

Jaime CAMACHO and Kathleen Camacho, Petitioners, v. HONDA MOTOR CO., LTD., a corporation; and American Honda Motor Co., Inc., a California corporation, Respondents.

No. 85SC112.

Supreme Court of Colorado, En Banc.
741 P.2d 1240 (July 13, 1987)

KIRSHBAUM, Justice.

We granted certiorari to review the decision in *Camacho v. Honda Motor Co.*, 701 P.2d 628 (Colo.App.1985), in which the Court of Appeals affirmed a trial court order dismissing claims filed by the petitioners, Jaime Camacho and Kathleen Camacho (the Camachos), against the respondents, Honda Motor Co., Ltd. and American Honda Motor Co., Inc. (Honda). The Court of Appeals held that the trial court properly granted a motion for summary judgment filed by Honda because the absence of leg protection devices could not as a matter of law render a motorcycle a defective and unreasonably dangerous product under the Restatement (Second) of Torts section 402A (1965). We reverse and remand with directions.

I

In March 1978, Jaime Camacho (Camacho) purchased a new 1978 Honda Hawk motorcycle, model CV400T2, from a Honda dealer. In May 1978, while driving the motorcycle through an intersection, Camacho collided with an automobile and sustained serious leg injuries. Camacho and his wife filed an action against Honda seeking damages for personal injuries, property losses, loss of consortium and exemplary damages. The action was based on several theories, including strict liability. The Camachos alleged that the motorcycle was a defectively designed, unreasonably dangerous product under the Restatement (Second) of Torts section 402A because it was not equipped with "crash bars" tubular steel bars attached to the motorcycle frame to protect the rider's legs in the event of a collision. They asserted that if such crash bars had been installed on the motorcycle, Camacho's leg injuries would have been mitigated.

Two mechanical engineers employed by the Camachos testified in depositions that, in light of their extensive research work on motorcycle crash bars, including testing conducted for the United States Department of Transportation, the state of the art in mechanical engineering and motorcycle design was such that effective injury-reducing, leg protection devices were feasible in March 1978 and that several manufacturers other than Honda had made such devices available as optional equipment; that, although room for further improvement of crash bars existed in March 1978, crash bars then available from manufacturers other than Honda provided some protection in low-speed collisions and, in particular, would have reduced or completely avoided the serious leg injuries suffered by Camacho; and that Honda itself had conducted some of the seminal research on crash bars in 1969, as the result of which Honda's engineers had concluded that injury-reducing crash bars could be manufactured by strengthening the steel bars which had been tested and providing strong bolts to attach the bars to the motorcycle frame.

Honda moved for summary judgment, arguing that as a matter of law a motorcycle lacking crash bars cannot be deemed unreasonably dangerous. The trial court granted the motion, concluding that (1) because the danger of leg injury was obvious and foreseeable, Honda had no duty to totally alter the nature of its product by installing crash bars; and (2) Honda had no duty under the crashworthiness doctrine to add a safety feature to its product to reduce the severity of injuries resulting from accidents.

In agreeing with the trial court's conclusions, the Court of Appeals held that the determination of whether a product is unreasonably dangerous because of a design defect is to be made on the basis of whether the extent of the danger "would have been fully anticipated by or within the contemplation of" the ordinary user or consumer. *Camacho v. Honda Motor Co.*, 701 P.2d 628, 631 (Colo.App. 1985). Because the criteria applied by the trial court and the Court of Appeals are inconsistent with our decisions in *Ortho Pharmaceutical Corp. v. Heath*, 722 P.2d 410 (Colo.1986), and *Union Supply Co. v. Pust*, 196 Colo. 162, 583 P.2d 276 (1978), we reverse and remand for further proceedings.

II

In *Roberts v. May*, 41 Colo.App. 82, 583 P.2d 305 (1978), the Court of Appeals recognized the applicability of the "crashworthiness" doctrine in Colorado. Under this doctrine, a motor vehicle manufacturer may be liable in negligence or strict liability for injuries sustained in a motor vehicle accident where a manufacturing or design defect, though not the cause of the accident, caused or enhanced the injuries. See generally 2 L. Frumer & M. Friedman, *Products Liability* § 3.03[4][f][v] (1987). The doctrine was first recognized in the landmark case of *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir.1968), in which the court noted that a manufacturer's duty encompassed designing and building a product reasonably fit and safe for its intended use, that automobiles are intended for use on the roadways and that injury-producing collisions are a frequent, foreseeable and statistically expectable result of such normal use. Incumbent upon the automobile manufacturer was a duty of reasonable care in the design and manufacture of its product, including a duty to use reasonable care to minimize the injurious effects of a foreseeable collision by employing commonsense safety features. *Larsen v. General Motors Corp.*, 391 F.2d 495, 501-02. The crashworthiness doctrine has been adopted by the vast majority of courts in other jurisdictions which have considered the issue. E.g., *Hermann v. General Motors Corp.*, 720 F.2d 414 (5th Cir.1983); *Sours v. General Motors Corp.*, 717 F.2d 1511 (6th Cir.1983); *Horn v. General Motors Corp.*, 17 Cal. 3d 359, 131 Cal. Rptr. 78, 551 P.2d 398 (1976); *Ford Motor Co. v. Evancho*, 327 So. 2d 201 (Fla.1976); *Farmer v. International Harvester Co.*, 97 Idaho 742, 553 P.2d 1306 (1978); *Smith v. Ariens Co.*, 375 Mass. 620, 377 N.E.2d 954 (1978); *Hancock v. Paccar, Inc.*, 204 Neb. 468, 283 N.W.2d 25 (1979); *McMullen v. Volkswagen of America*, 274 Or. 83, 545 P.2d 117 (1976); see generally 1 R. Goodman, *Automobile Design Liability* § 1:4 (2d ed. 1983) (noting the nearly universal acceptance of the crashworthiness doctrine). We agree with the reasoning of those decisions, as did the Court of Appeals in its consideration of this case, and adopt the crashworthiness doctrine for this jurisdiction. . . .

III

In determining the extent of liability of a product manufacturer for a defective product, this court has adopted the doctrine of strict products liability as set forth in the Restatement (Second) of Torts section 402A (1965). *Smith v. Home Light & Power Co.*, 734 P.2d 1051 (Colo.1987); *Blueflame Gas, Inc. v. Van Hoose*, 679 P.2d 579 (Colo. 1984); *Anderson v. Heron Eng'g Co.*, 198 Colo. 391, 604 P.2d 674 (1979); *Hiigel v. General Motors Corp.*, 190 Colo. 57, 544 P.2d 983 (1975). Section 402A provides:

Special Liability of Seller of Product for Physical Harm to User or Consumer (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. (2) The rule stated in Subsection (1) applies although (a) the seller has exercised all possible care in the preparation and sale of his product, and (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Honda asserts that as a matter of law a motorcycle designed without leg protection devices cannot be deemed "in a defective condition unreasonably dangerous to the user" because the risk of motorcycle accidents is foreseeable to every ordinary consumer and because it is obvious that motorcycles do not generally offer leg protection devices as a standard item. In support of this argument Honda relies on comment i to section 402A, which states in pertinent part:

i. Unreasonably dangerous. The rule stated in this Section applies only where the defective condition of the product makes it unreasonably dangerous to the user or consumer. The article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.

The trial court and the Court of Appeals in essence applied this consumer contemplation test in dismissing the Camachos' claims.

In *Cronin v. J.B.E. Olson Corp.*, 8 Cal. 3d 121, 104 Cal. Rptr. 433, 501 P.2d 1153 (1972), the California Supreme Court declined to require an injured person to establish that a product is unreasonably dangerous as a requisite to recovery for injuries in a strict liability design defect context. In *Union Supply Co. v. Pust*, 196 Colo. 162, 583 P.2d 276 (1978), this court rejected the *Cronin* rationale, recognizing that requiring a party who seeks recovery on the basis of an alleged defective product to establish that the product is unreasonably dangerous appropriately places reasonable limits on the potential liability of manufacturers. However, we also held in *Pust* that the fact that the dangers of a product are open and obvious does not constitute a defense to a claim alleging that the product is unreasonably dangerous. We noted that adoption of such a principle would unfairly elevate the assumption of risk defense to a question of law. The obvious and foreseeable consumer contemplation test employed by the trial court and approved by the

Court of Appeals is substantially similar to the open and obvious standard specifically rejected in *Pust*. It is not the appropriate standard in Colorado for measuring whether a particular product is in a defective condition unreasonably dangerous to the consumer or user.

A consumer is justified in expecting that a product placed in the stream of commerce is reasonably safe for its intended use, and when a product is not reasonably safe a products liability action may be maintained. See *Bradford v. Bendix-Westinghouse Automotive Air Brake Co.*, 33 Colo.App. 99, 517 P.2d 406 (1973); accord, e.g., *Atkins v. American Motors Corp.*, 335 So. 2d 134 (Ala.1976); *Putensen v. Clay Adams, Inc.*, 12 Cal. App. 3d 1062, 91 Cal. Rptr. 319 (1970); *Owens v. Allis-Chalmers Corp.*, 414 Mich. 413, 326 N.W.2d 372 (1982); *Nesselrode v. Executive Beechcraft, Inc.*, 707 S.W.2d 371 (Mo.1986); *O'Brien v. Muskin Corp.*, 94 N.J. 169, 463 A.2d 298 (1983); *Voss v. Black & Decker Mfg. Co.*, 59 N.Y.2d 102, 463 N.Y.S.2d 398, 450 N.E.2d 204 (1983); *Phillips v. Kimwood Mach. Co.*, 269 Or. 485, 525 P.2d 1033 (1974); *Azzarello v. Black Bros. Co.*, 480 Pa. 547, 391 A.2d 1020 (1978); *Galvan v. Prosser Packers, Inc.*, 83 Wash. 2d 690, 521 P.2d 929 (1974); see also *W. Prosser The Law of Torts* § 96 at 641, 644-45 (4th ed. 1971) (Dean Prosser, Reporter for Restatement (Second) of Torts § 402A, noting that the basis of strict liability for design defects is that reasonable care must be used to design a product that is reasonably safe for its intended or foreseeable uses).

Of course, whether a given product is reasonably safe and, therefore, not unreasonably dangerous, necessarily depends upon many circumstances. Any test, therefore, to determine whether a particular product is or is not actionable must consider several factors. While reference to "reasonable" or "unreasonable" standards introduces certain negligence concepts into an area designed to be free from those concepts, e.g., *Barker v. Lull Eng'g Co.*, 20 Cal. 3d 413, 143 Cal. Rptr. 225, 573 P.2d 443 (1978); *Turner v. General Motors Corp.*, 584 S.W.2d 844 (Tex.1979); see generally *J. Beasley, Products Liability and the Unreasonably Dangerous Requirement* 21-35, 72-94 (1981); *Birnbaum, Unmasking the Test for Design Defect: From Negligence [to Warranty] to Strict Liability to Negligence*, 33 *Vand.L.Rev.* 593 (1980), that difficulty is much less troublesome than are the problems inherent in attempting to avoid dealing with the competing interests always involved in allocating the risk of loss in products liability actions, see generally *W.P. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts* § 99 (5th ed. 1984); *Wade, On Product "Design Defects" and Their Actionability*, 33 *Vand.L.Rev.* 551, 570-71 (1980). In this regard, comment c to section 402A contains the following pertinent observations:

c. On whatever theory, the justification for the strict liability has been said to be that the seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that the public has the right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods; that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and that the consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper persons to afford it are those who market the products.

These considerations strongly suggest that the consumer contemplation concept embodied in comment i, while illustrative of a particular problem, does not provide a satisfactory test for determining whether particular products are in a defective condition unreasonably dangerous to the user or consumer. In the final analysis, the principle of products liability contemplated by section 402A is premised upon the concept of enterprise liability for casting defective products into the stream of commerce. *Jackson v. Harsco Corp.*, 673 P.2d 363 (Colo.1983). The primary focus must remain upon the nature of the product under all relevant circumstances rather than upon the conduct of either the consumer or the manufacturer. *Smith v. Home Light & Power Co.*, 734 P.2d 1051; *Jackson v. Harsco Corp.*, 673 P.2d 363; *Bradford v. Bendix-Westinghouse Automotive Air Brake Co.*, 33 Colo.App. 99, 517 P.2d 406; Wade, On Product "Design Defects" and Their Actionability, 33 Vand.L. Rev. 551 (1980). Total reliance upon the hypothetical ordinary consumer's contemplation of an obvious danger diverts the appropriate focus and may thereby result in a finding that a product is not defective even though the product may easily have been designed to be much safer at little added expense and no impairment of utility. W.P. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on The Law of Torts* § 99 at 66 (5th ed. 1984). Uncritical rejection of design defect claims in all cases wherein the danger may be open and obvious thus contravenes sound public policy by encouraging design strategies which perpetuate the manufacture of dangerous products. *Union Supply Co. v. Pust*, 196 Colo. 162, 583 P.2d 276; accord, e.g., *McGowne v. Challenge-Cook Bros., Inc.*, 672 F.2d 652 (8th Cir.1982) (applying Missouri Law); *Davis v. Fox River Tractor Co.*, 518 F.2d 481 (10th Cir.1975) (applying Oklahoma law); *Beloit Corp. v. Harrell*, 339 So. 2d 992 (Ala.1976); *Byrns v. Riddell, Inc.*, 113 Ariz. 264, 550 P.2d 1065 (1976); *Auburn Mach. Works Co. v. Jones*, 366 So. 2d 1167 (Fla.1979); *Siruta v. Hesston Corp.*, 232 Kan. 654, 659 P.2d 799 (1983); *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207 (Minn.1982).

In *Ortho Pharmaceutical Corp. v. Heath*, 722 P.2d 410 (Colo.1986), we recently recognized that exclusive reliance upon consumer expectations is a particularly inappropriate means of determining whether a product is unreasonably dangerous under section 402A where both the unreasonableness of the danger in the design defect and the efficacy of alternative designs in achieving a reasonable degree of safety must be defined primarily by technical, scientific information. Moreover, manufacturers of such complex products as motor vehicles invariably have greater access than do ordinary consumers to the information necessary to reach informed decisions concerning the efficacy of potential safety measures. Harris, *Enhanced Injury Theory: An Analytical Framework*, 62 N.C.L.Rev. 643, 675 (1984). The principles that have evolved in the law of products liability have in part been developed to encourage manufacturers to use information gleaned from testing, inspection and data analysis to help avoid the "massive problem of product accidents." *Palmer v. A.H. Robins Co, Inc.*, 684 P.2d 187 (Colo.1984) (quoting Owen, *Punitive Damages in Products Liability Litigation*, 74 Mich.L.Rev. 1257, 1258 (1976)).

A product may be unreasonably dangerous due to a manufacturing defect, a design defect or a failure to warn. See generally Walkowiak, *Reconsidering Plaintiff's Fault in Product Liability Litigation: The Proposed Conscious Design Choice Exception*, 33 Vand.L.Rev. 651, 654-56 (1980). The question in manufacturing defect cases is whether the product as produced conformed with the manufacturer's specifications. *Id.* Resolution of whether a particular product is unreasonably dangerous is more difficult in design defect or failure to warn cases, where the

product has been manufactured exactly as intended. In *Ortho* we noted that the following factors are of value in balancing the attendant risks and benefits of a product to determine whether a product design is unreasonably dangerous:

(1) The usefulness and desirability of the product its utility to the user and to the public as a whole. (2) The safety aspects of the product the likelihood that it will cause injury and the probable seriousness of the injury. (3) The availability of a substitute product which would meet the same need and not be as unsafe. (4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility. (5) The user's ability to avoid danger by the exercise of care in the use of the product. (6) The user's anticipated awareness of the dangers inherent in the product and their avoidability because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions. (7) The feasibility, on the part of the manufacturer, of spreading the loss by setting the price of the product or carrying liability insurance.

Ortho Pharmaceutical Corp. v. Heath, 722 P.2d 410, 414 (relying on *Wade*, *On the Nature of Strict Tort Liability for Products*, 44 Miss.L.J. 825, 837-38 (1973)). The factors enumerated in *Ortho* are applicable to the determination of what constitutes a product that is in a defective unreasonably dangerous condition. By examining and weighing the various interests represented by these factors, a trial court is much more likely to be fair to the interests of both manufacturers and consumers in determining the status of particular products.

The question of the status of the motorcycle purchased by Camacho involves in part the interpretation of mechanical engineering data derived from research and testing interpretation which necessarily includes the application of scientific and technical principles. In addition, the question posed under the crashworthiness doctrine is not whether the vehicle was obviously unsafe but rather whether the degree of inherent dangerousness could or should have been significantly reduced. The record contains some evidence to support the conclusion that Honda could have provided crash bars at an acceptable cost without impairing the motorcycle's utility or substantially altering its nature and Honda's failure to do so rendered the vehicle unreasonably dangerous under the applicable danger-utility test. It is far from certain, however, that the ultimate answer to this question can be determined on the basis of the limited facts thus far presented to the trial court.

IV [OMITTED]

V

Under C.R.C.P. 56(c), summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. E.g., *Continental Airlines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987); *Huydts v. Dixon*, 199 Colo. 260, 606 P.2d 1303 (1980). The moving party has the burden of establishing the nonexistence of a genuine issue of material fact. *Urban v. Beloit Corp.*, 711 P.2d 685 (Colo.1985); *Ginter v. Palmer & Co.*, 196 Colo. 203, 585 P.2d 583 (1978).

The Camachos proffered evidence that the Honda Hawk motorcycle could have been equipped with crash bars which would mitigate injuries in low-speed, angled-impact collisions such as the one in which Camacho was involved. The Camachos' expert witnesses' interpretation of research and testing data indicated that the maneuverability of the motorcycle could be retained by making the crash bars no wider than the handlebars, that the stability of the motorcycle could be retained by mounting the crash bars relatively close to the center of gravity and that the addition of crash bars would not impair the utility of the motorcycle as a fuel efficient, open-air vehicle nor impair the safety of the motorcycle in accidents which varied in kind from the accident involving Camacho. These conclusions are all strenuously disputed by Honda. However, precisely because the factual conclusions reached by expert witnesses are in dispute, summary judgment as to whether the design strategies of Honda were reasonable is improper. *Roberts v. May*, 41 Colo.App. 82, 583 P.2d 305 (1978).

The judgment is reversed, and the case is remanded to the Court of Appeals with directions to remand the case to the trial court for further proceedings consistent with the views expressed in this opinion.

DISSENT [OMITTED] FOOTNOTES [OMITTED]