North Dakota Law Review

Volume 28 | Number 2 Article 4

1952

Automobiles - Guest Statute - Compensation - Passenger or Guest

James L. Taylor

RECENT CASES

AUTOMOBILES — GUEST STATUTE — COMPENSATION — PASSENGER OR GUEST. — The meaning of "compensation" as used in state guest statutes is illustrated by two recent decisions, in which opposite results were obtained in dissimilar fact situations. In the first, an Ohio case,[1] the plaintiff, desirous of completing repairs on his car as quickly as possible, had taken his car to the garage of his friend, the decedent, who had agreed to finish the job by the next day if plaintiff would assist him in tearing down the motor. It was agreed that decedent would drive plaintiff to his home after the work was completed that night and plaintiff's father, who was to return plaintiff to his home in another car, was directed to proceed on alone. While decedent was returning plaintiff to his home, an accident occurred, in which decedent was killed and plaintiff injured. Plaintiff brought action against the administrator of decedent's estate, alleging injury through negligence of decedent. Upon appeal from judgment for plaintiff, *held,* defendent in the absence of a showing of wilful or wanton negligence on the part of decedent, would not be liable for injuries to plaintiff, in that plaintiff, not having given "compensation" for his ride, was a guest within the meaning of the Ohio guest statute.[2]

In the other case,[3] decided in California, plaintiffs sought damages for injuries received in an auto accident, which resulted while plaintiffs and defendants were vacationing together. Both parties had agreed prior to the commencement of the trip to contribute to a common fund, from which were to be paid all expenses of the trip. In affirming judgment for plaintiff, it was *held,* one justice dissenting, that plaintiffs, in contributing to the expenses of the trip, had given "compensation" and were thus not guests within the California guest statute.[4]

Originally guest statutes were designed primarily to free the automobile host from liability to guests for ordinary negligence as imposed by the early common law rule.[5] However, most guest statutes today still allow the guest to recover where the host has been guilty of gross or wanton negligence or he is driving while intoxicated.[6] A different view is taken by states which do not have guest statutes but follow the English common law rule and there the host is liable where there is shown something less than wilful, wanton or negligent conduct.[7]

Clearly of prime importance is the problem of distinguishing between a

---

1. Ames v. Seifert, 99 N.E.2d 905 (Ohio 1951).
2. Page Ohio Ann. §6308-6 (1935): "The owner, operator or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest while being transported without payment therefor in or upon said motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wilful or wanton misconduct of such operator, owner or person responsible for the operation of said vehicle."
3. Whitmore v. French, 235 P.2d 3 (Calif. 1951).
4. Calif. Veh. Code §403 (Deering 1937): "No person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of such vehicle or against any other person legally liable for the conduct of such driver on account of personal injury to or death of such guest during such ride, unless the plaintiff in any such action establishes that such injury or death proximately resulted from the intoxication or wilful misconduct of said driver."
5. Gammon, *The Automobile Guest,* 17 Tenn. L. Rev. 452, 455 (1942).
6. 4 Blashfield, Cyclopedia of Automobile Law and Practice §2313 (Perm. ed. 1946).
7. Massaletti v. Fitzroy, 228 Mass. 487, 118 N.E. 168 (1917).

guest and a passenger, and ordinarily a guest is thought to be one who accepts a ride without the payment of compensation therefor.[8] This compensation, some states hold, must flow from some contractual relationship, express or implied,[9] and the test of such relationship would seem to be whether or not the host can recover at law for the reasonable or agreed value of the transportation furnished.[10] However, courts are reluctant to find a contract, thus increasing the host's liability, unless it clearly appears that he was motivated in supplying the transportation by the benefit received.[11] A more liberal view, one which is gaining increasing popularity, is taken by states which require no contract but only some substantial benefit, monetary or otherwise, to the driver for the transportation furnished.[12] Such non-contractual relationships have been found and the rider is said to be a passenger as a matter of law, where the passenger assisted the driver in helping him to locate his destination[13]; where the rider was the agent of the driver and the purpose of the trip was to facilitate the employment of the passenger, thus conferring a benefit upon the principal – driver [14]; where the trip is in contemplation of the mutual benefit of both parties; [15] and where the parties are on a joint venture.[16]

The nature of the trip is also sometimes important. Trips which have a precise business aspect or prior arrangement to share costs and expenses, even though the trip is made for the mutual pleasure of the parties, more often make the rider a passenger than a guest.[17] Where the trip is for the joint pleasure of the parties and there is a sharing of gas and oil expenses without prior arrangement therefor, such payment is usually held only to be

---

8. Clendenning v. Simerman, 220 Iowa 739, 263 N.W. 248 (1935) (where employer of defendant bought gas for defendant's car to take employer's daughter and her friend, plaintiff's decedent, shopping in a nearby town, decedent was not a passenger). See 2 Restatement, Torts §490, comment a (1934).

9. Dennis v. Wood, 357 Mo. 886, 211 S.W.2d 470 (1948); Voelkl v. Latin, 58 Ohio App. 245, 16 N.E.2d 519 (1938) (where plaintiff's husband paid two dollars of the expenses of a two family pleasure trip, there was no contractual relation enforceable at law); Gale v. Wilber, 163 Va. 211, 175 S.E. 739 (1934).

10. Hale v. Hale, 219 N.C. 191, 13 S.E.2d 221 (1941); Coerver v. Haab, 23 Wash.2d 481, 161 P.2d 194 (1945) (held contract in a "share-the-ride" case).

11. Boggs v. Plybon, 157 Va. 30, 160 S.E. 77 (1931). Also see Richards, *Another Decade Under the Guest Statute*, 24 Wash. L. Rev. 101, 104 (1949).

12. Humphreys v. San Francisco Area C. Boy S. of America, 22 Cal.2d 436, 139 P.2d 941 (1943); Scholz v. Leuer, 7 Wash.2d 76, 109 P.2d 294 (1941) (accompanying defendant to assist him in locating customers on paper route and this was held to be a benefit).

13. George v. Stanfield, 33 F. Supp. 486 (D. Idaho 1940); Haney v. Takakura, 2 Cal. App. 2d 1, 37 P.2d 170 (1934); Dorn v. Village of North Olmstead, 133 Ohio St. 375, 14 N.E.2d 11 (1938).

14. Kruy v. Smith, 108 Conn. 628, 144 Atl. 304 (1929) (defendant, so that plaintiff, his housekeeper, could more quickly take up her duties, picked her up in his car; court held benefit flowed to driver such that he was liable for her injuries on the trip).

15. Piercy v. Zeiss, 8 Cal. App.2d 595, 47 P.2d 818 (1935); Bookhart v. Greenlease-Lied Motor Co., 215 Iowa 8, 244 N.W. 721 (1932) (plaintiff injured while defendant was demonstrating car and court found compensation); Thomas v. Currier Lumber Co., 283 Mich. 134, 277 N.W. 857 (1938) (plaintiff was passenger of defendants agent, who at the request of the defendant was driving the plaintiff to defendant's office to close business deal).

16. Jensen v. Hansen, 12 Cal. App.2d 678, 55 P.2d 1201 (1936) (held compensation where plaintiff and defendant were going to appraise house).

17. Kruzie v. Sanders, 23 Cal.2d 237, 143 P.2d 704 (1943) (held benefit where plaintiff was to assist defendant in selecting Christmas gift); Duncan v. Hutchinson, 139 Ohio St. 185, 39 N.E.2d 140 (1942); Russel v. Pilger, 113 Vt. 537, 37 A.2d 403 (1944).

incidental to the trip.[18] In these cases the provocation for the offer of transportation is the joint pleasure of the parties and the sharing of expenses is simply an exchange of social amenities and courtesies among close friends.

It should be kept in mind that whatever degree of benefit is required by the jurisdiction to take the case out of the operation of the guest statute, it is basic that such a result can be reached only if the benefit is the chief moving influence for the furnishing of the transportation.[19] Thus it must appear clear that to a great degree each case presents a factual problem as to the existence or non-existence of a benefit to the host. The court in the instant California case,[20] for example, appears to be influenced in its decision by the comparatively large sum contributed by the plaintiff's to the defendant. In the Ohio case,[21] on the other hand, the court, reaching an opposite result, relies heavily upon the close relationship of the plaintiff and defendant in failing to find a "compensation".

The California case represents the liberal trend and it is hoped that North Dakota, whose guest statute [22] appears untested in this respect,[23] will see fit to follow this late trend, thus contributing some measure of security to the regrettable position of the guest who must otherwise bear the brunt of a situation not of his own making.

JAMES L. TAYLOR

CRIMINAL LAW — INSANITY — PRESUMTION AND BURDEN OF PROOF — INSTRUCTIONS. —The defendant was convicted of the crime of rape. Upon a plea of not guilty, the entire defense was based on the defendant's insistence that he could not remember what had occurred at the time the offense was committed. No evidence was offered by the defendant to raise the issue of insanity, nor was there a request by him to submit such issue to the jury under the guidance of instructions. Witnesses for the prosecution testified that the defendant had appeared to be "in a trance" and "abnormal." However, two psychiatrists testified, apparently in rebuttal to what was conceived to have been a defense of insanity, that the defendant was of sound mind. On appeal, it *held* that the complete absence of instructions by the trial court on the issue of the defendant's insanity required that the case be reversed and remanded for a new trial. *Tatum v. United States,* 190 F.2d 612 (D.C. Cir. 1951).

Persons who are insane cannot be held criminally responsible for their

---

18. Fiske v. Wilkie, 67 Cal. App.2d 440, 154 P.2d 725 (1945); Eubank v. Kielsmeier, 171 Wash. 484, 18 P.2d 48 (1933). *Compare* McCann v. Hoffman, 9 Cal.2d 279, 70 P.2d 909 (1937) *with* Walker v. Adamson, 9 Cal.2d 287, 70 P.2d 1914 (1927).

19. Kruzie v. Sanders, 23 Cal.2d 237, 143 P.2d 704 (1943); McCann v. Hoffman, 9 Cal.2d 279, 70 P.2d 909 (1937); Rogers v. Vreeland, 16 Cal. App.2d 364, 60 P.2d 585 (1936) (sharing expenses of short drive to mountains to see flowers did not constitute compensation); Dorn v. Village of North Olmstead, 133 Ohio St. 375, 14 N.E.2d 11 (1938); Syverson v. Berg, 194 Wash. 86, 77 P.2d 382 (1938) (mother's chaperoning of daughter who had dance date with defendant did not bestow sufficient benefit upon defendant to take mother out of guest statute).

20. Whitmore v. French, 235 P.2d 3 (Calif. 1951).

21. Ames v. Seifert, 99 N.E.2d 905 (Ohio 1951).

22. N.D. Rev. Code c. 39-15 (1943).

23. *Cf* Bentley v. Oldetyme Distillers Co., 71 N.D. 52, 298 N.W. 417 (1941) (where court discussed problem of compensation but main issue adjudicated was question of existence of agency).