

ABDULKADHIM v. WU (July 23, 2020, No. B298091) Cal.App. LEXIS 757

The Court determined that the sudden emergency doctrine applies to the emergency the party that is alleged to have been negligent faced, and it excuses that party's behavior due to the emergency.

FACTS/PROCEDURE

Defendant and Respondent Tommy Wu was driving a SUV on a highway near Rosemead, CA around 1:00 a.m. Wu was driving about 60-70 mph and was in front of the decedent Jasim Al-Kuraishi. Wu saw a car was stopped in the lane he was traveling in, about 20-30 car lengths of ahead of him. Wu changed lanes by moving to his left (into the HOV lane) and passed the stopped vehicle at a rate of 40-50 mph. He was 300-400 feet past the stopped vehicle when he saw the decedent's car slam into the rear of the stopped vehicle. The impact caused the decedent's car to leave the lane it was in, which caused it to be hit by another car that was traveling 70 mph in an adjacent lane. Wu stopped and called 911 after seeing the accident in his rear-view mirror.

The decedent's wife, Halah Jawad Abdulkadhim, sued Wu and the other defendants alleging negligence. Wu answered and filed a cross complaint. Wu filed for motion for summary judgment and after supplemental briefing on the sudden emergency doctrine, the trial court granted Wu's motion on April 5, 2019. The Appellant filed a notice of appeal on May 30, 2019, prior to the final entry of order. The appeals court continued the matter to allow entry of the final judgment and to allow Wu to dismiss his cross complaint. Judgment was entered on July 2, 2020 and the appeals court deemed the notice of appeal to be from the July 2, 2020 judgment.

HOLDING/DISCUSSION

The Second Appellate Court affirmed the trial court's judgment and awarded Wu costs on appeal. The sudden emergency or "imminent peril" doctrine, occurs when "a person, who without negligence on his part, is suddenly and unexpectedly confronted with peril, arising from either the actual presence or the appearance, of imminent danger to himself or to others, is not expected nor required to use the same judgment and prudence that is required of him in the exercise of ordinary care in calmer and more deliberate moments." (quoting *Leo v. Dunham* (1953) 41 Cal.2d 712, 714. A party cannot use the doctrine if their negligence caused or contributed to the creation of the dangerous situation. (*Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 216.) The trial court found that Wu had a complete defense with the sudden emergency doctrine to the Appellant's negligence claim.

Appellant argued that Wu created the emergency when he changed lanes at the last minute which did not allow the decedent to see the stopped car in time to avoid it. Wu contends that the emergency was the stopped car, in a lane that was moving at highway speed. Abdulkadhim argues that the emergency was the decedent's inability to see the stopped car before it was too late because of Wu's untimely lane change. The Court found that an emergency is an incident presented to the party that is alleged to have been negligent. It is that party's behavior that the doctrine excuses. Under the sudden emergency doctrine, it is irrelevant whether Wu's lane change created a dangerous condition for the decedent or anyone else. The only relevant emergency was the one the Respondent faced, since the Respondent is using the sudden emergency doctrine as a defense. Accordingly, the Court affirmed the trial court's judgment and awarded Respondent costs on appeal.