Henningsen v. Bloomfield Motors, Inc.

161 A.2d 69 (N.J. 1960)

Plaintiff Claus H. Henningsen purchased a Plymouth automobile, manufactured by defendant Chrysler Corporation, from defendant Bloomfield Motors, Inc. His wife, plaintiff Helen Henningsen, was injured while driving it and instituted suit against both defendants to recover damages on account of her injuries. Her husband joined in the action seeking compensation for his consequential losses. The complaint was predicated upon breach of express and implied warranties and upon negligence. At the trial the negligence counts were dismissed by the court and the cause was submitted to the jury for determination solely on the issues of implied warranty of merchantability. Verdicts were returned against both defendants and in favor of the plaintiffs. Defendants appealed and plaintiffs cross-appealed from the dismissal of their negligence claim. . . .

The facts are not complicated, but a general outline of them is necessary to an understanding of the case.

On May 7, 1955 Mr. and Mrs. Henningsen visited the place of business of Bloomfield Motors, Inc., an authorized De Soto and Plymouth dealer, to look at a Plymouth. They wanted to buy a car and were considering a Ford or a Chevrolet as well as a Plymouth. They were shown a Plymouth which appealed to them and the purchase followed. The record indicates that Mr. Henningsen intended the car as a Mother's Day gift to his wife. He said the intention was communicated to the dealer. When the purchase order or contract was prepared and presented, the husband executed it alone. His wife did not join as a party.

The purchase order was a printed form of one page. On the front it contained blanks to be filled in with a description of the automobile to be sold, the various accessories to be included, and the details of the financing. The particular car selected was described as a 1955 Plymouth, Plaza "6," Club Sedan. The type used in the printed parts of the form became smaller in size, different in style, and less readable toward the bottom where the line for the purchaser's signature was placed. The smallest type on the page appears in the two paragraphs, one of two and one-quarter lines and the second of one and one-half lines, on which great stress is laid by the defense in the case. These two paragraphs are the least legible and the most difficult to read in the instrument, but they are most important in the evaluation of the rights of the contesting parties. They do not attract attention and there is nothing about the format which would draw the reader's eye to them. In fact, a studied and concentrated effort would have to be made to read them. De-emphasis seems the motif rather than emphasis. More particularly, most of the printing in the body of the order appears to be 12 point block type, and easy to read. In the short paragraphs under discussion, however, the type appears to be six point script and the print is solid, that is, the lines are very close together.

The two paragraphs are:

The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. . . .

I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. . . .

. . .The testimony of Claus Henningsen justifies the conclusion that he did not read the two fine print paragraphs referring to the back of the purchase contract. And it is uncontradicted that no one made any reference to them, or called them to his attention. With respect to the matter appearing on the back, it is likewise uncontradicted that he did not read it and that no one called it to his attention.

The reverse side of the contract contains 8 1/2 inches of fine print. It is not as small, however, as the two critical paragraphs described above. The page is headed "Conditions" and contains ten separate paragraphs consisting of 65 lines in all. The paragraphs do not have headnotes or margin notes denoting their particular subject, as in the case of the "Owner Service Certificate" to be referred to later. In the seventh paragraph, about two-thirds of the way down the page, the warranty, which is the focal point of the case, is set forth. It is as follows:

7. It is expressly agreed that there are no warranties, express or implied, made by either the dealer or the manufacturer on the motor vehicle, chassis, or parts furnished hereunder except as follows:

The manufacturer warrants each new motor vehicle (including original equipment placed thereon by the manufacturer except tires), chassis or parts manufactured by it to be free from defects in material or workmanship under normal use and service. Its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

After the contract had been executed, plaintiffs were told the car had to be serviced and that it would be ready in two days . . .

The new Plymouth was turned over to the Henningsens on May 9, 1955. . . . It had no servicing and no mishaps of any kind before the event of May 19. That day, Mrs. Henningsen drove to Asbury Park. On the way down and in returning the car performed in normal fashion until the accident occurred. She was proceeding north on Route 36 in Highlands, New Jersey, at 20-22 miles per hour. The highway was paved and smooth, and contained two lanes for northbound travel. She was riding in the right-hand lane. Suddenly she heard a loud noise "from the bottom, by the hood." It "felt as if something cracked." The steering wheel spun in her hands; the car veered sharply to the right and crashed into a highway sign and a brick wall. No other vehicle was in any way involved. A bus operator driving in the left-hand lane testified that he observed plaintiffs' car approaching in normal fashion in the opposite direction; "all of a sudden [it] veered at 90 degrees \* \* \* and right into this wall." As a result of the impact, the front of the car was so badly damaged that it was impossible to determine if any of the parts of the steering wheel mechanism or workmanship or assembly were defective or improper prior to the accident. The condition was such that the collision insurance carrier, after inspection, declared the vehicle a total loss. It had 468 miles on the speedometer at the time.

The insurance carrier's inspector and appraiser of damaged cars, with 11 years of experience, advanced the opinion, based on the history and his examination, that something definitely went "wrong from the steering wheel down to the front wheels" and that the untoward happening must have been due to mechanical defect or failure; "something down there had to drop off or break loose to cause the car" to act in the manner described.

As has been indicated, the trial court felt that the proof was not sufficient to make out a prima facie case as to the negligence of either the manufacturer or the dealer. The case was given to the jury, therefore, solely on the warranty theory, with results favorable to the plaintiffs against both defendants.

I.

THE CLAIM OF IMPLIED WARRANTY AGAINST THE MANUFACTURER.

. . . The terms of the warranty are a sad commentary upon the automobile manufacturers' marketing practices. Warranties developed in the law in the interest of and to protect the ordinary consumer who cannot be expected to have the knowledge or capacity or even the opportunity to make adequate inspection of mechanical instrumentalities, like automobiles, and to decide for himself whether they are reasonably fit for the designed purpose. . . . But the ingenuity of the Automobile Manufacturers Association, by means of its standardized form, has metamorphosed the warranty into a device to limit the maker's liability. . . .

The manufacturer agrees to replace defective parts for 90 days after the sale or until the car has been driven 4,000 miles, whichever is first to occur, if the part is sent to the factory, transportation charges prepaid, and if examination discloses to its satisfaction that the part is defective. It is difficult to imagine a greater burden on the consumer, or less satisfactory remedy. Aside from imposing on the buyer the trouble of removing and shipping the part, the maker has sought to retain the uncontrolled discretion to decide the issue of defectiveness. . . .

. . . We hold that under modern marketing conditions, when a manufacturer puts a new automobile in the stream of trade and promotes its purchase by the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser. Absence of agency between the manufacturer and the dealer who makes the ultimate sale is immaterial.

II.

THE EFFECT OF THE DISCLAIMER AND LIMITATION OF LIABILITY CLAUSES ON THE IMPLIED WARRANTY OF MERCHANTABILITY.

. . .

The warranty before us is a standardized form designed for mass use. It is imposed upon the automobile consumer. He takes it or leaves it, and he must take it to buy an automobile. No bargaining is engaged in with respect to it. In fact, the dealer through whom it comes to the buyer is without authority to alter it; his function is ministerial -- simply to deliver it. The form warranty is not only standard with Chrysler but, as mentioned above, it is the uniform warranty of the Automobile Manufacturers Association. Members of the Association are: General Motors, Inc., Ford, Chrysler, Studebaker-Packard, American Motors (Rambler), Willys Motors, Checker Motors Corp., and International Harvester Company. . . . Of these companies, the "Big Three" (General Motors, Ford, and Chrysler) represented 93.5% of the passenger-car production for 1958 and the independents 6.5% . . .

The gross inequality of bargaining position occupied by the consumer in the automobile industry is thus apparent. There is no competition among the car makers in the area of the express warranty. Where can the buyer go to negotiate for better protection? Such control and limitation of his remedies are inimical to the public welfare and, at the very least, call for great care by the courts to avoid injustice through application of strict common-law principles of freedom of contract. Because there is no competition among the motor vehicle manufacturers with respect to the scope of protection guaranteed to the buyer, there is no incentive on their part to stimulate good will in that field of public relations. Thus, there is lacking a factor existing in more competitive fields, one which tends to guarantee the safe construction of the article sold. Since all competitors operate in the same way, the urge to be careful is not so pressing. . . .

Although the courts, with few exceptions, have been most sensitive to problems presented by contracts resulting from gross disparity in buyer-seller bargaining positions, they have not articulated a general principle condemning, as opposed to public policy, the imposition on the buyer of a skeleton warranty as a means of limiting the responsibility of the manufacturer. They have endeavored thus far to avoid a drastic departure from age-old tenets of freedom of contract by adopting doctrines of strict construction, and notice and knowledgeable assent by the buyer to the attempted exculpation of the seller. . . . Accordingly to be found in the cases are statements that disclaimers and the consequent limitation of liability will not be given effect if "unfairly procured". . . ; if not brought to the buyer's attention and he was not made understandingly aware of it . . .

The task of the judiciary is to administer the spirit as well as the letter of the law. On issues such as the present one, part of that burden is to protect the ordinary man against the loss of important rights through what, in effect, is the unilateral act of the manufacturer. The status of the automobile industry is unique. Manufacturers are few in number and strong in bargaining position. In the matter of warranties on the sale of their products, the Automotive Manufacturers Association has enabled them to present a united front. From the standpoint of the purchaser, there can be no arms length negotiating on the subject. Because his capacity for bargaining is so grossly unequal, the inexorable conclusion which follows is that he is not permitted to bargain at all. He must take or leave the automobile on the warranty terms dictated by the maker. He cannot turn to a competitor for better security.

Public policy is a term not easily defined. Its significance varies as the habits and needs of a people may vary. It is not static and the field of application is an ever increasing one. A contract, or a particular provision therein, valid in one era may be wholly opposed to the public policy of another . . . Courts keep in mind the principle that the best interests of society demand that persons should not be unnecessarily restricted in their freedom to contract. But they do not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way. . . .

Public policy at a given time finds expression in the Constitution, the statutory law and in judicial decisions. In the area of sale of goods, the legislative will has imposed an implied warranty of merchantability as a general incident of sale of an automobile by description. The warranty does not depend upon the affirmative intention of the parties. It is a child of the law; it annexes itself to the contract because of the very nature of the transaction. . . . The judicial process has recognized a right to recover damages for personal injuries arising from a breach of that warranty. The disclaimer of the implied warranty and exclusion of all obligations except those specifically assumed by the express warranty signify a studied effort to frustrate that protection. True, the Sales Act authorizes agreements between buyer and seller qualifying the warranty obligations. But quite obviously the Legislature contemplated lawful stipulations (which are determined by the circumstances of a particular case) arrived at freely by parties of relatively equal bargaining strength. The lawmakers did not authorize the automobile manufacturer to use its grossly disproportionate bargaining power to relieve itself from liability and to impose on the ordinary buyer, who in effect has no real freedom of choice, the grave danger of injury to himself and others that attends the sale of such a dangerous instrumentality as a defectively made automobile. In the framework of this case, illuminated as it is by the facts and the many decisions noted, we are of the opinion that Chrysler's attempted disclaimer of an implied warranty of merchantability and of the obligations arising therefrom is so inimical to the public good as to compel an adjudication of its invalidity. . . .

III.

THE DEALER'S IMPLIED WARRANTY.

The principles that have been expounded as to the obligation of the manufacturer apply with equal force to the separate express warranty of the dealer. This is so, irrespective of the absence of the relationship of principal and agent between these defendants, because the manufacturer and the Association establish the warranty policy for the industry. The bargaining position of the dealer is inextricably bound by practice to that of the maker and the purchaser must take or leave the automobile, accompanied and encumbered as it is by the uniform warranty.

. . .

VII.

. . . [T]he judgments in favor of the plaintiffs and against defendants are affirmed.