

Questions were left to the jury; these and the answers were as follows:—

1. Was the deceased guilty of any negligence which caused the accident or which so contributed to it that but for his negligence the accident would not have happened? A. Yes.

2. If yes, wherein did such negligence consist? A. By not using proper precaution in crossing the street.

3. Was the death caused by any negligence of the defendants prior to the negligence, if any, of the deceased? A. No.

4. If yes, wherein did such negligence consist?

5. Was the death caused by any negligence of the defendants? A. Yes.

6. If yes, wherein did such negligence consist? A. By not having their car equipped with up-to-date appliances.

7. Notwithstanding the negligence, if any, of the deceased, could the defendants, by the exercise of reasonable care, have prevented the accident? A. Yes.

8. If yes, state what they should have done, but omitted to do, which, if done, would have prevented the accident? A. (1) Should have had car properly equipped. (2) Motorman should have stopped when he first realised the danger.

9. Was the negligence, if any, of the deceased, a continuing act of negligence up to the very moment of the accident? A. No.

The jury assessed the damages at \$3,500.

The jury, after making these findings, were further instructed by the Chief Justice, and again retired. Later they brought in additions to their answers:—

To the answer to question 6 they added: "Had the company's car been equipped with modern air-brakes, we think the accident might have been avoided."

And to the answer to question 8 they added: "According to evidence submitted, the motorman first realised the danger of an accident when at a distance of 40 or 50 feet. Instead of taking up the slack, as he stated, had he applied the brakes immediately, we think the accident would have been avoided."

And they further added: "The motorman in his evidence admitted that he realised that the man was going to cross the street, that he had in his hand the power to stop the car, either by brake or reverse. We find that, had the motorman acted more promptly, the accident would have been avoided."

The Chief Justice entered judgment for the plaintiffs upon these answers; and the defendants appealed.