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U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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4:03CV3042

FINAL JURY INSTRUCTIONS

DEBORAH DOBBS d/b/a D & D TRUCKING,
and KATHLEEN A. HARSHA,

Defendants.

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

INSTRUCTION NO. 3

You are reminded that you are not to engage in any independent investigation of this case. For instance, you are not to consult a dictionary or any other like reference.

INSTRUCTION NO. 4

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

INSTRUCTION NO. 5

The parties have agreed that the following may be accepted as established facts for purposes of this case only:

1. William G. Aden is and was at all times relevant for these purposes a resident of Lincoln, Lancaster County, Nebraska, and is the duly appointed Personal Representative of the Estate of Goldie A. Aden, Deceased.

2. Kathleen E. Harsha, Defendant, is a resident of Colorado. On March 13, 2001, she was employed as an over-the-road truck driver operating a 1994 Freightliner tractor semi-trailer, and at all times relevant hereto, was acting in the scope and course of her employment with Deborah A. Dobbs d/b/a D & D Trucking.

3. Deborah A. Dobbs d/b/a D & D Trucking is or was a business with its principal place of business in Gainesville, Georgia, engaged in the business of operating a 1994 Freightliner tractor semi-trailer in interstate commerce in the State of Nebraska and other states.

4. On March 13, 2001, at approximately 5:00 p.m. a collision occurred at the intersection of Southwood Drive and Highway 2 in Lincoln, Lancaster County, Nebraska between a 1995 Buick automobile being operated by the Plaintiff, William Aden, and a 1994 Freightliner tractor being operated by the Defendant Kathleen Harsha.

5. Goldie Aden sustained injuries as a result of said accident, which injuries resulted in her death.

INSTRUCTION NO. 6

There are two plaintiffs in this lawsuit, (1) William G. Aden, personally, and (2) William G. Aden, as the Personal Representative of the Estate of Goldie A. Aden, Deceased.

Throughout these instructions I will refer to the claim that is brought by William G. Aden in his personal capacity as the “individual claim,” and I will refer to the claim that is brought by William G. Aden in his capacity as a personal representative of his deceased wife’s estate as the “wrongful death claim.”

INSTRUCTION NO. 7

There are two defendants in this lawsuit, (1) Deborah A. Dobbs, doing business as D & D Trucking, and (2) Kathleen A. Harsha.

Their interests are the same. If you find in favor of one of them, you must find in favor of both of them. If you find against one of them, you must find against both of them.

INSTRUCTION NO. 8

At the time of the collision on March 13, 2001, Kathleen E. Harsha was acting within the scope of her authority as the agent of Deborah A. Dobbs d/b/a D & D Trucking. That means that if you find that Kathleen E. Harsha is liable to Plaintiff, then you must also find that Deborah A. Dobbs d/b/a D & D Trucking is liable to Plaintiff.

INSTRUCTION NO. 9

Any party who has the burden of proving a claim must do so by the greater weight of the evidence.

The greater weight of the evidence means evidence sufficient to make a claim more likely true than not true. It does not necessarily mean a greater number of witnesses or exhibits.

Any party is entitled to the benefit of any evidence tending to establish a claim, even though such evidence was introduced by another.

If the evidence upon a claim is evenly balanced, or if it weighs in the favor of the other party, then the burden of proof has not been met.

INSTRUCTION NO. 10

STATEMENT OF THE CASE – NEGLIGENCE

I. PLAINTIFFS' CLAIMS

A. ISSUES

This case involves a collision occurring between a 1995 Buick automobile owned and driven by William Aden, and a 1994 Freightliner tractor semi-trailer operated by Deborah A. Dobbs d/b/a D & D Trucking, and driven by Kathleen Harsha, an employee of Deborah A. Dobbs d/b/a D & D Trucking. The accident occurred on March 13, 2001, at the intersection of Highway 2 with Southwood Drive in Lincoln, Lancaster County, Nebraska.

William Aden, both individually and as the personal representative of his deceased wife's estate, claims that the Defendants, through the acts of Kathleen Harsha, were negligent in one or more of the following ways:

1. Failing to keep a proper lookout;
2. Failing to keep the tractor semi-trailer under reasonable control;
3. Operating the tractor semi-trailer at a speed greater than what was reasonable and prudent under the circumstances then and there existing;
4. Failing to yield the right-of-way to the vehicle driven by William Aden;

5. Failing to heed or obey the traffic signal at the intersection of Highway 2 and Southwood Drive;

6. Operating the tractor semi-trailer with insufficient and unsafe brakes;

and

7. Operating the tractor semi-trailer with insufficient and unsafe tires.

Defendants admit there was a collision between the tractor-semi-trailer and Plaintiffs' car.

Defendants deny that they were guilty of any negligence whatsoever that caused or contributed to the collision of the 1994 Freightliner tractor semi-trailer with Plaintiffs' vehicle. Defendants also deny the remainder of Plaintiffs' claims.

B. BURDEN OF PROOF

Before the Plaintiffs, or either of them, can recover against the Defendants, the Plaintiffs must prove, by the greater weight of the evidence, each and all of the following:

1. That the Defendants were negligent in one or more of the ways claimed by the Plaintiffs;

2. That this negligence was a proximate cause of the collision;

3. That the collision was a proximate cause of some damage to the Plaintiff;

and

4. The nature and extent of that damage.

C. EFFECT OF FINDINGS

1. PLAINTIFF'S INDIVIDUAL CLAIM

If the Plaintiff, William G. Aden, has not met his burden of proof on his individual claim, then your verdict must be for the Defendants.

On the other hand, if the Plaintiff has met his burden of proof, then you must consider the Defendants' claim that William Aden was also negligent.

2. PLAINTIFF'S WRONGFUL DEATH CLAIM

If the Plaintiff, William G. Aden, as the Personal Representative of the Estate of Goldie A. Aden, Deceased, has not met his burden of proof on the wrongful death claim, then your verdict must be for the Defendants.

On the other hand, if the Plaintiff has met his burden of proof, then your verdict must be for the Plaintiff and you must consider the Defendants' claim that William Aden was also negligent.

II. DEFENDANTS' CLAIMS

A. ISSUES

The Defendants claim that William Aden himself was negligent in one or more of the following ways:

1. Failing to keep a proper lookout;
2. Failing to yield the right-of-way to the vehicle being operated by Kathleen Harsha;

3. Failing to keep his vehicle under reasonable control; and

4. Leaving a place of safety and entering a place of danger when it was

unsafe to do so.

B. BURDEN OF PROOF

In connection with their claim that William Aden was negligent, the burden is on the Defendants to prove by the greater weight of the evidence both of the following:

1. That William Aden was negligent in one or more of the ways claimed by

Defendants; and

2. That the negligence on the part of William Aden was a proximate cause

of the Plaintiff's injury.

C. EFFECT OF FINDINGS

1. PLAINTIFF'S INDIVIDUAL CLAIM

If the Defendants have not met their burden of proof, then your verdict must be for the Plaintiff, William Aden, on his individual claim.

On the other hand, if the Defendants have met their burden of proof, then you must determine to what extent the negligence of William Aden and of the Defendants each contributed to the damages of the Plaintiff, expressed as a percentage of 100 percent, and you must record this determination on the verdict form.

If you find that the negligence of William Aden was equal to or greater than the negligence of the Defendants, then William Aden will not be allowed to recover on his individual claim. If, however, you find that the negligence of William Aden was less than the negligence of the Defendants, then William Aden will be allowed to recover on his individual claim, but the amount of his damages will be reduced by the percentage of total negligence that is attributable to him.

2. PLAINTIFF'S WRONGFUL DEATH CLAIM

If the Defendants have not met their burden of proof, then you must record on the verdict form that the percentage of William Aden's negligence was zero and that the percentage of the Defendants' negligence was 100 percent.

On the other hand, if the Defendants have met their burden of proof, then you must determine to what extent the negligence of William Aden and of the Defendants each contributed to the damages of the Plaintiff, expressed as a percentage of 100 percent, and you must record this determination on the verdict form.

The Defendants will be liable for all of the Plaintiff's economic damages, but will only be liable for an allocable share of the Plaintiff's noneconomic damages, in direct proportion to the percentage of their negligence.

INSTRUCTION NO. 11

If you return a verdict on the individual claim for the Plaintiff, William G. Aden, then you must decide how much money will fairly compensate the Plaintiff for his injury.

I am about to give you a list of the things you may consider in making this decision. From this list, you must only consider those things you decide were proximately caused by the Defendants' negligence:

1. The nature and extent of the injury, including whether the injury is temporary or permanent and whether any resulting disability is partial or total;
2. The reasonable value of the medical, nursing, and similar care and supplies reasonably needed by and actually provided to the Plaintiff and reasonably certain to be needed and provided in the future; and
3. The physical pain and mental suffering the Plaintiff has experienced and is reasonably certain to experience in the future.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 12

There is evidence that William Aden had urological problems and shoulder injuries prior to the date of the accident. The Defendants are liable only for any damages that you find to be proximately caused by the accident. If you cannot separate damages caused by any pre-existing conditions from those caused by the collision, then the Defendants are liable for all those damages.

INSTRUCTION NO. 13

If you return a verdict on the wrongful death claim for the Plaintiff, William G. Aden, as the Personal Representative of the Estate of Goldie A. Aden, Deceased, then you must determine the amount of economic damages and noneconomic damages that will fairly compensate for the Plaintiff's injury.

I. ECONOMIC DAMAGES

You must determine the reasonable cost of Goldie Aden's funeral.

II. NONECONOMIC DAMAGES

You must determine the monetary value of the services, comfort, and companionship, that Goldie Aden would have contributed to William Aden or her next of kin had she lived. In making this determination, you should consider the following:

1. Any services, comfort, or companionship that Goldie Aden gave to her spouse, William Aden, or to her daughters before her death, and the prospect that there would have been changes in the future;
2. The physical and mental health of Goldie Aden had she not suffered the injuries that caused her death;
3. Goldie Aden's life expectancy immediately before the injuries that caused her death; and
4. The life expectancy of her husband.

In considering these lost contributions, you may award damages only for the life expectancy of Goldie Aden, the decedent, or William Aden, whichever is shorter. You may not award William Aden any damages for his grief or mental suffering.

Your determination of noneconomic damages must consist of a single sum of money representing the entire monetary loss of Goldie Aden's spouse and daughters. Do not divide the money between William Aden and next of kin; that will be done by the court.

INSTRUCTION NO. 14

William Aden is 89 years old and has a normal life expectancy of 3.31 years. On March 13, 2001, Goldie Aden was 76 years old, with a normal life expectancy of 9.42 years. This evidence may assist you in determining probable life expectancy. This is only an estimate based on average experience. It is not conclusive. You should consider it along with any other evidence bearing on probable life expectancy, such as evidence of health, occupation, habits, and the like.

INSTRUCTION NO. 15

A proximate cause is a cause that produces a result in a natural and continuous sequence, and without which the result would not have occurred.

INSTRUCTION NO. 16

Negligence is doing something that a reasonably careful person would not do under similar circumstances, or failing to do something that a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 17

A person may assume that every other person will use reasonable care and will obey the law until the contrary reasonably appears.

INSTRUCTION NO. 18

Drivers are negligent if they do something a reasonably careful driver in the same situation would not have done or fail to do something a reasonably careful driver in the same situation would have done.

For example, drivers are negligent if they fail to see or hear those things that would have been seen or heard by a reasonably careful driver in the same situation. They are also negligent if they fail to keep their vehicle under such control as a reasonably careful driver would have, in the same situation.

Reasonably careful drivers take into consideration such facts as their own speed, the condition of their vehicle, the condition of the road, the presence of other vehicles, pedestrians, or objects, and any other factors that affect driving conditions.

Drivers must use reasonable care even when they have the right-of-way.

INSTRUCTION NO. 19

A steady yellow light is a warning that the light is about to turn red. Nebraska statutes provide that drivers approaching a steady yellow light must stop before entering the nearest crosswalk at the intersection, if they can do so safely. If they cannot stop safely, then such drivers may cautiously proceed through the intersection.

INSTRUCTION NO. 20

Nebraska statutes provide that drivers who have a red light must stop.

1. If there is a clearly marked stop line, they must stop immediately before crossing that line.
2. If there is not a clearly marked stop line, they must stop immediately before entering the nearest crosswalk.
3. If there is neither a clearly marked stop line nor a marked crosswalk, they must stop before entering the intersection.

INSTRUCTION NO. 21

Nebraska statutes provide that drivers who are turning left must yield the right-of-way to vehicles approaching from the opposite direction and in the intersection or so close and traveling at such a speed that it is not safe to proceed with the left turn.

INSTRUCTION NO. 22

A driver entering an intersection with traffic lights in his favor, and having stopped within the intersection, may complete his movement through the intersection notwithstanding a change in the traffic lights, if it is safe to do so.

INSTRUCTION NO. 23

It is claimed that Nebraska Statutes and Lincoln Municipal Codes regarding the duties of a driving motor vehicle on a roadway have been violated. It is also claimed that certain safety regulations promulgated by the U.S. Department of Transportation were violated. If you find that they were, that does not necessarily prove negligence. The violation of these statutes, ordinances, and safety regulations are evidence that you may consider, along with all of the other facts and circumstances in the case, in deciding whether or not there was any negligence.

INSTRUCTION NO. 24

Your verdict must be unanimous. That is, it must be agreed to by all eight jurors.

INSTRUCTION NO. 25

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. You may

reach my chambers by pressing the “call” button on the intercom telephone in the jury room. The caller should clearly identify himself or herself as a member of the jury so that my staff will react accordingly. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

If you do not agree on a verdict by 5:00 o’clock p.m., you may separate and return for deliberation at 9:00 o’clock a.m. on the next business day. You may deliberate after 5:00 o’clock p.m. but if so, please advise the bailiff of your intention to do so. You may also separate for meals during the course of your deliberations, but if you do separate for meals please contact the bailiff to advise her of your intention to separate and when you expect to return to the jury room to reconvene your deliberations. If you do separate, then during that time, you are not allowed to discuss this case with anyone, even another juror.

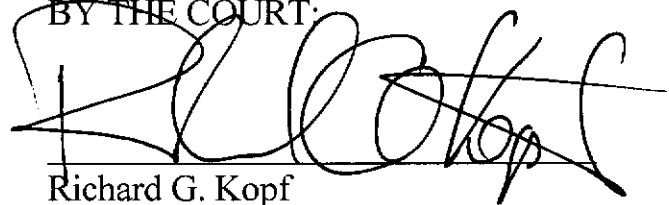
Fourth, your verdict must be based solely on the evidence and law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, complete it pursuant to the instructions on the form, and advise the marshal or bailiff when you are ready to deliver your verdict.

Submitted at 11:21 o'clock a.m. / p.m.

DATED this 29th day of October, 2004.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. Kopf', written over a horizontal line.

Richard G. Kopf
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COPY

WILLIAM G. ADEN, Personally, and)
WILLIAM G. ADEN, Personal Representative)
of the Estate of Goldie A. Aden, Deceased,)

Plaintiffs,)

vs.)

DEBORAH DOBBS d/b/a D & D TRUCKING,)
and KATHLEEN A. HARSHA,)

Defendants.)

4:03CV3042

VERDICT FORM

Please answer the following questions in accordance with the jury instructions and the instructions contained in this form. Note that you may be required to skip certain questions.

VERDICT

DEFENDANTS' NEGLIGENCE

1. Have the Plaintiffs proven that the Defendants were negligent?

(Check only one) Yes _____ No _____

If you answered "Yes," then your verdict on the "wrongful death claim" is for the Plaintiff, William G. Aden, Personal Representative of the Estate of Goldie A. Aden, Deceased, and against the Defendants, Deborah A. Dobbs d/b/a D & D Trucking and Kathleen A. Harsha; your verdict on the "individual claim" will be determined by your answer to Question 2.

If you answered "No," then your verdict on both claims is for the Defendants, Deborah A. Dobbs d/b/a D & D Trucking and Kathleen A. Harsha, and against the Plaintiffs, William G. Aden, personally, and William G. Aden, Personal Representative of the Estate of Goldie A. Aden, Deceased. In that case, skip

Questions 2, 3, and 4, and proceed directly to "Execution of Verdict Form" because your deliberations are completed.

CONTRIBUTORY OR COMPARATIVE NEGLIGENCE

(Complete this question only if you answered "yes" to question 1.)

2. What is the percentage of negligence as between William Aden, if any, and the Defendants? Answer this question by completing the following two statements, entering a number between 0 and 100 in each blank:

A. William Aden's negligence was _____%.

B. The Defendants' negligence was _____%.

Note that the total must equal 100 percent.

If you answered that William Aden's negligence was 50% or more, then your verdict on the "individual claim" is for the Defendants, Deborah A. Dobbs d/b/a D & D Trucking and Kathleen A. Harsha, and against William G. Aden. In that case, skip Question 3 and proceed to Question 4.

If you answered that William Aden's negligence was less than 50%, then your verdict on the "individual claim" is for the Plaintiff, William G. Aden, and against the Defendants, Deborah A. Dobbs d/b/a D & D Trucking and Kathleen A. Harsha. In that case, answer Questions 3 and 4.

PLAINTIFF'S DAMAGES - "INDIVIDUAL CLAIM"

(Complete this question only if you answered "yes" to question 1 and only if in answer to question 2 you have found William Aden's negligence was less than 50 percent.)

3. On the "individual claim," what are the damages of the Plaintiff, William G. Aden? Answer this question by stating below the total amount of his damages, if any, without any reduction for contributory negligence.

\$_____.

Note that if you have found in answering Question 2 that William Aden was negligent, the amount of money that will actually be awarded to the Plaintiff is not the total amount of damages stated above. If the Plaintiff was 50 percent or more contributorily negligent, he recovers no damages; indeed, in that case, you should not answer this damage question at all. If the Plaintiff was negligent in an amount of 49 percent or less, then the judge will reduce the Plaintiff's total damages by that percent, and the remainder will be awarded to the Plaintiff.

PLAINTIFF'S DAMAGES - "WRONGFUL DEATH CLAIM"

(Complete this question only if you have answered "yes" to question 1, and you have answered question 2.)

4. On the "wrongful death claim," what are the damages of the Plaintiff, William G. Aden, Personal Representative of the Estate of Goldie A. Aden, Deceased? Without any reduction for contributory negligence, answer this question by completing the following two statements:

- A. The Plaintiff's economic damages, if any, are: \$_____.
- B. The Plaintiff's noneconomic damages, if any, are: \$_____.

Note that the Defendants' liability to the Plaintiff will be limited to 100% of the Plaintiffs' economic damages plus a percentage of the noneconomic damages that is equal to the percentage of the Defendants' negligence (as determined in your answer to Question 2.B). Do not answer this question unless your verdict on the "wrongful death claim" is for the Plaintiff.

After you have answered all applicable questions, execute the verdict form by having your foreperson date and sign the form below.

EXECUTION OF VERDICT FORM

Note: The Foreperson shall sign and date the verdict form, and such signature shall mean that the verdict of the jury was unanimous.

DATED this _____ day of _____, 2004.

FOREPERSON

(Aden.vform)