Michigan Law Review

Volume 56 | Issue 1

1957

Civil Procedure - Judgments - Effect of Prior "Compromise" Judgment as Collateral Estoppel

Peter H. Hay S.Ed.
University of Michigan Law School

CIVIL PROCEDURE—JUDGMENTS—EFFECT OF PRIOR "COMPROMISE" JUDGMENT AS COLLATERAL ESTOPPEL—In a negligence action for injuries sustained in an automobile accident, one of three successful plaintiffs was granted a new trial because damages awarded her were inadequate. In the new trial the issue of negligence was relitigated over plaintiff's objection that the question of liability was res judicata. The jury found for the defendant and plaintiff appealed. *Held,* affirmed, one justice dissenting. Although the judgment in favor of the other two plaintiffs in the prior action establishing defendant's liability has become final, this prior judgment is not res judicata. Since the judgment was entered pursuant to a verdict which was evidently a compromise among the jurors, the jury failed to determine the issue of liability. *Taylor v. Hawkinson,* 47 Cal. (2d) 893, 306 P. (2d) 797 (1957).

Although early common law cases held that a verdict could be set aside only in its entirety and a new trial granted only on all issues,[1] the leading case of *Simmons v. Fish*[2] recognized the court's power to grant a new trial on less than all the issues. The court recognized that in some cases issues are distinct and separable and the error on which a new trial is founded may not affect other elements of the verdict.[3] Today a majority of the states, either by statute, court rule,[4] or case law,[5] have adopted the general proposition that a partial new trial can be granted, usually at the discretion of the trial judge.[6] An important exception to this power has been carved out by some states.[7] California in particular has consistently held it an abuse of discretion by the trial court to grant a new trial on the issue of damages alone when the verdict was evidently a compromise between the jurors.[8] For example, when damages awarded are so grossly inadequate as to suggested that the jury compromised on the question of liability in order to reach agreement, any new trial granted must be as to all the issues including liability, and cannot be confined to the question of damages. This was the situation in the principal case, and the court did not find the contention of res judicata sufficiently persuasive to change

1 See discussion by Rugg, J., in Simmons v. Fish, 210 Mass. 563 at 564, 97 N.E. 102 (1912).

2 210 Mass. 563, 97 N.E. 102 (1912).

3 The court cautioned that this practice should be limited to the narrow situation in which separability is beyond question. Id. at 568. See Norfolk Southern R. Co. v. Ferebee, 238 U.S. 269 (1915).

4 E.g., Rule 59, Fed. Rules Civ. Proc., 28 U.S.C. (1952); Ariz. Code Ann. (1939) §21-1310; Cal. Code Civ. Proc. (Deering, 1939) §657; Colo. Rules Civ. Proc., (Col. Rev. Stat. 1953) c. 6, rule 59 [relied on in Belcaro Realty Inv. Co. v. Norton, 103 Colo. 485, 87 P. (2d) 1114 (1939)]; Miss. S. Ct. Rule 12, 161 Miss. 903 at 905 (1931).

5 See cases collected in 29 A.L.R. (2d) 1199 at 1203 (1953).

6 E.g., Leipert v. Honold, 39 Cal. (2d) 462, 247 P. (2d) 324 (1952); 29 A.L.R. (2d) 1185 (1953); Rose v. Melody Lane, 39 Cal. (2d) 481, 247 P. (2d) 335 (1952).

7 Ibid.; Hendrickson v. Koppers Co., 11 N.J. 600, 95 A. (2d) 710 (1953).

8 See note 6 supra. Hamasaki v. Flotho, 39 Cal. (2d) 602, 240 P. (2d) 298 (1952), affd. on reh. 248 P. (2d) 910 (1952); Cary v. Wentzel, 39 Cal. (2d) 491, 247 P. (2d) 341 (1952).

the usual result,[9] despite a well supported dissent. The conflict which faced the court was between equally well-established rules. Had the present plaintiff been the only plaintiff in the first action, there is no question that under California procedure[10] and case law[11] she would be precluded from obtaining a new trial on the question of damages only. On the other hand, had the verdict in the first suit not been reached through a compromise of the jurors, the doctrine of collateral estoppel would prevent the defendant from relitigating the question of his liability in a new trial. The court's solution of this problem is not easy to accept, particularly since under California law both a consent judgment[12] and a default judgment[13] may give rise to a collateral estoppel. The principal case seems quite analogous to the former, especially if the parties in the original action by failing to move for a new trial accepted, as the Court suggests, "the jury's compromise as their own."[14] The court's argument that the jury "failed to determine the issue of liability"[15] is therefore not persuasive for, by allowing the judgment to stand, the defendant accepted its determination of his liability to the same extent as in a consent judgment. The court's decision appears to be based upon the policy consideration that the defendant, subjected to the possibility of increased damages, should also have an opportunity to escape liability. He refused such an opportunity once, however, by failing to move for a new trial in the first action. It would therefore seem that while sound policy may support refusal of partial new trials after a "compromise" verdict involving one plaintiff and one defendant, it should not be used to carve out an exception to the rules of collateral estoppel.

Peter H. Hay, S. Ed.

[9] Radiant Oil Co. v. Herring, 146 Fla. 154, 200 S. 376 (1941), presented a similar fact situation, but the issue of res judicata was never raised.

[10] Cal. Code Civ. Proc. (Deering, 1939) §657.

[11] Leipert v. Honold, note 6 supra. See also 29 A.L.R. (2d) 1119 (1953).

[12] Partridge v. Shepard, 71 Cal. 470, 12 P. 480 (1886).

[13] Horton v. Horton, 18 Cal. (2d) 579, 116 P. (2d) 605 (1941).

[14] Principal case at 896.

[15] Ibid.