



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ERA C. NUNEZ v. PROFESSIONAL TRANSIT
MANAGEMENT OF TUCSON, INC.
CV-11-0186-PR**

PARTIES:

Petitioner: Professional Transit, doing business as SunTran (“SunTran”).

Respondent: Era C. Nunez, as personal representative of the Estate of Linda Joyce Brown.

FACTS:

This case involves the applicable standard of care owed by common carriers to passengers. Brown was a wheelchair-bound passenger on a bus operated by SunTran. When Brown boarded the bus, the driver followed SunTran’s standard policy and secured the wheelchair to the bus to prevent the chair from moving. SunTran’s policy was for the driver to ask wheelchair passengers if they wanted to wear a seatbelt to secure them in the wheelchair. The evidence in this case was conflicting on this point. Brown maintained the driver did not ask her if she wanted to wear a seat belt. The driver vociferously disagreed and maintained that Brown refused the restraints.

Evidence at trial showed that at one point on the bus route, the driver stopped for traffic and released the brake when traffic started to move again; however, she had to make a sudden stop when the vehicle in front of her stopped abruptly. Brown was thrown from her wheelchair and sustained injuries. Brown sued the driver and SunTran, claiming the driver was negligent in following other vehicles too closely and in not asking Brown whether she wanted to be secured by a seatbelt.

By the time of the trial, Brown had passed away from causes unrelated to this accident. Nunez, the personal representative of Brown’s estate, presented expert testimony that the driver fell below the standard of care by not asking Brown whether she wanted to wear the safety restraints provided by SunTran. The expert relied on Brown’s unsworn declaration prepared for litigation purposes. The jury found SunTran 70% at fault and Brown 30% at fault and awarded \$110,744.50 in damages to Nunez.

SunTran appealed. Relying on *Atchison, T. & S. F. Ry. Co. v. France*, 54 Ariz. 140, 94 P.2d 434 (1939), SunTran argued the trial court erroneously instructed the jury that the standard of care for common carriers is “the highest degree of care” because that standard is a remnant from a different time and lacks a sound theoretical underpinning. The court of appeals disagreed. It rejected SunTran’s interpretation of *Atchison*. In that case, the trial court instructed the jury that the standard of care for a common carrier was “the highest degree of care practicable under the circumstances,” and it refused to give the defendant’s requested instruction that “negligence

is the omission to do something which a reasonably prudent man . . . would do [and] it is not intrinsic or absolute, but is always relative to the surrounding circumstances” *Id.* at 143-44, 94 P.2d at 436. The jury returned a verdict for the plaintiff.

On appeal in *Atchison*, the supreme court stated that, even though the highest degree of care instruction accurately stated the law, given the paucity of evidence in that case it was by itself insufficient. The trial court also should have given defendant's requested instruction. *Id.*

In this case, the court of appeals noted, SunTran did not request an additional instruction to clarify the standard of care for the jury. Rather, it requested a reasonable care instruction to supplant the highest degree of care instruction. Additionally, because there was sufficient evidence of SunTran's negligence, the failure to give its reasonable care instruction was not prejudicial to SunTran. Accordingly, the court of appeals found no error in the trial court's refusal to give SunTran's requested instruction. It noted the supreme court as recently as 1998 reaffirmed that the standard of care for a common carrier is “the highest degree of care.” *See Napier v. Bertram*, 191 Ariz. 238, 242 n. 9, 954 P.2d 1389, 1393 n. 9 (1998). Accordingly, the court affirmed the judgment in favor of Nunez.

SunTran seeks review, noting that New York rejects the highest degree of care standard in favor of a reasonable person standard. *See Bethel v. New York City Transit Authority*, 703 N.E.2d 1214 (N.Y. 1998). It further claims there is a disparity in relevant Arizona law concerning the relevant standard of care. *Compare Block v. Meyer*, 144 Ariz. 230, 234, 696 P.2d 1379, 1383 (App. 1984) (upholding a jury instruction that required only a reasonable duty of care for common carriers), with *S. Pac. Co. v. Hogan*, 13 Ariz. 34, 37-38, 108 P. 240, 241 (1910) (holding that, as a common carrier of passengers, a railroad is bound to exercise the highest degree of care practicable under the circumstances and that a passenger injury caused by the derailling of a train triggers a presumption of negligence).

ISSUE:

Did the court of appeals err in ruling that SunTran, as a common carrier, owed a duty to conduct itself with the highest degree of care?

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