IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| Mark Daniels, | : | |
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| Plaintiff Below, | : | C.A. No. 05-04-0179AP |
| Appellee, | : | |
| | : | |
| v. | : | |
| | : | |
| Rick Ranshaw | : | |
| Ranshaw Tire | : | |
| | : | |
| Defendants Below, | : | |
| Appellants. | : | |

**Decision after Trial**

**Date of Trial: March 14, 2007**

**Date of Decision: March 20, 2007**

**Judgment for the Plaintiff, Mark Daniels**

Mark Daniels, Persimmon Tree Apartments, Building #1, Apartment #122, Dover, Delaware 19901

Rick Ranshaw, 3915 McKee Road, Dover, Delaware 19901
Ranshaw Tire, Post Office Box 54, Cheswold, Delaware 19936

Trader, J.

In this trial *de novo* on appeal from the Justice of the Peace Court, based on the doctrine of *res ipsa loquitur* I hold that the plaintiff Mark Daniels has established by a preponderance of the evidence that the defendant Rick Ranshaw was negligent because he failed to tighten the lug nut of the left front wheel of the plaintiff's vehicle.

The relevant facts are as follows: On November 18, 2004, the plaintiff purchased four new tires from the defendant and the defendant installed the new tires on the plaintiff's 1993 Nissan. On November 19, 2004, the plaintiff drove his vehicle to Wilmington and the vehicle was rattling. When he was driving his car back from Wilmington on Route 1 near the Smyrna exit, the left front tire came off his vehicle. The vehicle went off the side of the road and the plaintiff sustained damages to the left front fender, left front wheel and steering column of his vehicle. The vehicle was towed back to defendant's place of business. The plaintiff had some repairs made at the Nissan dealer and the defendant refused to pay the bill for the repairs to the vehicle. Thereafter, the plaintiff filed a civil action in the Justice of the Peace Court and the case is before this court on appeal as a trial *de novo*.

Trial was held on March 14, 2007, and Edward Sample testified as an expert witness for the plaintiff. I must determine whether he is sufficiently qualified by reason, education, training, knowledge and experience to render a reliable opinion.

Delaware Rule of Evidence 702 provides as follows: If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of opinion or otherwise, if (1) the testimony is based on sufficient facts or data, (2) the testimony is a product of reliable

principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 702 of the Delaware Uniform Rules of Evidence was amended in 2001 to track the language of the Federal Rules of Evidence as well as the decision in *Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579 (1993). Under *Daubert*, the *Frye* general acceptance test was displaced by the rules of evidence. *Id.* at 589. In *Daubert,* the court referred to trial judges as gatekeepers who must ensure that expert testimony is reliable and relevant. *Id.* Although *Daubert* applied to scientific evidence, in *Kumho Tire Company Ltd. v. Carmichael*, 526 U.S. 137 (1999), the Court held that the *Daubert* gatekeeping function applies to all expert testimony.

In *Goodridge v. Hyster Co.*, 845 A.2d 498 (Del. 2004), the Delaware Supreme Court applied a five-step analysis to determine whether a trial judge abused his discretion in ruling on the admissibility of expert opinion. The test requires that: "(1) the witness may be qualified as an expert by knowledge, skill, experience, training or education; (2) the evidence be relevant and reliable; (3) the expert's opinion be based upon information reasonably relied upon by experts in the particular field; (4) the expert testimony should assist the trier of fact to understand the evidence to determine a fact in issue; and (5) the expert testimony should not create unfair prejudice or confuse or mislead the jury." *Id.* at 503.

In the case before me, Mr. Sample testified that he was a certified mechanic, but he did not produce any certificate. He had been making general repairs on engines for many years, but he did not testify that he had any specialized training. Although I initially determined that he qualified as an expert witness, I now conclude he does not

qualify as an expert under *Goodrich v. Hyster, supra.* Mr. Sample did not inspect the vehicle and he did not have sufficient data to form a reliable conclusion.

Although there was no expert testimony in this case, the plaintiff may recover based on the doctrine of *res ipsa loquitur*. There is evidence that the defendant installed the tires on the car on November 18, 2004, and the next day the car was rattling. The left front wheel came off the car when the plaintiff was driving back from Wilmington and plaintiff's vehicle went off the road and was damaged.

Under the doctrine of *res ipsa loquitur*, five elements must be shown: (1) "the occurrence is one that does not normally happen if proper care is exercised by the person who has management and control over the circumstances leading up to it; (2) the facts warrant an inference of negligence of such force so as to call for an explanation or rebuttal from the defendant; (3) the cause of the injury must have been under the management or control of the defendant at the time the negligence likely occurred; and (4) where the injured party participated in events leading up to the occurrence, his or her own conduct must be excluded as a responsible cause; (5) there must be a causal connection between the defendant's act or omission and the accident." *Skipper v. Royal Crown Brewing,* 192 A.2d 910, 912 (1963).

The circumstances of the accident in this case would lead reasonable persons to conclude that the damage to the plaintiff's vehicle would not have occurred if there had not been some negligence on the part of the defendant. As Judge Taylor stated in *Gebelein v. Hopkins Trucking,* 1993 WL 543981 (Del. Super.), "the infrequency of vehicle wheels coming off permits an inference by reasonable persons at the falling off of the wheel involved some negligence on the part of defendants." Therefore, it is a

reasonable inference that the accident occurred because the defendant failed to tighten the lug nut on the left front wheel of plaintiff's vehicle.

In applying *res ipsa loquitur*, the question of who had control of the instrumentality which caused the injury is important in determining whether the defendant caused the injury. But the doctrine of *res ipsa loquitur* has flexibility which depends upon the court's evaluation of the particular situation. *General Motors Corp. v. Dillon,* 367 A.2d 1020, 1023 (Del. 1976). Under Delaware law, the instrumentality that caused the injury need not be under the defendant's exclusive control. *Delaware Coach Co. v. Reynolds,* 71 A.2d 69 (Del. 1950).

In the case before me, the accident occurred the next day after the defendant installed the tires. Although at that time the defendant had relinquished control of the vehicle, defendant's control existed at the time of the negligent act which later produced the accident.

In the case at bar, the plaintiff was driving carefully within the speed limit on Route 1 at the time of the accident. He testified that that he did not hit a pothole or any other object that would have caused the accident. Thus, the evidence excludes the plaintiff's conduct as a responsible cause of the accident.

Finally, there is a causal connection between defendant's negligence and the accident. But for the defendant's failure to tighten the lug nut, the accident and the damage to plaintiff's vehicle would not have occurred.

Based on this analysis I conclude that reasonable persons would conclude that the accident was because of the defendant's negligence. Additionally, I reject defendant's testimony that he tightened the lug nut on the left wheel of the vehicle.

The final issue in this case is the amount of damages that the plaintiff suffered. Plaintiff's Exhibit 1 sets forth the costs of certain repairs to his vehicle and plaintiff's Exhibit 2 is an estimate of further repairs that need to be done to the vehicle. Both exhibits contain items of the expenses not attributed to the accident. Therefore, these exhibits cannot be utilized as a basis for determining damages.

The plaintiff testified that he had paid $1,200.00 for the vehicle and that the vehicle was a total loss after the accident. The owner of personal property may properly testify as to the original cost of the automobile. *State ex rel. Smith v. 0.15 Acres of Land*, 169 A.2d 256, 259 (Del. 1961). McCormick, *Handbook on the Law of Damages*, §46, p. 176 (1935). Since the vehicle was worth $1,200.00 before the accident and had no value after the accident, the amount of the plaintiff's damages is assessed at $1,200.00.

In accordance with these findings of fact and conclusions of law, judgment is entered in behalf of the plaintiff Mark Daniels and against the defendant Rick Ranshaw for the sum of $1,200.00 plus the costs of these proceedings.

**IT IS SO ORDERED.**

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Merrill C. Trader
Judge