

Court of Appeals Upholds Trial Judge's "Change of Heart" Ruling in Trucking Case

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Taking up an appeal of a trial judge's grant of a new trial to a plaintiff against whom a defense verdict had been returned, the South Carolina Court of Appeals recently took the unusual step of upholding the ruling, despite that the trial judge had, very candidly, acknowledged errors in related rulings. The case caption is *Rivera v. Newton et al*, Opinion no. 5055 (Decided Nov. 28, 2012), and the lesson in the broad sense, as always, is that a litigant needs to win at the trial level, because South Carolina's appellate courts are strongly predisposed to uphold trial court rulings. Very important policy considerations underlie this inclination, which rightly tempers any criticism of a given outcome. The *Rivera* scenario is an unusual one, though, and warrants some scrutiny.

As a passenger rather than the driver of a motor vehicle involved in a collision, Rivera was shielded from the most common defense that drivers assert against plaintiffs in motor vehicle accident cases: that the plaintiff himself or herself, rather than the defendant, was the negligent party in causing the accident. As a passenger Rivera's driving behavior obviously could not have caused the accident; she was a victim, plain and simple, the only question being whether it was the driver of the car she occupied (her brother, an unlicensed driver) or the driver of the logging truck they collided with (who was blocking both lanes of travel on a rural highway, at night) who was the negligent party.

Because Rivera, as a passenger, clearly was not negligent in causing the accident, she moved for a directed verdict on liability, in essence asking the court to instruct the jury that one of the defendants—her brother or the log truck operator—had been negligent in causing the accident, and that the jury's role was to determine which defendant was the cause. The trial judge denied the motion, ruling that the jury might (and was free to) find that Rivera had failed to meet her burden of proof against both of the defendants. As it turned out, this is precisely what the jury did: it returned a verdict in favor of the defendants, leaving Rivera—who had been ejected from the vehicle and was badly injured—with no recovery.

Rivera moved for a new trial on various grounds, prominent among them the argument that she had presented in requesting a directed verdict: that there was an accident, that she herself clearly had not caused it, and that it therefore had to have been caused by one of the defendants. Although the trial judge had been unmoved by these arguments at the directed verdict stage, he granted a new trial on basically these same grounds: "Therefore, I find and conclude that the court erred in not granting the plaintiff's motion for directed verdict as to liability and in instructing the jury that it could return a verdict in favor of all defendants."

The remarkable component of this ruling is the statement that "the court erred" in not granting the plaintiff's motion. Finding that a trial court erred is typically the province of an appellate court, rather than of the erring trial court itself. While views of the merits of the ruling differ—the majority of the Court of Appeals upheld; one judge dissented—the lack of internal consistency prompted the dissenting judge to characterize the ruling as "an erroneous change of heart".

Broadly, the most important consideration in all this may be that the first ruling came before the jury's decision, while the second ruling, on essentially the same subject as the first, eviscerated the jury's ruling. Opponents of the procedures that grant the trial court this authority consider it a usurpation of the jury's authority but, once again, strong policy considerations support it, and a change of heart is hardly the only scenario in which such negation occurs.

More interesting, though, is the fact that the case was a rare one in which the passenger may well have been the cause—or, at least, a cause—of the accident. Specifically, the evidence showed that just before they got into the car, Rivera and her brother had been notified of a family emergency, and that Rivera had compelled the brother to drive the car, despite that she knew her brother was not a licensed driver. Under these circumstances, a jury may well find that it was that decision which was the cause of the accident, which in turn would suggest that the trial judge's initial ruling, which authorized the jury to return a jury verdict, had been correct all along.