

**IN THE COURT OF APPEALS 08/06/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00929 COA**

**PEGGY THOMPSON**

**APPELLANT**

**v.**

**GLEN D. SMITH**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES E. GRAVES, JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DUNCAN LOTT

ATTORNEY FOR APPELLEE:

PHILIP W. GAINES

NATURE OF THE CASE: CIVIL: PERSONAL INJURY

TRIAL COURT DISPOSITION: PLAINTIFF 50% NEGLIGENT, DEFENDANT 50%  
NEGLIGENT, NO DAMAGES AWARDED

BEFORE BRIDGES, P.J., COLEMAN, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

Peggy Thompson (Thompson) appeals from a jury verdict in the Circuit Court of Hinds County in which Thompson sued Glen D. Smith (Smith) for driving his car into the rear of a car in which

Thompson was a passenger. The jury returned a special verdict finding each driver 50% negligent and awarding zero dollars in damages to Thompson. We find from the facts of this case that Smith was negligent as a matter of law, and no jury question existed as to whether the preceding driver was contributorily negligent. Therefore, a jury instruction apportioning damages was not appropriate in this case. However, since the jury found that Thompson was not entitled to any damages as a result of this accident, this error in instructing the jury was harmless, and we affirm the jury's verdict.

## FACTS

On March 6, 1990, Thompson and five other women drove to Jackson from Corinth to attend a workshop for the Headstart program. Around 4:30 P.M. the women began to return to Corinth in a van driven by Frances Brasfield. Thompson was riding in the front passenger seat of the van. Before leaving Jackson, Brasfield exited the interstate to purchase gas. Upon leaving the interstate, Brasfield followed the road which looped under the interstate and merged into north Frontage Road. Brasfield stopped at the intersection and waited for the road to clear so she could merge into traffic. Just as Brasfield began to enter the road, Thompson told her to stop. Brasfield stopped the van, and Smith's automobile rear-ended the van. Thompson testified that she told Brasfield to stop because an automobile had suddenly changed lanes making it unsafe for the van to proceed into traffic.

## DISCUSSION

Thompson argues that the jury erred in finding Brasfield guilty of contributory negligence. She argues that Smith's negligence was the sole proximate cause of the accident. Smith admits he was negligent, but contends that Brasfield was contributorily negligent for coming to a sudden stop for no reason and without warning.

Smith's testimony reflects that his negligence was the sole proximate cause of this accident. While the Brasfield van was merging onto Frontage Road, Smith took his eyes from the van in front of him and began to move forward. Seeing no traffic coming from his right, he attempted to move onto Frontage Road, hitting the van directly before him.

On this record Smith was not entitled to a contributory negligence instruction. Assuming arguendo that there was no vehicle approaching from the right which would cause Brasfield to suddenly stop, there was no obstacle to prevent Smith from seeing the van if he had been attentive and looking ahead. According to Smith's own testimony, he could have avoided the accident if he had looked in front of him before proceeding. Smith also admitted seeing a flash of brake lights before he hit the van. As a matter of law, the driver of a vehicle following behind another vehicle, and not attempting to pass has a duty to keep his vehicle under proper control, keep a proper lookout ahead, and commensurate therewith drive at a speed and distance where he can avoid a collision should the preceding vehicle suddenly stop. *White v. Miller*, 513 So. 2d 600, 601 (Miss. 1987) (citations omitted). Smith testified that he had momentarily looked away from the van when Brasfield suddenly stopped, but this incident could have been anticipated and guarded against by him. Additionally, Smith traveled Frontage Road daily and was aware that traffic was heavy during this time.

Although the jury was incorrectly given an instruction on contributory negligence, a review of the record supports the jury verdict awarding zero damages to Thompson. The record reveals that Thompson did not complain of any injury at the scene of the accident and did not complain of injury

until two days later. Furthermore, Thompson's medical records reveal previous medical conditions which the jury could have concluded to be a cause of Thompson's alleged injury. This Court will not disturb a jury verdict unless we find that the damages are excessive or inadequate due to influence by bias, passion, or prejudice so as to shock the conscience or the damages awarded are contrary to the overwhelming weight of the evidence. *Andrew Jackson Life Ins. Co. v. Williams*, 566 So. 2d 1172, 1190 (Miss. 1990). We do not feel that the verdict is so inadequate as to shock the conscience or contrary to the overwhelming weight of the evidence. Nor do we find that the verdict shows bias, passion, or prejudice by the jury toward Thompson. Thus, the jury award of zero damages was not

erroneous, and the granting of the contributory negligence instruction was harmless error.

**THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS HEREBY AFFIRMED.  
ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND  
SOUTHWICK, JJ., CONCUR.**

**FRAISER, C.J., CONCURS IN RESULT ONLY.**