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Sudden Illness as a Defense in Auto Accidents

Annamarie R. Kirchner*

TODAY, AUTOMOBILE ACCIDENTS constitute a major source of actions at law for negligence. Some of these mishaps may have sudden illness of the motor vehicle operator as the primary or contributing cause. The purpose of this note is to examine the question of sudden illness and its possible value as a defense when negligence is charged against an automobile driver.

One may escape liability under the law by pleading and proving an affirmative defense.¹ One defense open to the defendant is that the accident was unavoidable or was an act of God.² An *unavoidable accident* has been defined as an inevitable accident,³ an event or an occurrence which could not have been prevented by any human foresight or ordinary prudence, the result occurring without fault.⁴ An *act of God* is a term defined as an accident or an occasion lacking a human agent,⁵ such as windstorms,⁶ rainstorms,⁷ floods,⁸ ice and sleet,⁹ lightning,¹⁰ landslides,¹¹ natural leakage of oil and gas,¹² unexplained

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¹ Prosser, *Torts*, 426-470 (3d ed. 1964).

² Prosser, *op. cit. supra* n. 1 at 320; Howie III, *Act of God, A Reconsideration*, 18 Wash. & Lee L. Rev. 336 (1961); Findlay, *Torts-Negligence-Act of God, Pa. Scorns "Irreverent" Usage, Displays Preference of "Vis Major,"* 37 Notre Dame Law. 734 (1962). For examples of pleading of "Act of God" as a defense, see, Oleck, *Negligence Forms of Pleading*, 436-7, 789, 1047 (1957 rev. ed.) (It need *not* be specially pleaded).

³ Prosser, *op. cit. supra* n. 1 at 142.

⁴ 38 Am. Jur., *Negligence* § 65 (1941); Prosser, *op. cit. supra* n. 1, at 143-46.

⁵ Prosser, *op. cit. supra* n. 1 at 426-470; Howie III, *op. cit. supra* n. 2 at 336; Findlay, *op. cit. supra* n. 2 at 734.

⁶ Feeney v. New York Waist House, 105 Conn. Rep. 647, 136 A. 554 (1927); Lee v. Crittenden County, 216 Ark. 480, 226 S.W.2d 79 (1950); Brewer v. United States, 108 F.Supp. 889 (D.C. Ga. 1952); Young v. Marlas, 243 Iowa 367, 51 N.W.2d 443 (1952); Swanson v. LaFontaine, 238 Minn. 460, 57 N.W.2d 262 (1953).

⁷ Spaulding v. Cameron, 38 Cal. 2d 265, 231 P.2d 921 (1951); Western & Atlantic R.R. v. Hassler, 92 Ga. App. 278, 88 S.E.2d 559 (1955).

⁸ Standard Brands v. Nippon Yusen Kaisha, 42 F.Supp. 43 (D.C. Mass. 1941); Krichau v. Chicago B. & Q. R. Co., 150 Neb. 498, 34 N.W.2d 899 (1948); City of Portsmouth v. Culpepper, 192 Va. 362, 64 S.E.2d 799 (1951); Hilzer v. Farmers Irr. Dist., 156 Neb. 398, 56 N.W.2d 457 (1953); Snyder v. Farmers Irr. Dist., 157 Neb. 771, 61 N.W.2d 557 (1953); Thrasher v. Amere Gas Utilities Co., 138 W.Va. 166, 75 S.E.2d 376 (1953); Cover v. Platte Valley Public Power & Irr. Dist., 162 Neb. 146, 75 N.W.2d 661 (1956).

⁹ Public Service Co. v. Sonagerra, 208 Okl. 95, 253 P.2d 169 (1953).

¹⁰ Sauer v. Rural Co-Op Power Ass'n of Maple Lake, 225 Minn. 356, 31 N.W.2d 15 (1948).

¹¹ Gleeson v. Virginia Midland R'd Co., 140 U.S. 435, 11 S.Ct. 859, 35 L. ed. 458 (1891).

¹² Gulf Oil Corp. v. Lemmons, 198 Okl. 596, 181 P.2d 568 (1947); Renegar v. Bogie, 199 Okl. 427, 186 P.2d 820 (1947); Thrasher v. Amere Gas Util. Co., *supra* n. 8.

aircrashes,¹³ and unexpected illnesses.¹⁴ It should be noted that confusion can arise between the legal and non-legal definitions of an act of God. In general the non-legal definition of an act of God is any "natural" occurrence which takes place on earth. But for legal purposes this must be considerably more restricted. In the legal definition it would be necessary to show that the event is unforeseeable by use of reasonable human intelligence and that there is a lack of human agency as the prime cause of the damage.¹⁵ The occurrence must be unusual for the time and locale for such recognition. Therefore, not all unavoidable events are considered by the laws as acts of God.

In order to examine the possible value of illness as a defense it is necessary to define briefly the general states of human health. *Health* is a condition of mind or body in which the physiological processes function at normal efficiency.¹⁶ Any departure from this norm which results in an alteration of these processes is considered illness. Since the turn of the century the mortality rate for various illnesses has been altered, and the life span of mankind has increased. This is largely due to the fact that man has been successful in improving his environment, his nutrition, and his control of some diseases.¹⁷ However, new problems are arising. As the average life span has increased, there has been a corresponding increase in the prevalence of illnesses that are considered degenerative in character. These are associated with the natural wear of anatomical parts which ultimately alters physiological processes and are frequently associated with advancing age. These illnesses, or alterations of physiological functions, may appear without previous knowledge or warning.

Illnesses are generally categorized as *acute* or *chronic*.¹⁸ This classification is frequently misunderstood. The terms do not refer to the severity of the disease but rather to the suddenness of its onset. The *acute* illness has a rapid onset, which produces signs and symptoms within a short period of time. It generally runs a brief course, from which there is usually a full recovery, or an abrupt termination in death. Occasionally the acute illness may be prolonged and revert to chronicity. A *chronic* illness is a lengthy, persistent body condition. Its

¹³ *Lopez v. Resort Airlines*, 18 F.R.D. 37 (D.C. N.Y. 1955); *Southern Air Transport v. Gulf Airways*, 215 La. 366, 40 So.2d 787 (1949). But this is a question, under some views.

¹⁴ *Sanders v. Coleman*, 97 Va. Rep. 690, 34 S.E. 621 (1899); *Ringeman v. State*, 136 Ala. Rep. 131, 34 So. 351 (1903); *Eleason v. Western Casualty & Surety Co.*, 254 Wis. 134, 35 N.W.2d 301 (1948); *McClellan v. Chicago Great Western Ry. Co.*, 3 Ill.App.2d 235, 121 N.E.2d 337 (1954), *Freifield v. Hennessy*, 353 F.2d 97 (3rd Cir. 1965).

¹⁵ *Prosser, op. cit. supra* n. 1 at 426-470. *Howie III, op. cit. supra* n. 2 at 336. *Findlay, op. cit. supra* n. 2 at 734.

¹⁶ See, generally, *Williamson, Biologists in Search of Material* (2d ed. 1947).

¹⁷ See, generally, *Turner, Personal and Community Health* (2d ed. 1959).

¹⁸ See, generally, *Shafer, Sawyer, McCluskey, Bech, Medical-Surgical Nursing* 26-35 (1964).

signs and symptoms may be intermittent, and may be present in an acute manner. The chronic illness generally runs a long course from which there may be only partial recovery, or eventual death.¹⁹

In our consideration of the question of liability of the operator of a motor vehicle, we are of course most concerned with those illnesses associated with acute symptomatology. The concern from a legal standpoint revolves mainly around the *suddenness* of the incapacity which resulted in the question of a negligent act, and whether this act constitutes actionable negligence, or is an unavoidable occurrence without fault. A key factor is the state of previous knowledge of his health on the part of the auto operator. The possibility of his having prior knowledge of a condition that may produce sudden incapacity, whether that be from an acute illness or exacerbation of symptoms from a previously unknown or unknowable condition, could result in a variable interpretation of negligence under the law.

The task of driving varies greatly with the type of vehicle and the individual driving that vehicle. Ralph Nader has written that the manufacturers of the American auto motor vehicle have concentrated upon other factors than safety, so that all our vehicles of all types often are almost completely unsafe.²⁰ However, the question of negligence is not germane to our discussion since we are concerned with the condition of the *individual* driving that vehicle and the relation of his condition to potential legal negligence. Human failure overshadows every highway accident. Therefore the human mechanism ought to be in prime condition in order to drive the motor vehicle at any speed and under any environmental condition. The ultimate success factor in automobile accident prevention usually is the driver. It will depend largely upon his intelligence, his sense of personal and social responsibility, his reactions to various stimuli in normal conditions and under any type of stress, and his driving ability in good health or in illness.²¹

Cardiovascular, metabolic, neurologic, emotional and psychiatric disorders, as well as alcohol and drugs, are among the leading causative factors in careless, reckless and irresponsible driving. These disease entities also have been the leading causes of death in the United States.²²

Cardiovascular diseases hold the first position. More than 12,830,000 Americans have heart disease, and a like number have high blood pressure and arteriosclerosis which ultimately affects the entire

¹⁹ See, generally, Apperly, *Patterns of Disease on a Basis of Physiological Pathology* (1951).

²⁰ See, generally, Nader, *Unsafe at Any Speed* (New York 1965).

²¹ Lawston, 64 *Traffic Safety* 12 (1964).

²² See, generally, The National Health Education Commission, Inc., *Facts on the Major Killing and Crippling Diseases in the United States* (1964).

circulatory system.²³ This group of illnesses produces a high incidence of situations where sudden incapacity occurs. This ranges all the way from slight dizziness and visual disturbances to death. The individual whose disease affects the coronary arteries of the heart may have a complete and sudden occlusion of the flow of blood through the main artery or one of its branches. This may occur without previous warning or without any previous knowledge of threatening health condition. It may produce such severe pain that the individual is rendered incapable of proper control of a motor vehicle, or the incapacity from this illness could be due to almost immediate complete loss of consciousness or death.

The cerebrovascular accident, often referred to by the non-medical term "stroke," is another group in this complex of circulatory diseases. While one usually thinks of the "stroke" as resulting in complete, sudden, and prolonged incapacity, or death, it should be remembered that there are many variations in the symptomatology. Although some of these may result in incapacity of a major nature which is easily recognized, the more minor and transient may go unrecognized, but they are capable of producing momentary and complete incapacity in a driver of a motor vehicle. Therefore in addition to the blood clots or hemorrhages which affect the brain and result in the pronounced disabilities, these transient attacks raise a major question in the problem of negligence. These episodes are often referred to by the person who has suffered them as "dizzy spells" or "blackouts." They usually occur from a momentary decrease in circulating blood to the brain in persons with vascular disease. Though the symptoms may be short in duration, the incapacity for driving a motor vehicle may be total during this brief time. The recovery in this situation may be complete and leave no objective evidence of it having occurred.

Aneurysms, which are pulsating dilatations of arterial walls, have as their natural course a progressive expansion and final rupture. These are becoming more common in the American population because of the high incidence of atherosclerosis. They are often undetected until they rupture. This is a catastrophic occurrence accompanied by sudden, massive internal hemorrhage, with total incapacity.

Certain metabolic disorders may also result in symptoms that will produce sudden incapacity. Symptoms of these conditions vary from muscle weakness, to tetany, to convulsions, to unconsciousness. Of these illnesses, the one most commonly found to affect a driver's capacity to handle a motor vehicle is diabetes mellitus. This is a chronic, metabolic disease in which there is some degree of insulin insufficiency which results in an inability to metabolize carbohydrate properly. There are

²³ Cecil and Leb, *Textbook of Medicine* 618-636, 681-710 (11th ed. Beeson & McDermott 1963).

approximately 2,000,000 known diabetics in the United States.²⁴ In this 1% of our population who have diabetes, it is estimated that 4% go unrecognized and therefore untreated.²⁵ Sudden incapacity can occur in this illness from two separate causes. In the untreated or inadequately treated individual, coma can result from the alteration of blood chemicals that occur in improper carbohydrate metabolism. Prior to coma onset there is usually a period of severe apathy or drowsiness, and incapacity for driving a motor vehicle can develop rather suddenly and even prior to loss of consciousness. In the other situation, over treatment by means of an excess of insulin can result in sudden development of a shock like condition. Often the diabetic person has minimal or no warning of the impending incapacity.

In addition to the previously discussed vascular problems that affect the brain, there are a number of neurological diseases that may result in sudden incapacity. The only common one is epilepsy. It is one of the oldest diseases known to mankind. It was described by Hippocrates, and the term itself means "seizure." It is characterized by attacks of loss of consciousness which may be accompanied by convulsions. Several symptom types of seizures are recognized. The grand mal is one usually associated as epilepsy by non-medical people. It is characterized by loss of consciousness and convulsions. The petit mal type is characterized by being more transient and manifesting a lesser mental disturbance without falling or convulsions. Although this form may last for as brief a time as thirty seconds, it can be incapacitating to the operator of a motor vehicle. A third type known as psychic equivalents is not significant to our discussion. Although an epileptic seizure may be preceded by an *aura*, which is some form of sudden sensory change in vision or hearing, this warning is of no help since the convulsions follow so promptly that the individual has no time to help himself.²⁶ There are over 800,000 persons in the United States with some form of epilepsy or approximately one out of every two hundred of our population.²⁷ The epileptic is always advised to refrain from alcoholic beverages, since any type of alcohol, or combination of alcohol and drugs could contribute to an attack. The individual is also advised to refrain from any physical or emotional stress.²⁸ Night driving is particularly dangerous to the epileptic because the glare of opposing headlights can act as a stimulus to

²⁴ Beeson and McDermott, *op. cit. supra* n. 23 at 1294, American Diabetic Ass'n Inc. Facts Sheet (Aug. 1964).

²⁵ See, generally, Joslin, *Treatment of Diabetes Mellitus* (10th ed. 1959); Mitchell, *Current Concepts in the Recognition and Management of Diabetes Mellitus*, 60 *J. Ark. Med. Soc.* 410 (1964).

²⁶ Rupp, *Management of Epilepsy*, 166 *A.M.A.J.* 1967-1970 (1958).

²⁷ Smith and Gips, *Care of the Adult Patient, Medical-Surgical Nursing* 392-399 (2d ed. 1966).

²⁸ Rupp, *op. cit. supra* n. 26, 1967-1970.

produce an attack.²⁹ In addition, the drugs used to prevent attacks all have the side effect of producing drowsiness and, therefore, pose an additional danger to the epileptic as a driver.

Emotional and neuropsychiatric problems can be another source of incapacity. The emotionally disturbed person can be indifferent and despondent, or aggressive, impulsive, and antagonistic. In either case there is impairment of judgment and a lack of alertness and attention with slowing of the reflexes. In the neuropsychiatric individual these processes are more pronounced. When these people are under medical treatment they are usually taking ataractic drugs, commonly known as tranquilizers. These drugs have side effects in the form of drowsiness and delayed reaction time which in themselves may create a problem for the driver.

Unfortunately, these ataractic drugs are being used today on an extremely wide scale, rather than being limited to the groups mentioned above. The proportion of our driving population suffering impairment of judgment, slowing of reflexes, and drowsiness is completely unknown, but is estimated by medical authorities to constitute a significant safety problem on the highways. Other drugs, even though taken for specific medical therapy, have similar injurious side effects. However, the most potent and dangerous is alcohol.

Many highway accidents are due to the drinking driver. Alcohol is a nervous system depressant despite the fact that so many people look upon it as a stimulant. Performance, judgment, observation, muscle coordination, and tolerance of light glare are impaired by its use. It has been found that small doses do not have a constant depressing effect upon the output of work of an unskilled nature, but work requiring skill and precision invariably suffers in accuracy, efficiency, and time required for its accomplishment. Large single doses produce signs of distinct cerebral depression which pass from muscular incoordination to a state of unconsciousness similar to that of ether or chloroform anesthesia.³⁰

This brings us to a consideration of several questions. Is the driver of a motor vehicle who suffered sudden incapacity due to one of these disease states negligent in the legal sense if his loss of control of the vehicle results in personal or property damage? Is this an unavoidable accident? Can such a driver logically plead that the occurrence is an act of God, beyond his control, and therefore without fault?

In certain of these disease states the individual may develop sudden incapacity without any prior knowledge of a disease existing. This is particularly true with some of the cardiovascular illnesses such as acute coronary occlusion, and some "strokes." The undiagnosed diabetic and

²⁹ Smith and Gips, *op. cit. supra* n. 27, 392-399.

³⁰ *Cyclopedia of Medicine and Surgery Specialists* 1965, 269-299 (1965).

the initial attack of epileptic disorders may also incapacitate a driver without any previous warning. Should a driver be so incapacitated, and through this incapacity cause a personal or property damage incident, the question of negligence is rather clear cut. In these situations the accident is unavoidable, for lacking prior knowledge of his physical condition the prudent person would have had no opportunity to take a different course. The sudden occurrence of the illness lacks a human agent and opens to such a driver the possible defense of an act of God and lack of personal fault.³¹

The value of such a defense would be to excuse the defendant from liability. This would be based upon the idea that he could not be responsible for a happening that he could not anticipate or guard against.³² Therefore, in order for an act to be considered a legal defense, it must be proven that the sole cause of injury lacked a human agent and that the resultant injury was an occurrence that could not have been foreseen or avoided by any exercise of diligence or care on the part of the defendant. In fact nothing he could have done as a reasonable, prudent, or diligent man would have avoided the end result.³³ The act itself is out of his control. In these cases the defendant must prove that the onset of illness was sudden and without prodromata or prior warning. Under these circumstances it can be proven that the principal cause, the illness, lacked a human agent, both as to origin and to prevention. Therefore, the defendant could not reasonably anticipate the occurrence and could not reasonably be expected to guard against it. The only further proof that must be established would be that the resulting incapacity was of such a nature that the damage was unavoidable. If the defendant is successful in showing these two factors the courts may find that no negligence occurred. In several jurisdictions the court has so ruled.³⁴

In many cases the sudden onset of the incapacitating illness has been preceded by signs and symptoms. These "warnings" vary with the individual. It is unfortunate that with many people when these warning signs are mild and transient in character, the individual tends to ignore them and fails to seek proper medical examination and advice. Under these circumstances the person is unaware of potential danger to himself and of the possibility that he may become a driving hazard. Should such an individual become a defendant the possibility of using act of God as a defense is not as clear cut as in the previous group of cases we have considered. Although all other factors may be present and provable, the decision here revolves around the question

³¹ 38 Am. Jur., *op. cit. supra* n. 4, § 65; Prosser, *op. cit. supra* n. 1, 143-46.

³² Annot., 28 A.L.R.2d 35 (1953); Howie III, *op. cit. supra* n. 2 at 336; Findlay, *op. cit. supra* n. 2 at 437.

³³ 38 Am. Jur., *op. cit. supra* n. 4 at § 65; Prosser, *op. cit. supra* n. 4 at 143-146.

³⁴ Sanders v. Coleman, *supra* n. 14; McClean v. Chicago Great Western Ry. Co., *supra* n. 14; Freifield v. Hennessy, *supra* n. 14.

of whether his failure to heed prodromatal warning signs constitutes the action of a reasonable and diligent person. This would depend upon the degree of severity or the obvious character of the warning signs as well as the capability of the individual to relate these as important and potentially dangerous. Therefore, under some circumstances it would be possible to plead act of God if the warning itself were minimal or the ability of the defendant for reasons of intelligence or other factors could be shown to prevent proper recognition and proper realization of the potential danger. If such mitigation of the circumstance could be proven, the argument that there was no deviation from the course a reasonably prudent person would take could be substantiated. However, probably in the majority of situations this could not be proven, and a pleading of an act of God would not be upheld by the court.

A third category of possible defendants to consider would be those individuals who have had a diagnosed disease such as a previous myocardial infarction or diabetes mellitus, and are under competent and adequate medical care. Should a sudden incapacity such as a recurrent myocardial infarction or insulin shock occur, the defendant could conceivably plead no negligence on the basis that the incident resulted from an act of God. It can be argued that such a person was following the course that a reasonable, diligent, and prudent individual would follow and, therefore, could not anticipate or further guard against the sudden episode that occurred. Therefore, this incapacitating illness might be considered beyond his control and without a human agent. However, if the individual has been aware of his disease but has neglected to pursue advised medical treatment no such defense would be available.

The final category one must consider involves those individuals who are taking medications where the side effects may impair driving ability through the production of drowsiness, slowing of reflexes, impairment of vision, or impairment of judgment. Such individuals should be warned against driving, and when so advised they would have no defense from negligence under a pleading of an act of God. The Motor Carrier Safety Regulations of the Interstate Commerce Commission forbids driving of commercial vehicles on the highway while under the influence of any such drugs or alcohol.³⁵ In addition, the American Medical Association in its Medical Guide for Physicians has recommended that individuals on these drugs be warned of the possible side effects which might preclude driving. The statutes of the various states are vague or non-existent in regard to this subject. Statutes requiring a warning by physicians would be impracticable if not unenforceable. One suggestion has been that pharmacies be required to label medications

³⁵ National Ass'n of Motor Bus Owners, Motor Carrier Safety Regulations of the Interstate Commerce Com. 192.1-192.5 Rev. 1952 (Sept. 5, 1962).

at the time the prescription is filled as potentially unsafe while driving. It has also been suggested that a simple warning symbol analogous to the skull and crossbones of poison could be made standard for labeling such prescriptions. The defendant driver who has been under the influence of alcohol has no defense of act of God open to him.

Conclusion

The foregoing has examined the potential value of pleading sudden illness as act of God in auto accidents for the driver defendant. It has been shown that such a pleading to be successful would require that the prime cause be without human agent and that the occurrence be unforeseeable and unavoidable by reasonable human diligence and prudence. In this evaluation the sudden incapacity, whether from an acute illness or acute exacerbation of a chronic illness, has been grouped into four categories. In each of these an attempt has been made to outline the possibility of pleading this defense. These are summarized in the following paragraphs.

In the first category are those defendants who become suddenly incapacitated without any prior knowledge of the existence of a disease condition. It has been shown that a pleading of no negligence due to an act of God may be a useful and workable defense.

The second category consists of individuals who have had prior symptoms of their disease, but who have failed to take steps for determination of the importance of these symptoms. It has been shown that the value of such a pleading would vary within this group. If the defendant could prove that the prodromata were so minimal or that the defendant's intelligence or understanding was of such a nature that his failure to obtain medical examination and advice was not unreasonable or lacking in diligence, this defense might be useful. Without such proof persons in this group would be unable to plead the incapacity as an act of God because of their own failure to take proper steps for prevention.

The third category is made up of those who have had knowledge and adequate medical treatment for their disease but despite this have had a sudden episode resulting in incapacity. It has been shown that his group may profitably utilize this defense. A subgroup of people who are aware of their disease but fail to carry out proper treatment would have no defense in this sense.

The fourth group consists of persons who are using drugs for one reason or another. It is obvious that they should be aware of any side effects and the danger of driving while using the drugs. Therefore, this defense is not available to them. It has been noted that our current statutes are lacking in regard to this problem.