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Pellecchia v. Connecticut Light and Power Co.

Appellate Court of Connecticut - January 21, 2014 - A.3d - 147 Conn.App. 650

On July 28, 2006, the assistant highway superintendent for the Town of Killingly observed live, downed power lines on a section of Mashentuck Road. Mashentuck Road is a public highway located in the town, and the highway is maintained and controlled by the town. The assistant notified the town's highway superintendent of the downed power lines, and the two placed orange cones on the highway where Mashentuck Road intersected with the two nearest crossroads. They then left the area. Thereafter, Anthony E. Pellecchia was electrocuted and died when the motorcycle he was driving came into contact with the downed, energized power lines. Cannot be a fun way to go.

In June, 2008, the administrator of the decedent's estate commenced a wrongful death action alleging, inter alia, that QVEC, which was notified of the downed power lines, was negligent in failing to provide timely notice of the downed lines to the utility defendants. In August, 2011, QVEC filed a third party complaint seeking indemnification from the town defendants. QVEC alleged in the third party complaint that any negligence attributable to QVEC due to its alleged failure to timely notify the utility defendants of the downed power lines was passive in nature and that the direct and immediate cause of the decedent's electrocution was the active negligence of the town defendants in failing to close properly that section of Mashentuck Road over which the power lines had fallen to vehicular traffic.

The town defendants filed a motion to strike the third party complaint. The town defendants argued, inter alia, that the third party complaint should be stricken because a claim for indemnification could not be brought against a municipality or its employees for what constituted a defective highway claim under § 13a-149. QVEC filed a memorandum of law in opposition to the motion to strike the third party complaint, arguing that the allegations in the third party complaint properly set forth a claim for common-law indemnification on an active/passive negligence theory.

The trial court granted the town defendants' motion to strike based on the court's determination that the factual allegations of the third party complaint invoked the municipal highway defect statute, General Statutes § 13a-149. On the basis of that determination, the court ultimately concluded that QVEC could not state a proper cause of action because QVEC had failed to allege that it complied with the notice requirement of § 13a-149, QVEC had not alleged that it was a "traveler" as required under § 13a-149, and indemnification is not appropriate when the allegations of third party negligence invoke § 13a-149. The appeals court agreed that QVEC could not, as a matter of law, state a claim for indemnification on the facts alleged and, accordingly, it affirmed the judgment of the court.