

**IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE**

MARGARET H. CRUZE,)
) 03A01-9907-CV-00245
 Plaintiff/Appellee)
)
 vs.) Appeal As Of Right From The
) GRAINGER CO. CIRCUIT COURT
)

FILED

December 16, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

FORD MOTOR COMPANY,) HON. DALE YOUNG
) JUDGE
 Defendant/Appellant)
 and)
)
)
 DEBORAH BOWLIN,)
)
 Defendant/Appellee.)

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AFFIRMED

Swiney, J.

OPINION

This is a personal injury case arising out of a two-car collision between Margaret Cruze (Plaintiff/Appellee) and Deborah Bowlin (Defendant/Appellee). Cruze sued Bowlin and Ford Motor Company (Defendant/Appellant), alleging negligence by Bowlin in causing the accident. Cruze sued Ford under the theory of negligence and strict product liability concerning alleged defects in Ford's passenger restraint system on her 1994 Ford Escort. The Trial Court granted a directed verdict that Defendant Bowlin was negligent in the operation of her vehicle and submitted to the jury the questions of the allocation of fault between Defendants Ford and Bowlin and the total amount of Plaintiff's damages. The jury returned a verdict for Cruze in the amount of \$6.56 million and apportioned 10% to Bowlin and 90% to Ford. Bowlin has not appealed. Ford appeals and states the issues on appeal as follows:

1. Whether the trial court violates a defendant's right to jury trial when it submits the case in a form that requires the jury to allocate fault for all of the plaintiff's damages either to that defendant, or to a co-defendant, or to both, and does not permit the jury any other option.
2. Whether the trial court commits reversible error when it submits a "crashworthiness" product liability case in a form that does not ask the jury to determine the amount of the damages (out of all those the plaintiff suffered in the accident) for which the product manufacturer should share fault with the tort-feasor who caused the accident.
3. Whether the trial court commits reversible error in a product liability case when it refuses to instruct the jury that compliance with government standards for vehicle occupant crash protection creates a rebuttable presumption that the vehicle was not unreasonably dangerous in that respect, where the plaintiff alleges that the product was in a defective condition and that the manufacturer was negligent.
4. Whether the judgment in a product liability case should be reversed where the liability question was submitted to the jury with instructions limiting that question to a claim of negligence and where the evidence did not identify a specific error in the product's design or manufacture, or link any such error with the manufacturer's lack of due care.

For the reasons stated below, we affirm the judgment of the Trial Court.

BACKGROUND

Cruze was leaving a nursing home in her 1994 Ford Escort, headed north on Highway 11W in Grainger County when Bowlin, traveling south on 11W, made a left turn in her path. Bowlin's Pontiac Grand Am collided with Cruze's Ford Escort, with the initial impact at the Ford's left front bumper. Bowlin sustained minor injuries. Bowlin's 4-year-old child, a passenger in her car, suffered no

injuries, and her mother, also a passenger, suffered injuries requiring five days' hospitalization. Cruze was wearing a manual lap seat belt with an automatic shoulder harness, which were in place when the emergency crew arrived to assist her. Her car was also equipped with a driver-side air bag, which had deployed. She suffered a cervical fracture at C6-7, resulting in quadriplegia.

It is uncontested that Cruze was not at fault. Both Cruze and Bowlin alleged that Cruze's injury was due to a defect in the Ford's air bag system. Cruze and Ford both presented to the jury considerable expert testimony. Cruze's expert testified that the injury was caused by the late deployment of the air bag and that there could be no other reasonable explanation. Cruze also presented expert engineer testimony that the late deployment of the air bag was caused by design changes in the air bag crash sensor system utilized by Ford and because this particular unit was defective. He was also critical of Ford's crash testing methods, which he opined should have predicted this unfortunate injury if the testing had been more comprehensive.

Ford's experts attempted to show that Cruze's broken neck did not result from the air bag but from the violence of the collision and the fragile nature of her body. One expert testified that the injury occurred because of Cruze's age (she was 76 years old) and osteoarthritic bones. Medical expert Dr. Robert Mendelsohn testified that he had never seen an injury exactly like this but he was confident that the air bag had played no role in causing it. Verne Roberts testified that the absence of broken ribs shows the air bag did not hit Cruze with the force she contends. Ford's expert testified that one cannot get seriously injured by an inflating air bag unless she is within an inch of the air bag cover when it initiates, and Cruze could not have been in that position with her seat belts on. If that much pressure had been applied by the air bag, it would have collapsed the steering wheel. A Ford accident reconstructionist testified that the crash itself could not have slowed down the activation of the air bag. Ford's experts also defended the quality of its crash testing.

At the close of the evidence, and prior to the jury charge, Cruze amended her complaint to rely solely on her negligence claims and on the strict liability theory of defective condition, withdrawing her "unreasonably dangerous" theory. The Trial Court granted a directed verdict in Ford's favor on

Cruze's claims for breach of warranty and failure to warn, and granted a directed verdict in Cruze's favor that Bowlin had been negligent. The Court then submitted the case to the jury, which found that Cruze had sustained \$6,565,864.84 in damages and apportioned 90% of the fault to Ford, resulting in a judgment against Ford in the amount of \$5,909,278.36. Bowlin was apportioned 10% of the fault, resulting in a judgment of \$656,586.48 against Bowlin, which Bowlin does not appeal.

DISCUSSION

_____ Our standard of review as to findings of fact by a jury in a civil action is limited to determining whether or not there is any material evidence to support the verdict. Rule 13(d), T.R.A.P. The appellate courts do not determine the credibility of witnesses or weigh evidence on appeal from a jury verdict. Where the record contains material evidence supporting the verdict, the judgment based on that verdict will not be disturbed on appeal. *Reynolds v. Ozark Motor Lines, Inc.*, 887 S.W.2d 822 (Tenn. 1994). A Trial Court's conclusions of law are subject to a *de novo* review. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 28 (Tenn. 1996).

Under Tennessee law, we review the jury charge in its entirety and consider it as a whole in order to determine whether the Trial Court committed prejudicial error. The charge will not be invalidated as long as it fairly defines the legal issues involved in the case and does not mislead the jury. *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 446 (Tenn. 1992).

Under Rule 3(e) of the Tennessee Rules of Appellate Procedure:

in all cases tried by a jury, no issue presented for review shall be predicated upon error in the admission or exclusion of evidence, *jury instructions granted or refused*, misconduct of jurors, parties or counsel, or other action committed or occurring during the trial of the case, or other ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived. [*Emphasis added*].

The Jury Verdict Form

_____ Ford's issues 1, 2 and 4 relate to the jury verdict form. In summary form, Ford claims: (1) that the form denied its right to a jury trial because it did not give the jury the option of deciding that

neither defendant was at fault, (2) that the form did not separate damages for enhanced injuries from those that Cruze would have suffered anyway from the accident, and (3) that the form did not include a specific reference to strict liability, therefore the jury verdict was based on negligence, and the evidence was legally insufficient to support a negligence verdict against Ford.

We reproduce the verdict form complained of:

1. Considering all of the fault at 100%, what percentage of the total fault is chargeable to each of the following defendants:

	Ford Motor Company	_____%	(0-100%)
Deborah S. Bowlin	_____%	(0-100%)	
	<u>100%</u>		

2. Without considering the percentage of fault found in Question One, what total amount of damages, if any, do you find were sustained by the Plaintiff,
Margaret H. Cruze \$_____

We address the first issue, stated by Ford as follows:

Whether the trial court violates a defendant’s right to jury trial when it submits the case in a form that requires the jury to allocate fault for all of the plaintiff’s damages either to that defendant, or to a co-defendant, or to both, and does not permit the jury any other opinion.

Ford argues that, since the jury was never given the option of deciding that *neither* defendant was at fault, “[t]he Trial Court’s submission amounted to an improper directed verdict that deprived Ford of its right to a jury trial.” Ford argues that the verdict form required the jury to allocate 100% of fault to Ford and/or Bowlin and did not allow the jury to allocate 0% of fault to both Ford and Bowlin. Ford contends that the jury could have found the accident unforeseeable, in which case neither defendant would have been liable, citing *Ford Motor Co. v. Eads*, 457 S.W.2d 28, 32 (Tenn. 1970), but the jury was not given this option. Ford argues the Trial Court should have followed the verdict form suggested by our Supreme Court in *McIntyre v. Balentine*, 833 S.W.2d 52, 59 (Tenn. 1992), which Appellant says requires a three-step analysis: (1) was defendant negligent? (2) was defendant’s negligence a proximate cause of plaintiff’s injury? (3) what are the percentages of fault among the parties found to be at fault? In this case, Ford argues it requested this procedure be followed, and that

its “constitutional right to jury trial was prejudiced when the Trial Court simply announced that Cruze *would* obtain a judgment for all her damages from the defendants”

Cruze says this issue is not properly before this Court because Ford never argued in its Motion for New Trial that Ford was denied its right to a jury trial because of the verdict form. T.R.A.P. Rule 3(e). Further, Cruze maintains that Ford was not deprived of a right to jury trial because the Trial Court’s instructions and the verdict form clearly state that the jury could find Ford zero percent at fault. Cruze also argues that the tortfeasor need not be able to foresee the *exact manner* in which the injury takes place, but merely the *general manner*, citing *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991).

We have reviewed the record for evidence of the parties’ discussions as to the Trial Court’s proposed instructions and verdict form, which required the jury to find that Ford and/or Bowlin were 100 percent at fault. Since we find Ford objected to the verdict form, both before it was given and in its post-verdict motion, the issue is properly before this Court. Therefore, we must determine whether the Trial Court’s use of this verdict form in light of its jury instructions had the effect of depriving Ford of its constitutional right to a jury trial.

Ford argues that “[w]hen a trial court submits a case to the jury in a fashion that does not give it the option of returning a verdict for the defendants, it effectively grants a directed verdict and violates the defendants’ constitutional right to jury trial,” and cites *Lorentz v. Deardan*, 834 S.W.2d 316 (Tenn. Ct. App. 1992) for this proposition. We quote the holding of that case as pertinent here:

In spite of the above holding, we find it necessary to reverse the judgment of the trial court and remand this case for a new trial. In its instructions to the jury, the trial court indicated that the plaintiffs were entitled to rescission under the theories of fraud, misrepresentation, or mutual mistake or, alternatively, violation of the Tennessee Consumer Protection Act. On the verdict form submitted to the jury, the trial court refused to include an option where the jury could find for the defendants. Apparently, the trial judge was of the opinion that the defendants could not prevail under any theory which they had advanced. The effect of these instructions was to direct a verdict for the plaintiffs even

though they had not moved for such. *See Morgan v. Tennessee Central Railway Co.*, 31 Tenn. App. 409, 421, 216 S.W.2d 2d 32, 37 (1948).

* * *

We conclude that the trial court's failure to instruct the jury as to each of the theories of the defendants, and failure to include an instruction that gave the jury the option of returning a verdict for the defendants, constituted prejudicial error requiring a new trial. *Memphis Transit*, 218 Tenn. at 316, 403 S.W.2d at 301. *See also Marsh v. Parton*, 61 Tenn. App. 416, 454 S.W.2d 385 (1969).

This Court's holding in *Lorentz* was based on the fact that none of the defendants in *Lorentz* could have prevailed. In *Lorentz*, both defendants appealed and complained that the jury was not given the opportunity to return a verdict in their favor. In this case, the jury *did* have the option of returning a verdict for Ford. To do so, the jury merely had to find Bowlin responsible for 100% of plaintiff's injury and Ford responsible for 0%, which the jury certainly could have done. This option was not available to the jury in *Lorentz*. Bowlin has not appealed.

Taking into consideration the fact that the parties agree that Cruze should be assessed 0% of the fault, we find that the verdict form and the Trial Court's jury instructions did give the jury the option of delivering a verdict completely exonerating Ford, and therefore Ford's constitutional right to a jury trial was not violated. For these reasons, Ford's first issue is without merit.

Ford states its second issue as follows:

Whether the trial court commits reversible error when it submits a "crashworthiness" product liability case in a form that does not ask the jury to determine the amount of the damages (out of all those the plaintiff suffered in the accident) for which the product manufacturer should share fault with the tort-feasor who caused the accident.

Ford complains that "[t]he submission to the jury did not permit separating damages for any 'enhanced injuries' from those that Cruze would have suffered anyway." Ford argues that, in Tennessee, such cases as this are to be determined in accordance with *Ellithorpe v. Ford Motor Co.*, 503 S.W.2d 516, 519 (Tenn. 1973). Ford argues that it did not cause the crash, and it's liability should be limited to

the “second accident” injuries, i.e., those injuries resulting from problems with the vehicle after the initial collision (or, “crash worthiness”). Ford says the jury was not properly instructed that they must first take out the damages caused by the collision, for which Ford has no liability, then Ford “shares responsibility” for only the “second accident” injuries. Ford contends that, since the jury instruction given in this case did not permit such a calculation, the only solution is a new trial.

Cruze argues that, under *Whitehead v. Toyota Motor Corp.*, 897 S.W.2d 684, 694 (Tenn. 1995), “[a]ny claim for ‘enhanced injuries’ is nothing more than a claim for injuries that were actually and proximately caused by the defective product.” Cruze argues that since fault includes proximate or legal cause, the jury, by assessing 90% of the fault against Ford in question 1, already determined that Ford proximately caused 90% of Mrs. Cruze’s damages.

The trial record shows the parties discussed this issue at length before the jury was instructed, with Cruze arguing that the jury instructions as given correctly informed the jury that “the fault portion covers both the negligence and the enhanced injuries,” therefore the verdict form should simply ask for a percentage of fault against Ford and a percentage of fault against Bowlin, to avoid confusing the jury and resulting in an inconsistent verdict. Ford, on the other hand, argued that the verdict form must include “how much of Ford’s fault or how much of her damages are over and above those that she would have otherwise received in the accident. Ford’s position is she got them all because of the accident.” Plaintiff responded, “You’re assuming that they’re not going to listen to that part of the charge which says they’re only responsible for the enhanced injuries they caused” The Trial Court, after considering these arguments, specifically applied *Whitehead v. Toyota*, as cited above, and denied Ford’s request to provide a more detailed or complex verdict form.

Our Supreme Court has provided an example of an appropriate special verdict form in cases involving strict products liability and other theories such as negligence. *Owens v. Truckstops of America*, 915 S.W.2d 420 (Tenn. 1996). For comparison, we reproduce the *Owens* example beside the verdict form used in this case.

“FN17. The following special verdict form, as adopted to the specific allegations of the case,

may be used in cases where liability is predicated upon strict products liability and other theories such as negligence:

Owens Verdict Form:

Cruz Verdict Form:

Using 100 percent as the total combined harm, 1. find from a preponderance of the evidence the percentage of the plaintiff’s injuries or damages proximately caused by:

Considering all the fault at 100%, what percentage of the total fault is chargeable to each of the following defendants:

The defective or unreasonably dangerous product (Defendants A and B) _____%

Ford Motor Co. _____%

Defendant X _____%

Deborah S. Bowlin _____%

Defendant Y _____%

100%

Plaintiff _____%

2. Without considering the percentage of fault found in Question One, what total amount of damages, if any, do you find were sustained by the Plaintiff,

(Total must equal 100%)

Signature of Foreman _____”

Margaret H. Cruz

\$ _____

—

Taking into consideration the fact that, in this case, the parties agree that Margaret Cruze’s fault was zero percent, we think the verdict form in light of the jury instructions given, was satisfactory and enabled the Trial Court to render judgment. Our Supreme Court has recently held:

Well-settled law requires courts to construe the terms of a verdict in a manner that upholds the jury’s findings, if it is able to do so. *See Briscoe v. Allison*, 200 Tenn. 115, 125-126, 290 S.W.2d 864, 868 (1956). Even if a verdict is defective in form, it is to be enforced if it sufficiently defines an issue in such a way as to enable the court to intelligently articulate a judgment. *See Arcata Graphics Co. v. Heidelberg Harris, Inc.*, 874 S.W.2d 522, 527 (Tenn. App. 1993).

Concrete Spaces, Inc. v. Henry Sender, et al, No. 01S01- 9812-CH-00224 (Tenn., filed August 30, 1999, for publication.)

In *Concrete Spaces*, our Supreme Court remanded the case for a new trial because the verdict form used required the Court to speculate “that compensatory damages were awarded solely on a violation of the Tennessee Consumer Protection Act and that the award of punitive damages was [therefore] improper.” The verdict form used “leaves open the possibility that the jury wrongly awarded

punitive damages in conjunction with the Consumer Protection Act rather than in connection with a common law claim for recovery.”

No such problem exists with the jury instructions and verdict form used in this case. The jury was asked to assess damages totaling 100% against either Bowlin or Ford, or both. The verdict form cannot be considered without also looking at the instructions given by the Trial Court to the jury. We must presume that the jury followed the instructions. *Perkins v. Sadler*, 826 S.W.2d 439, 443(Tenn. Ct. App. 1991). Specifically, the Trial Court instructed the jury on the issue of Ford’s possible fault for any enhanced injuries as follows:

Accordingly, Ford Motor Company is not responsible for any injuries except those proximately caused by Ford Motor Company. Ford Motor Company can only be responsible for any enhanced injuries.

Now, enhanced injuries refers to the plaintiff’s injuries, if any, that were caused by defects, if any, in the 1994 Ford Excort, or because of Ford’s negligence, if any, over and above those injuries that probably would have occurred as a result of the accident absent any defect caused by Ford.

The fallacy of Ford’s position concerning its second issue is evident from the language used by Ford in stating the second issue. In its second issue, Ford says that the Trial Court committed reversible error by not submitting a verdict form that would “. . .ask the jury to determine the amount of damages (out of all of those Cruze suffered in the accident) for which the product manufacturer should share fault with the tort-feasor who caused the accident.” Ford maintains that the submission to the jury did not allow the jury to separate damages for Cruze’s “enhanced injuries” from any damages that Cruze would have suffered anyway. Cruze did not sue Bowlin and Ford asking for damages resulting from a multitude of injuries. Rather, Cruze sued for damages resulting only from one injury, the cervical fracture at C6-7 which resulted in her quadriplegia. The jury instructions given by the Trial Court and the verdict form used asked the jury to determine the amount of fault, if any, which Ford should share with Bowlin for the one injury complained of by Cruze. Under the instructions given to the jury and the verdict form submitted to the jury, the jury would have determined that Ford had no fault for the one injury suffered by Cruze if they had decided that it was not an “enhanced injury.” The jury determined otherwise.

Accordingly, we find that Ford's second issue is without merit.

Ford states its fourth issue as follows:

Whether the judgment in a product liability case should be reversed where the liability question was submitted to the jury with instructions limiting that question to a claim of negligence and where the evidence did not identify a specific error in the product's design or manufacture, or link any such error with the manufacturer's lack of due care.

Ford argues that "[t]he evidence was legally insufficient to support the verdict as the case was submitted to the jury." Ford contends the jury instructions only charged negligence, not strict liability, and negligence was not proven against Ford.

Cruze contends that, nowhere in Ford's Memorandum of Law in support of its post-verdict motion did Ford raise the issue that negligence was the only claim that went to the jury and that there was not sufficient evidence to support a verdict on negligence. Cruze argues that under Rule 3(e) of the Tennessee Rules of Appellate Procedure, Ford cannot raise this issue on appeal. Further, Ford requested Special Instruction No. 8, so it cannot now complain that the Court gave that instruction. More importantly, Cruze contends that the instructions as a whole sufficiently presented her strict liability theory for the jury's consideration, and the trial court properly performed its role as 13th juror. Therefore, this Court must uphold the jury's verdict if there is *any* material evidence to support the verdict, citing *Ellis v. White Freightliner Corp.*, 603 S.W.2d 125 (Tenn. 1980).

We again examine Ford's post-verdict motion to determine whether this issue is properly before us, since "it is well-settled that issues not raised at trial may not be raised for the first time on appeal." *Simpson v. Frontier Community Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991); *DHS v. DeFriece*, 937 S.W.2d 954, 960 (Tenn. Ct. App. 1996). We find Ford's post-verdict motion did raise this issue, and it is therefore properly before us.

On the issue of whether the jury instructions charged both negligence and strict liability, the record in this case shows that Defendant's Special Instruction No. 1 was given, as follows:
(Underlining occurs in the original.)

SPECIAL INSTRUCTION NO. 1 - T.P.I. 2.40 -

PREPONDERANCE OF THE EVIDENCE (MODIFIED):

In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove her claims against Defendant Deborah S. Bowlin and Defendant Ford Motor Company.

As I will instruct you in greater detail hereafter, the Court has determined as a matter of law that Defendant Deborah S. Bowlin acted negligently in causing the accident in which Mrs. Cruze was injured. Therefore, with respect to Mrs. Bowlin, you must only determine Mrs. Cruze's damages, if any, legally caused by Mrs. Bowlin's negligence. With respect to the Defendant Ford Motor Company, Plaintiff must prove the following:

1. That the 1994 Ford Escort designed and manufactured by Defendant Ford Motor Company was in a defective condition when it left Ford's control; or Ford was negligent in the design, manufacture or testing of the product.
2. That the 1994 Ford Escort was expected to and did reach Plaintiff without substantial change to its condition after it left Ford's possession;
3. The defective condition or negligence was the legal cause of the damages sustained by Plaintiff.

The term "preponderance of the evidence" means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true. If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed. You must consider all of the evidence on each issue.

AUTHORITY: T.P.I. 2.40 (MODIFIED); Tenn. Code Ann. § 29-28-105.

The Trial Court also charged the jury as follows:

With respect to the defendant, Ford Motor Company, the plaintiff must prove these following things. First of all, that the 1994 Ford Escort designed and manufactured by the defendant, Ford Motor Company, was in a defective condition when it left Ford's control, or Ford was negligent in the design, manufacture, or testing of that particular product. Second of all, that the 1994 Ford Escort was expected to and did reach Cruze without substantial change to its condition after it left Ford's possession. And third, that the defective condition or the negligence of Ford was the legal cause of the damages sustained by Mrs. Cruze.

These are but a portion of the instructions given to the jury by the Trial Court that pertained to the strict liability claim of Cruze against Ford. We find that the jury instructions, taken as a whole, do present Cruze's theory of strict liability as well as her theory of negligence.

Even if Ford were correct that the liability question was submitted to the jury only with

instructions pertaining to a claim of Ford's negligence, Ford's argument would still fail. Findings of fact by a jury in a civil action shall be set aside only if there is no material evidence to support the verdict. Rule 13(d), Tennessee Rules of Appellate Procedure. As discussed earlier in this opinion, the record before us contains material evidence, the Plaintiff's experts' testimony, to support a finding by the jury of negligence by Ford. For these reasons and those discussed above, we find Ford's fourth issue to be without merit.

Applicability of "Federal Motor Vehicle Safety Standards"

Ford states its third issue as follows:

Whether the trial court commits reversible error in a product liability case when it refuses to instruct the jury that compliance with government standards for vehicle occupant crash protection creates a rebuttable presumption that the vehicle was not unreasonably dangerous in that respect, where the plaintiff alleges that the product was in a defective condition and that the manufacturer was negligent.

Ford, in short, contends that "[t]he trial court erroneously refused to instruct the jury on the rebuttable presumption arising from compliance with government standards." Ford argues that Tenn. Code Ann. § 29-28-104 (1980) establishes that compliance with an applicable government standard creates a rebuttal presumption that the product is not unreasonably dangerous, and the evidence was undisputed that the Ford Escort was in compliance. Although Cruze withdrew her claim that the Ford Escort was unreasonably dangerous during the charge conference and that claim was not submitted to the jury, Ford contends this did not preclude submission of the requested instruction, since "where a special instruction that has been requested, is a correct statement of the law, is not included in the general charge, and is supported by the evidence introduced at trial, the court should give the instruction." *Underwood v. Waterslides of Mid-Am., Inc.*, 823 S.W.2d 171, 178 (Tenn. Ct. App. 1991).

Cruze argues that Tenn. Code Ann. § 29-28-104 refers to performance standards, not design standards in this case, because the applicable standards, "Federal Motor Vehicle Safety Standards," prescribe minimum standards for "performance" and specifically exclude "design."

Therefore, Cruze argues the special instruction requested was inapplicable to these facts and should not have been charged to the jury. The 10th Cir. has ruled, based on a similar Kansas statute, that if the FMVSS does not cover the allegedly defective component, then the manufacturers' compliance with the standard does not entitle them to the rebuttable presumption. *Compton v. Subaru of America, Inc.*, 82 F.3d 1513 (10th Cir. 1996).

Further, Cruze argues that, in Tennessee, legislative history shows that the "Tennessee Products Liability Act of 1978" creates liability on the part of the manufacturer, under Tenn. Code Ann. § 29-28-105(a) when the product is *defective OR unreasonably dangerous*, which is an intended departure by our legislature from the 402A Restatement (Second) of Torts rule requiring both defect and unreasonably dangerous. *Ray v. Bic Corp.*, 925 S.W.2d 527, 529 (Tenn. 1996). Cruze contends that her claim as shown by the proof was that the air bag was defective, and a jury charge about a rebuttable presumption that the air bag was not unreasonably dangerous was not appropriate.

Tenn. Code Ann. § 29-28-105(a) does provide for liability on the part of a manufacturer where the product is either defective or unreasonably dangerous. It does not require both. Cruze withdrew her claim that Ford's product was unreasonably dangerous. The jury was not faced with the task of deciding, based upon the evidence before them, whether or not Ford's product was unreasonably dangerous. Ford's requested instruction that compliance with the government standards by Ford's vehicle created a rebuttable presumption that the vehicle was not unreasonably dangerous was related to an issue that did not go to the jury. The Tennessee Legislature has determined that under Tennessee product law, recovery is available for defective products or for unreasonably dangerous products. A product need not satisfy both criteria in this state. Ford's requested jury instruction would have improperly negated this legislatively enacted standard.

The jury did not have the issue of whether or not the Ford Escort was unreasonably dangerous submitted to it. The failure of the Trial Court to issue Ford's requested jury instructions concerning compliance with government safety standards was not error. Ford's third issue is without merit.

CONCLUSION

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for such further proceedings, if any, as may be required, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against Ford.

D. MICHAEL SWINEY, J.

CONCUR:

HERSHEL P. FRANKS, J.

CHARLES D. SUSANO, JR., J.