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Automobiles-Accident at Intersection of Highways-Rules of the Road

RECENT CASE NOTES

AUTOMOBILES—ACCIDENT AT INTERSECTION OF HIGHWAYS—RULES OF THE ROAD—Defendant was driving south on U. S. 31 in Michigan; plaintiff was approaching this road on a county road from the east, stopped his car about 25 feet from the right of way of U. S. 31, looked to the north, but his view being obstructed by trees, shrubbery, etc., started his car and proceeded slowly to about 8 feet from the east edge of U. S. 31, looked to the north a distance of 250 or 300 feet, which was as far as he could see because of obstructions. He then started across the highway slowly and had proceeded about 25 feet when defendant's car, coming at the rate of 55 to 60 miles an hour, struck plaintiff's car as it was turning to the south. Defendant could have seen a car approaching on this county road only 250 or 300 feet from the intersection because of the obstructions. There was a sign placed on U. S. 31 warning drivers of the intersection, defendant had driven the road before and knew of the intersection, but made no effort to slow his car on approaching it. Issues of negligence of defendant and contributory negligence of plaintiff were submitted to the jury who found for the plaintiff in the sum of $12,048. On appeal, held, judgment affirmed.[1]

The court was correct in applying the law of Michigan to this case, since it is a fundamental principle of Conflict of Laws that the lex delicti governs in the case of a tort.[2] The Michigan rule in this case is, however, no different from the rule that applies in the majority of jurisdictions. The case involves a number of "rules of the road."

Right of way gives a preference to the vehicle on the main thoroughfare. This, however, does not eliminate the duty of the driver of such vehicle to operate it in a lawful manner, nor does it justify his disregarding another vehicle upon an intersecting thoroughfare.[3] One reaching an intersection first has preference in crossing it. Such right is not an absolute one, and both drivers should exercise a reasonable care to avoid coming to a collision.[4] Where two vehicles approach an intersection at the same time, the one approaching from the right has the right of way. This rule is usually codified by statute,[5] and has been held not to grant an absolute right, but to announce a rule of conduct which does not negative the duty of due care, and the rule of negligence per se does not apply.[6]

All of the above are merely rules of convenience. In the absence of knowledge or facts to the contrary, it has been held that one may assume that the other driver approaching an intersection will observe the laws of the

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[1] Lewin v. Moll (Ind. App. Sept. 21, 1933) 186 N. E. 905.

[2] Hall v. Hamel (1923), 244 Mass. 464, 138 N. E. 925; De Shetler v. Kordt, 43 Ohio App. 236, 183 N. E. 85.

[3] Kling v. Candy Co. (1929), 33 Ohio App. 177, 168 N. E. 761.

[4] Dinnen v. Fries (1930), 93 Ind. App. 190, 171 N. E. 665.

[5] Sec. 10154 Burns Ann. St. 1926.

[6] Blasengym v. Gen. Accident Fire & Life Assur. Corp. (1929), 89 Ind. App. 524, 165 N. E. 262.

road.[7] However, such a right to assume that the other motorist will use due care does not go far. Where one can see, or by the use of ordinary care should see that the other is not observing the rules, the former driver may not proceed merely because he has the right of way.[8] A person of ordinary prudence should take reasonable precautions under the circumstances to prevent collision, if he can foresee threatened danger from another not exercising ordinary care, whether or not from violation of traffic ordinance or rule of the road. He cannot rely on the presumption of ordinary care by such other person when from heedful attention the contrary is shown.[9] Thus, one approaching an intersection first may be required to yield,[10] or one may be required to wait until a driver over whom he has the right of way has passed.[11] But where a traveler on coming to a street intersection looks to his right and sees no vehicle approaching and then proceeds across the intersection, he is not as a matter of law violating the law which requires him to give the right of way to vehicles approaching from the right.[12]

The question of speed laws enters into this case, since the jury evidently found defendant negligent in driving at 55 or 60 miles a hour under the circumstances. Under the older authorities, decided soon after the automobile came into use, violation of a speed ordinance or statute was negligence per se.[13] However, many cases now hold that a state law or ordinance fixing the speed of automobiles present rules of evidence only and excess speed is not conclusive evidence of negligence.[14] It may be prima facie negligence, but not negligence per se.[15] The stress is now laid on the ability to control the vehicle. The duty of control of speed to a reasonable rate exists irrespective of any governmental regulations.[16] What is a reasonable speed is a question which involves all the circumstances; "the test of a reasonable speed is the lives and safety of the public."[17] The general rule is that it is negligence to drive an automobile at such speed that it cannot be stopped within the distance that objects can be seen ahead.[18] The duty of keeping an automobile under control involves the ability to stop promptly within a reasonable distance.[19] This general requirement

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[7] Elgin Dairy Co. v. Shepherd (1915), 183 Ind. 466, 108 N. E. 234, 109 N. E. 353.

[8] Elgin Dairy Co. v. Shepherd (1915), 183 Ind. 466, 108 N. E. 234, 109 N. E. 353.

[9] Keltner v. Patton (1933), 185 N. E. 270 (Ind. App.).

[10] Dinnen v. Fries (1930), 93 Ind. App. 190, 171 N. E. 665; Elgin Dairy Co. v. Shepherd (1915), 183 Ind. 466, 108 N. E. 234, 109 N. E. 353; Wolf v. Vehling (1923), 79 Ind. App. 221, 137 N. E. 713; Mayer v. Mellette (1917), 65 Ind. App. 54, 114 N. E. 241; Adams v. Harvitt (1922), 30 Ohio App. 211, 164 N. E. 773.

[11] Heedle v. Baldwin (1928), 118 Ohio St. 375, 161 N. E. 44, 160 N. E. 508.

[12] Kunz v. Thorp Fire-Proof Door Co. (1921), 231 Minn. 488, 185 N. W. 376.

[13] Fox v. Berekman (1912), 178 Ind. 572, 99 N. E. 989; Carter v. Caldwell (1915), 183 Ind. 434, 109 N. E. 335.

[14] Allen v. Leavich (1932), 43 Ohio App. 100, 182 N. E. 139.

[15] Scott v. Daw (1910), 162 Mich. 636, 127 N. W. 712.

[16] Gross v. Burnside (1921), 186 Calif. 467, 199 Pac. 780; Meyer & Peter v. Creighton (1912), 183 N. J. L. 749, 85 Atl. 344.

[17] Darish v. Scott (1920), 212 Mich. 139, 180 N. W. 435.

[18] Penn. Ry. Co. v. Huss (1932), 180 N. E. 919 (Ind. App.) (freight train on crossing); Croatin Bros. Packing Co. v. Rice (1925), 88 Ind. App. 126, 147 N. E. 288 (pedestrian lawfully crossing the street); Ry. v. Gillispie (1931), 173 N. E. 708 (Ind. App.).

[19] Bowmaster v. De Pree (1930), 252 Mich. 505, 233 N. W. 395.

applies with special force when approaching a street or highway intersection, and it is the duty of a driver who is approaching such intersection to have his car under such control as to be prepared for the traffic which he may find there. Nor is a driver excused for nonperformance of such duty at an intersection because his view is obscured as he approaches it.[20] In such circumstances, he is required to exercise more caution than would be required if his view were unobstructed.[21]

In practically all of the cases of automobile accidents liability depends almost entirely upon the facts of the particular case. No definite rule can be laid down, other than the very general rules of the road which are more in the nature of courtesy rules. The question as to a plaintiff's contributory negligence as well as a defendant's negligence is primarily one of fact, depending on the circumstances and usually must be left to the jury to determine.[22] Therefore, in the instant case it was incumbent upon the appellate court to sustain the finding of the jury since there was evidence to support it, even though such appellate tribunal in the first instance might have been inclined to find differently. P. C. R.

MASTER AND SERVANT—INDEPENDENT CONTRACTOR—WORKMEN'S COMPENSATION—This was an appeal from the Industrial Board. One Krekler had a truck which he used in hauling crushed stone for the appellants, who were constructing a road. His brother drove for a time; at the request of appellants, the brother quit driving. Krekler then engaged another driver who was also unsatisfactory to appellants. Krekler himself thereupon started to drive, and did drive for two days until the accident. The truck overturned, crushing him. Deceased was paid $1.00 per yard hauled, and furnished the truck, the driver, and serviced the truck completely. There was no agreement that the deceased was to haul a certain or definite amount or for a certain time. His truck was one of several employed by the appellants. He could have quit at any time or could have been discharged at any time. Held, the deceased was an employee rather than an independent contractor.[1]

An independent contractor is one exercising an independent employment under a contract to do a certain work by his own methods and without subjection to the control of his employer, except as to the production of results.[2] A servant is a person employed to perform services for another in his affairs, and who in respect to his physical movements in the performance of the service is subject to the other's control or right to control.[3]

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[20] Donsky v. Kotimaki (1925), 125 Me. 72, 130 Atl. 871; Rosenau v. Peterson (1920), 147 Minn. 95, 179 N. W. 647.

[21] Gosling v. Gross (1917), 66 Pa. Super. 304; Lumber Co. v. Ry. Co. (1920), 115 S. C. 267, 105 S. E. 406.

[22] Keltner v. Patton (1927), 159 N. E. 162 (Ind. App.); Stark v. Wishart (1929), 90 Ind. App. 264, 168 N. E. 711.

[1] Carr v. Krekler, Appellate Court of Indiana, June 24, 1932, 181 N. E. 526.

[2] Prest-O-Lite v. Skeel (1914), 182 Ind. 593, 106 N. E. 365; accord, Falender v. Blackwell (1906), 39 Ind. App. 121, 79 N. E. 393; Washburn Crosby Co. v. Cook (1918), 70 Ind. App. 463, 120 N. E. 434; Zainey v. Rieman (1924), 81 Ind. App. 74, 142 N. E. 397; Marion Malleable Iron Works v. Baldwin (1924), 82 Ind. App. 206, 145 N. E. 559; Makeever v. Marlin (1931), 92 Ind. App. 158, 174 N. E. 517; New Albany Forge and Iron Co. v. Cooper (1892), 131 Ind. 363, 30 N. E. 294; Crockett v. Calvert (1856), 8 Ind. 127. Meechem, Agency, 2nd Ed., sec. 1870.

[3] American Law Institute, Restatement of the Law of Agency, § 220(1).