

**ANAYA V. TARRADIE, 1962-NMSC-024, 70 N.M. 8, 369 P.2d 41 (S. Ct. 1962)**

**Adiel ANAYA, Plaintiff-Appellant,  
vs.  
Angelo TARRADIE and Andrew Tarradie, Defendants-Appellees**

No. 7036

SUPREME COURT OF NEW MEXICO

1962-NMSC-024, 70 N.M. 8, 369 P.2d 41

February 21, 1962

An action was brought for compensation for alleged damage to plaintiff's house struck by automobile driven by one of the defendants. The District Court, Bernalillo County, Paul Tackett, D.J., rendered a judgment adverse to the plaintiff, and the plaintiff appealed. The Supreme Court, Carmody, J., held that evidence that the automobile struck a fireplug and then struck and allegedly damaged the plaintiff's house was insufficient to establish negligence.

**COUNSEL**

Harry E. Stowers, Jr., Thomas E. Jones, Albuquerque, for appellant.

Modrall, Seymour, Sperling, Roehl & Harris, Albuquerque, for appellees.

**JUDGES**

Carmody, Justice. Compton, C.J., and Chavez, J., concur. Moise and Noble, JJ., not participating.

**AUTHOR: CARMODY**

**OPINION**

{\*8} {1} Plaintiff sought compensation for damages to a house, by reason of the alleged negligence of one of the defendants in the operation of a motor vehicle.

{2} The trial court ruled in favor of the defendants, and the plaintiff appealed on two grounds.

{3} One of the claimed errors related to the trial court's finding as to the title to the {\*9} property, and the other attacked the trial court's finding as to failure of proof of damage.

However, neither of these points is dispositive of the appeal, inasmuch as the plaintiff utterly failed to prove negligence.

{4} At the trial, the defendant had admitted that the defendant's automobile had struck a fireplug, and apparently the plaintiff felt he need go no further in showing negligence. However, the mere happening of the accident did not in anywise show that the defendant was negligent and there was no other proof, circumstantial or otherwise, that the defendant did not exercise ordinary care.

{5} Therefore, the points raised by appellant are not determinative of this appeal, because, even if they had merit (which we do not decide), the plaintiff would have no right to recover under the evidence.

{6} Affirmed. It is so ordered.