NO. UWY-CV-20-6053382-S

ANGEL CABRERA, ET AL : SUPERIOR COURT

V. : JUDICIAL DISTRICT OF WATERBURY

JESSIE ALLEN, ET AL : MAY 20, 2024

MEMORANDUM OF DECISION

Four plaintiffs, Angel Cabrera, Christian Cabrera, Jonathan Cabrera, and Julio Salazar bring this action against Jessie Allen and Allen Construction International, LLC (Allen Construction), claiming that while replacing a roof at 102 Grove Street in Shelton, Connecticut, they were injured when a truck owned by the defendant Allen Construction rolled into scaffolding causing injuries to all of them. The trial was scheduled for February 22, 2024, at the Superior Court in Waterbury and all plaintiffs were represented by Attorney Carlos A. Santos who was present with all plaintiffs except Julio Salazar. Attorney Santos had no explanation concerning the absence of Salazar, so the court ordered that Salazar be defaulted for his failure to appear at trial and that a default judgment be entered against him.

"It is well established that [i]t is within the province of the trial court, when sitting as the fact finder, to weigh the

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evidence presented and determine the credibility and effect to be given the evidence." (Internal quotation marks omitted.) *State* v. *Thompson*, 305 Conn. 412, 435-36, 45 A.3d 605 (2012), cert. denied, 568 U.S. 1146, 133 S. Ct. 988, 184 L. Ed. 2d 767 (2013). The court finds these facts to be credible. On December 5, 2018, at about 4:30 p.m., the three plaintiffs were working at 102 Grove Street in Shelton, Connecticut replacing roof tiles and shingles at a house located at that address. Allen Construction was the general contractor and the three plaintiffs worked for ACM General Construction LLC, which was a subcontractor of Allen Construction. Allen was employed by Allen Construction. At that time, the plaintiff Angel was on scaffolding adjacent to the house, the plaintiff Jonathan was on the roof with a harness on, and the plaintiff Christian was on the ground picking up debris. A truck owned by Allen Construction was parked at the top of the driveway adjacent to the house that the plaintiffs were working on. The driveway on which the truck was parked had a slight decline downward from the street to the backyard. It was at about 12:30 p.m. on the day in question when Allen came to the job site and moved the truck

that he had previously parked adjacent to the house to the top of the driveway, securing the emergency brake and placing chocks under the front wheels. At 4:30 p.m. the truck rolled down the driveway striking the ladders holding the scaffolding, causing Angel to fall nineteen feet into the bed of the truck, and causing the line attached to the harness protecting Jonathan to pull in such a way that caused him to fall on the roof, resulting in a leg injury. The ladders that were struck by the truck fell on Christian, who was protected by the helmet that he was wearing but nonetheless was injured from the blow, aggravating a prior head injury.

The plaintiffs have brought this action in common law negligence. For reasons not apparent to the court, they have not pursued a claim under the Workers' Compensation Act, General Statutes § 31-275 et seq., despite the fact that they allege in count two of the complaint that the truck that caused them injuries was owned by Allen Construction, the contractor for the project that hired ACM General Construction, which was the

employer of the plaintiffs.[1] The defendants have not plead or argued that when one is injured at work the exclusive remedy for workers such as the plaintiffs is under the Workers' Compensation Act. "Our Workers' Compensation Act indisputably is a remedial statute that should be construed generously to accomplish its purpose. . . . Section 31-284(a), the exclusivity provision in the act, manifests a legislative policy decision that a limitation on remedies under tort law is an appropriate trade-off for the benefits provided by workers' compensation. That trade-off is part and parcel of the remedial purpose of the act in its entirety. Accordingly, our case law on workers' compensation exclusivity reflects the proposition that *these*

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[1] General Statutes § 31-284(a) provides in relevant part: "An employer who complies with the requirements of subsection (b) of this section *shall not be liable* for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer *shall secure compensation* for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury has been caused by the wilful and serious misconduct of the injured employee or by his intoxication. All rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment *are abolished* other than rights and claims given by this chapter, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation." (Emphasis added.).

statutes compromise an employee's right to a common law tort action for work related injuries in return for relatively quick and certain compensation." (Citations omitted; emphasis added; internal quotation marks omitted.) *Driscoll* v. *General Nutrition Corp.*, 252 Conn. 215, 220-21, 752 A.2d 1069 (2000).

In any event, the plaintiffs' claim is that the defendants' negligence caused injuries to the plaintiffs and the defendants have elected to defend the claim on that basis. It is the plaintiffs' burden to prove the allegations of its complaint. *Success, Inc.* v. *Curcio*, 160 Conn. App. 153, 179, 124 A.3d 563, cert. denied, 319 Conn. 952, 125 A.3d 531 (2015). But the plaintiffs provided no evidence of the defendants' negligence. For instance, there was no evidence that Allen failed to activate the emergency brake. Nor was any evidence presented by the plaintiffs that the truck had some faulty mechanism that was responsible for it rolling down the driveway after it had been securely parked for hours. There was no evidence presented that the truck was examined after the accident and expert analysis found the brakes gave way because they were worn out, which might suggest the defendants were negligent in the care of the

truck in a way that caused it to roll away from its parking place.

In their post-trial brief, the plaintiffs argue that the doctrine of res ipsa loquitur allows them to advance their claim even in the absence of direct evidence of the defendants' negligence. In order to utilize this doctrine, the case law requires certain prerequisites to be satisfied. "First, the situation, condition or apparatus causing the injury must be such that in the ordinary course of events no injury would have occurred unless someone had been negligent. Second, at the time of the injury, both inspection and operation must have been in the control of the party charged with neglect." (Footnote omitted.) *Barretta* v. *Otis Elevator Co.*, 242 Conn. 169, 173-74, 698 A.2d 810 (1997). Res ipsa loquitur is "not a rule of law which dispenses with proof of negligence. It is a convenient formula for saying that a plaintiff may, *in some cases*, sustain the burden of proving that the defendant was more probably negligent than not, by showing *how* the accident occurred, without offering any evidence to show *why* it occurred." (Emphasis in original; internal quotation marks omitted.) Id.,

173. The plaintiffs, in their reply to the defendants' post-trial brief, assert "[t]he mere act of the truck rolling back demonstrates that negligence is present without the requirement for any evidence of *how* the truck rolling back occurred." (Emphasis added.). The case law says otherwise. To advance their claim under res ipsa loquitur, the plaintiffs need to show *how* the truck rolled away, even if they cannot show *why* the truck rolled away. For example, the plaintiffs might have shown that *how* the truck rolled away was because the chocks slipped out from under the tires. This could be evidence from which the court might infer the defendants' negligence was *why* the truck rolled away. But the plaintiffs offer no such evidence. "The doctrine of res ipsa loquitur does not extend to situations in which the plaintiff's *own* evidence provides *no* basis on which to conclude that the defendant has been negligent . . . ." (Emphasis in original.) *Barretta* v. *Otis Elevator Co.*, supra, 176. The plaintiffs are unable to utilize the res ipsa loquitur doctrine to satisfy their burden to prove the occurrence was caused by the negligence of the defendants. Allen testified very credibly at trial that he moved the truck at about 12:30

p.m. to its location at the top of the driveway. See *State* v. *Thompson*, supra, 305 Conn. 437 (trial court is in best position to make credibility determinations). Allen testified that the truck did not have a park position in the transmission so it was important that he place the emergency brake securely in position. He emphasized that he placed the emergency brake on securely. He also placed the chocks under the tires. The court finds, based on the testimony of Allen, that the truck was parked securely at its location on the top of the hill.

Allen testified that in his opinion, the truck moved because one of the workers must have tried to move it. The fact remains that the truck was located at the top of the driveway for about three hours before it all of sudden rolled down the driveway with no evidence advanced by the plaintiffs as to how or why the truck moved. It is Allen's position that someone must have tried to move the truck because he was absolutely certain that he placed the emergency brake on when he left it at 12:30 p.m. and had also placed chocks under the two front tires. The truck did not move all afternoon, and the plaintiffs had no theory or explanation backed by credible evidence as to what

caused it to move late in the afternoon. The plaintiffs are unable to show that the accident would not have occurred but for Allen's negligence. See, e.g., *Barretta* v. *Otis Elevator Co.*, supra, 242 Conn. 175 .

The plaintiffs have not sustained their burden and have not proved by a preponderance of the evidence that the defendants' negligence caused the harm to the plaintiffs as alleged. *Gulycz* v. *Stop & Shop Companies*, 29 Conn. App. 519, 523, 615 A.2d 1087, cert. denied, 224 Conn. 923, 618 A.2d 527 (1992) ("[t]he general burden of proof in civil actions is on the plaintiff, who must prove all the essential allegations of the complaint"). The court therefore will render judgment on behalf of the defendants.

PELLEGRINO, JTR