

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIERAN MAGEE : CIVIL ACTION
 :
 v. :
 :
 NATIONAL RAILROAD PASSENGER :
 CORPORATION : NO. 98-3755

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 2000

In this FELA case, the jury found the defendant liable, and found that plaintiff's damages totaled \$382,972. But the jury also found that plaintiff's own negligence constituted a 35% cause of the accident, and the verdict was reduced accordingly. Plaintiff has now filed a Motion for Judgment as a Matter of Law with respect to the issue of contributory negligence, contending that the jury's finding on that subject was not supported by the evidence at trial.

Plaintiff was tightening a bolt on a tie-down apparatus on the top of a railroad car. It was dark, and the work was being performed with the aid of a flashlight held by a fellow employee. As plaintiff was applying the final tightening pressure to the wrench he was using, something slipped and he fell off the rail car and was injured. Experts who examined the tie-down apparatus after the accident gave different opinions as to the probable cause of the accident. Plaintiff's expert, and

other evidence, supported the view that either the head of the bolt to which the wrench was being applied, or a slotted box into which the bolt extended, was worn or of the wrong size, thus permitting the bolt to slip under pressure. The defense evidence was to the effect there was nothing wrong with either the bolt or the box, and that the accident must have been caused by some other factor. Suggestions included the possibility that plaintiff had not properly positioned the wrench on the bolt, or that plaintiff had simply slipped. There was testimony that a supervisor had previously cautioned the plaintiff that he should not be in a standing position on top of the car when performing such a bolt-tightening operation, but should, instead, be seated while tightening such bolts. Neither plaintiff nor any other witness testified as to precisely what caused the accident.

In these circumstances, it can be argued that the evidence in support of the jury's finding of contributory negligence is at least as persuasive, reliable, and non-speculative as the evidence in support of the jury's finding of negligence on the part of the defendant. I do not believe plaintiff has any valid grounds for complaint about the jury's allocation of relative fault. Indeed, the verdict may simply reflect a compromise, about which neither side can reasonably complain. The matter was strictly within the province of the jury, and the jury has spoken. I decline to disturb its verdict.

An Order follows.

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ORDER

AND NOW, this day of April, 2000, IT IS ORDERED
that plaintiff's "Motion for Judgment Notwithstanding the Verdict
on the Issue of Contributory Negligence" is DENIED.

John P. Fullam, Sr. J.