.

Filed on this the 14th day of Aug-
ust, 1934.

M. A. Stone
Clerk.

LAW OFFICES
J. B. BLACKBURN
BAY MINETTE, ALABAMA

Executed this 26th day of Aug. 1934. By
Plenig copy on W. D. Owens and Mrs.
W. D. Owens.

J. R. Roby, D. S. Clerk.

RECORDED

BEN E. SIMMS,

Plaintiff

vs.

W. D. OWENS and MRS.
LAURA E. OWENS,

Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

INTERROGATORIES PROPOUNDED BY THE PLAINTIFF TO
EACH OF THE DEFENDANTS

First Interrogatory

Please state whether or not you were engaged in any kind of business in Baldwin County on and before August 26, 1933, and in which business you used trucks, operated by means of gasoline. If you answer that you were so engaged in such business, please state the nature of your business and whether said business was operated in Baldwin County. Please state if on and/or before August 26, 1933, you were not engaged in, or interested in, the business of hauling wood, by means of automobile trucks, in Baldwin County. If so, please state how many trucks you used on or about said date, and who were the drivers of said trucks.

Second Interrogatory

Please state if on and before August 26, 1933, you had in your employ any servants or agents who operated automobile trucks for you in Baldwin County. Please state if, on August 26, 1933, one of your servants, agents or employees was not operating one of your trucks on and along the highway in Baldwin County between Loxley and Stapleton. Please state if one of your trucks did not collide with an automobile on or about the 26th day of August, 1933, on the public highway in Baldwin County between Loxley and Stapleton. If you answer in the affirmative, please state if the person in the other automobile which was in collision with your truck was not injured.

Third Interrogatory

Do you know the plaintiff, Ben E. Simms. Was not the said Ben E. Simms injured on or about August 26, 1933, by an automobile truck driven by one of your agents, servants or employees on the public highway between Loxley and Stapleton. Please state if the said Ben E. Simms did not lose his left arm as a proximate result of said collision.

Fourth Interrogatory

If you have answered in the former interrogatory that you were operating trucks in Baldwin County on and before August 26, 1933, please state where you secured your licenses for such trucks. Please state how many trucks you did operate in Baldwin County on and before August 26, 1933, and who were the drivers of said trucks. Please give the license numbers or tag numbers which were attached to the said truck. Who secured said tags and in whose name were the said tags or licenses issued. If you have testified that one of your trucks was in collision with an automobile being operated on and along the public highway in Baldwin County between Loxley and Stapleton on or about August 26, 1933, please give the name of the party who was driving said truck at said place and time.

Fifth Interrogatory

Did you or not, on or before August 26, 1933, own or have any interest in any automobile truck or trucks that were being used or operated along or over the public highways of Baldwin County, Alabama. State the numbers of such trucks and the nature and extent of your interest or ownership in each of them. Was there any occasion on August 26, 1933, for the use or operation of any automobile truck which you owned or in which you had any interest over or on the highway in Baldwin County, Alabama, between Loxley and Stapleton, in said County. Were you engaged in or in anywise interested in any

business for which any automobile truck or trucks which you owned or in which you had any interest could be or were used over the highway in Baldwin County, Alabama, between Loxley and Stapleton, in said County. State the nature of such business, the extent of your ownership or interest therein, and for what purpose said truck or trucks were used or could be used at said time. Give the name of each driver who operated such truck or trucks along said highway between said places at said time. Was any automobile truck owned by you or in which you had any interest injured or damaged on or about August 26, 1933. If so, please state fully and in detail the nature and extent of such injury or damage, and if you know, how such injury or damage was sustained. Did any driver or operator of any automobile truck which you owned or in which you had any interest make any report to you of any collision between the truck so driven by him and an automobile on the highway between Loxley and Stapleton. Give the name and address of such driver. For what purpose was he using the said truck at the time and place of the reported collision.

J. B. Blackburn
Gordon Edington, Leigh
ATTORNEYS FOR PLAINTIFF

STATE OF ALABAMA,
COUNTY OF BALDWIN.

Personally appeared before me, Ora Sirmon,
a Notary Public in and for said State and County, J. B. Blackburn, who being by me first duly sworn, deposes and says as follows: That he is one of the attorneys of record for the plaintiff in the above entitled cause, and if the foregoing interrogatories are well and truly answered by the defendants

and each of them, that same will be material testimony for
the plaintiff at the trial of said cause.

J. B. Blochman

Subscribed and sworn to before
me this 20th day of August,
1934.

Ora Simon
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA.

RECORDED

INTERROGATORIES

TO BE PROPOUNDED TO DEFENDANTS.

BEN E. SIMMS,
Plaintiff,

VS.

W. D. OWENS and MRS. LAURA E.
OWENS,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW.

Filed on this the 20th day of
August, 1934.

W. D. Owens

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

*Received the 20th day of Aug. 1934. By
Serving copy on W. D. Owens and Mrs.
W. D. Owens.*

J. B. Blackburn, D. S. & McLaughlin, Co.

(B)