Volume 62
Issue 2 *Dickinson Law Review - Volume 62, 1957-1958*

1-1-1958

Statutory Standards of Care in Pennsylvania Automobile Cases

Leo H. McKay

STATUTORY STANDARDS OF CARE IN PENNSYLVANIA AUTOMOBILE CASES

BY THE HONORABLE LEO H. MCKAY *

DOES a violation of the Motor Vehicle Code constitute negligence in Pennsylvania? The answer to this question would appear at first glance to be simple and obvious—yes. Negligence is the failure to exercise due care under the circumstances. The standard of due care may be established by statute or by judicial decision, or, lacking either, by the jury in a given case. Since the Vehicle Code has prescribed in detail the conduct required of operators of vehicles upon the highway under almost every conceivable traffic situation, it would seem that these statutory mandates would establish the standard of due care for operators, under the circumstances covered by them, so that their violation would be negligence. As will be pointed out, however, this result does not necessarily follow.

I. NEGLIGENCE OF THE DEFENDANT

Prior to the decision of the Supreme Court in the case of *Jinks et al. v. Currie et al*,[1] the status of violations of the Vehicle Code as acts of negligence was uncertain. Decisional support was available in support of three distinct propositions: (1) A violation of the Code is negligence per se.[2] (2) Violation is not negligence unless it is the proximate cause of the accident.[3] (3) A violation is not necessarily negligence but is at least evidence of negligence.[4] In addition, other cases held that the violation, although constituting negligence, must be the proximate cause of the accident in order to make a defendant liable.[5]

The uncertainty of the law on this question was doubtlessly intended to be dispelled by the *Jinks* decision.[6] In that case, defendant Currie attempted

* Judge of the Court of Common Pleas of the Thirty-fifth Judicial District (Mercer County); A.B., Allegheny College, LL.B., University of Pennsylvania Law School.

[1] 324 Pa. 532, 188 Atl. 356 (1936).

[2] Bohm v. Beckdol and Welker, 81 Pa. Super. 178 (1923); Jamison v. Kamerer, 313 Pa. 1, 169 Atl. 231 (1933); Dempsey v. Cuneo Eastern Press Ink Co. of Pa., 318 Pa. 557, 179 Atl. 220 (1935).

[3] Zandras v. Moffett, 286 Pa. 477, 133 Atl. 817 (1926); Johnson v. American Reduction Co., 305 Pa. 537, 158 Atl. 153 (1931).

[4] Wilson v. Con. Dressed Beef Co., 295 Pa. 168, 145 Atl. 81 (1929); Hough v. American Reduction Co. of Pittsburgh, 315 Pa. 234, 172 Atl. 722 (1934).

[5] Stubbs v. Edwards, 260 Pa. 75, 103 Atl. 511 (1918); Mehler v. Doyle, 271 Pa. 492, 115 Atl. 797 (1922); Laubach v. Colley, 283 Pa. 366, 129 Atl. 88 (1925); Bloom v. Bailey, 292 Pa. 348, 141 Atl. 150 (1928); Gaupin v. Murphy, 295 Pa. 214, 145 Atl. 123 (1928).

[6] See note 1, *supra*.

to pass a truck just as the truck turned to the left to enter an intersection. The lower court charged the jury that Currie's act in passing the truck at an intersection was negligence per se and on appeal the Supreme Court held this statement to be correct. It stated:

> "The section of the act (forbidding passing at intersections) is a positive mandate, a 'thou shalt not'. 'The driver of a vehicle shall not overtake and pass any other vehicle, proceeding in the same direction, . . . at any intersection of highways . . .' We are of opinion that the violation of such mandatory provision of the law, passed for the purpose of aiding the safe operation of motor vehicles on the public highways, is negligence per se, and that the court was right in so charging. It is true we have held the violation of an municipal ordinance is only evidence of negligence (*Ubelmann v. American Ice Co.,* 209 Pa. 398, 400, 58 A. 839, 850; *Weinschenk v. Phila. H. M. B. Co.,* 258 Pa. 98, 105, 101 A. 926, 929; *Bell v. Jacobs,* 261 Pa. 204, 208, 104 A. 587, and other cases) and while it is true we said by way of obiter dictum in *Johnson v. American Reduction Co.,* 305 Pa. 537, 539, 158 A. 153, 154, 'It is not negligence per se to ignore a statutory duty in driving a vehicle'; in the same sentence we commented that the ignoring of the statute requiring the driver of a wagon to keep close to the right curb was not the proximate cause of the accident in that case. This principle of negligence per se was in mind when we decided *Lane v. Muller, Inc.,* 285 Pa. 161, 131 A. 718; *Zandras v. Moffett,* 286 Pa. 477, 133 A. 817; and *Hayes v. Schomaker,* 302 Pa. 72, 152 A. 827; and is embodied in the general summary in the RESTATEMENT, TORTS, sec. 286, p. 752: The violation of a legislative enactment by doing a prohibited act . . . makes the actor liable for an invasion of an interest of another.' The majority rule is that the violation of a statute is negligence per se: 45 C. J. 720; 20 R. C. L. 38." [7]

Since the decision in the *Jinks* case, the Supreme and Superior Courts have repeatedly stated the law to be that violation of a mandatory provision of the Vehicle Code by a defendant is negligence per se.[8]

On the other hand, the Pennsylvania appellate courts have also continued to state and apply the rule that violations of the Code do not constitute negligence unless the particular violation is the proximate cause of the accident.

For example, in the case of *Knoble et ux v. Ritter,*[9] in which the defendant drove his car to the top of a hill at a speed in excess of that allowed by the statute and skidded on an icy stretch of highway into the plaintiff's car, the

---

[7] *Id.* at 537, 188 Atl. at 358.

[8] Gaskill v. Melella, 144 Pa. Super. 78, 18 A. 2d 455 (1941); Ashworth v. Hannum, 347 Pa. 393, 32 A. 2d 407 (1943); Landis v. Conestoga T. Co., 349 Pa. 97, 36 A. 2d 465 (1944); Kropko v. Galida, 155 Pa. Super. 446, 38 A. 2d 491 (1944); Marchl v. Bowling & Co. Inc., 157 Pa. Super. 91, 41 A. 2d 427 (1944); Bricker v. Gardner, 355 Pa. 35, 48 A. 2d 209 (1946); Com. v. Pennzoil Company, 358 Pa. 221, 56 A. 2d 93 (1948).

[9] Knoble et ux. v. Ritter, 145 Pa. Super. 149, 20 A. 2d 848 (1941).

court approved the action of the lower court in submitting the question of the defendant's control of his vehicle to the jury, but stated:

> "It is true that . . . speed in excess of that permitted by statute will not convict the driver of negligence unless it is shown that the speed was the proximate cause of the accident." [10]

In the case of *Huber et al v. Anderson* [11] the defendant was driving his automobile on the left side of the street in violation of the Vehicle Code when the minor plaintiff coasted on a sled under the rear wheel of the defendant's car. The court held that the fact that the driver was on the left side of the road was immaterial, quoting from earlier cases:

> "The fact that the driver was on the left side of the road, it may be observed, does not in itself establish negligence unless his position on that side was the efficient cause of the collision." [12]

In *McClelland et ux v. Copeland* [13] the court approved an instruction that: "the mere fact that there were four people on the front seat of the truck does not in itself constitute negligence as applied to the case before you."

In the case of *Ennis v. Atkin,*[14] a fire truck collided with the defendant's truck while rounding a corner on its way to a fire, causing the plaintiff decedent to be thrown from the fire truck and killed. Defendant's truck was parked within 15 feet of a fire hydrant in violation of the Vehicle Code. The Supreme Court stated:

> "Clearly the facts are insufficient to charge appelee with negligence per se." [15]

It must be agreed that these two lines of cases make it difficult to state any broad general rule with respect to whether violation of a provision of the Motor Vehicle Code by a defendant does or does not constitute negligence on his part. Perhaps the language of the cases can be reconciled by a rule reading as follows: "Violation of the code amounts to negligence if, but only if, such violation is the proximate cause of the accident; but, where the proximity of cause is clear, the violation constitutes negligence per se."

Fortunately, however, there are other cases which suggest a more satisfactory rule.

---

[10] *Id.* at 153, 20 A. 2d at 850.
[11] Huber v. Anderson, 355 Pa. 247, 49 A. 2d 628 (1946).
[12] *Id.* at 252, 49 A. 2d at 631.
[13] McClelland v. Copeland, 355 Pa. 405, 50 A. 2d 221 (1947).
[14] Ennis v. Atkin, 354 Pa. 165, 47 A. 2d 217 (1946).
[15] *Id.* at 169, 47 A. 2d at 219.

In *Ketzel v. Lizzini,*[16] the plaintiff, Ketzel, was injured while riding as a passenger in a car operated by defendant Lizzini, which collided with a car operated by one Dembrowski, in a right angle collision. Dembrowski had the right of way and was traveling at the rate of 40 miles per hour on a through highway. In sustaining judgment n.o.v. in favor of Dembrowski, the court said:

> "Furthermore even if Dembrowski were exceeding the speed limit, his speed would not amount to *actionable* negligence unless shown to be the proximate cause of the accident. *Mulheirn v. Brown,* 322 Pa. 171." (Italics supplied).[17]

The use of the word "actionable" suggests that proximate cause is necessary not to create negligence but to create liability for that negligence, as is the case when the alleged negligent act is founded upon common law want of due care.

In *Shakely v. Lee,*[18] while the court was dealing with the question of whether the plaintiff's decedent was guilty of contributory negligence in passing a truck at an intersection in violation of the Vehicle Code, it said:

> "Violation of a statute constituting negligence per se is nevertheless *not a ground of liability,* nor does it support a charge of contributory negligence, unless it is the proximate and efficient cause of an accident which is of the type the legislative enactment was designed to prevent." (Italics supplied.)[19]

Likewise, in *Kowalsky's Express v. Haverford Twp.,*[20] where the defendant's driver admitted entering a through highway without stopping his truck, the court said:

> "A violation of the safety regulations of the Vehicle Code is negligence per se (citing cases) and such negligence is a *ground of liability* if it is the proximate and efficient cause of an accident which is of the type the legislative enactment was designed to prevent." (Italics supplied.)[21]

Also, in the case of *DeLuca v. Manchester Laundry and Dry Cleaning,*[22] which involved injuries received by the plaintiff when struck by an automobile operated by one defendant while walking around a truck of the defendant laundry company which occupied the sidewalk and a portion of the street,

---

[16] 163 Pa. Super. 513, 63 A. 2d 369 (1949).
[17] *Id.* at 517, 63 A. 2d at 371.
[18] 368 Pa. 476, 84 A. 2d 322 (1951).
[19] *Id.* at 478, 84 A. 2d at 323.
[20] 170 Pa. Super. 229, 85 A. 2d 884 (1952).
[21] *Id.* at 231, 85 A. 2d at 885.
[22] 380 Pa. 484, 112 A. 2d 372 (1955).

allegedly in violation of the parking provision of the Vehicle Code, the court said:

> "In the second place, even assuming, arguendo, that the Laundry Company *was* guilty of a violation of the provisions of the statute and therefore negligent per se, such negligence was not a ground of liability unless it was the *proximate and efficient cause* of the accident in question: (citing cases)."[23]

Further, the case of *Huber v. Anderson*,[24] in which the Superior Court stated that a violation of the Code did not constitute negligence unless it was the efficient cause of the collision, relied upon two early cases, *Stubbs v. Edwards*[25] and *Wetherill v. Showell, Fryer and Co.*,[26] which merely held that the conduct of the defendant did not create liability.

Accordingly, it is suggested that the applicable rule may be stated as follows: A violation of the Code by a defendant constitutes negligence on his part, but such violation does not make him liable to the plaintiff unless it was the proximate cause of the accident. This rule not only summarizes the principles set forth in the *Ketzel, Shakely, Kowalsky,* and *DeLuca* cases, but it simplifies and harmonizes the rules which deal with statutory standards of care and those which concern the common law standard, so that, in both instances, negligence plus proximate cause equals liability.

II. Contributory Negligence on the Part of the Plaintiff

When it is the plaintiff who has violated a provision of the Vehicle Code, the question whether such violation constitutes contributory negligence on his part is also faced with two distinct lines of decisions.

In one group of cases, the courts have stated in unmistakable language that such a violation is contributory negligence per se and bars a recovery.

For example, in *Stark v. Fullerton Trucking Co. et al*,[27] the widow of a truck driver sued to recover damages for her husband's death which was caused when he drove his vehicle over the top of a hill into another truck which had collided with a third vehicle. The court held that the driver was guilty of contributory negligence in violating section 1002 of the Vehicle

---

[23] *Id.* at 488, 112 A. 2d at 374.

[24] See note 11, *supra.*

[25] 260 Pa. 75, 103 Atl. 511 (1918). Here a speeding car struck a motorcycle which darted out in front of it. The court said that the violation of a statue does not *create a liability* unless it is the efficient cause of the injury.

[26] 264 Pa. 449, 107 Atl. 808 (1919). In this case a boy was struck by an automobile while coasting on a sled. The court did not say that the violation of a speed statute does not *constitute negligence* unless it is the proximate cause of the accident. It merely held that there was no liability.

[27] 318 Pa. 541, 179 Atl. 84 (1935).

Code, which requires a driver to keep his vehicle under such control that he can stop within the assured clear distance ahead. The court stated:

> "The statute was passed to protect life and limb; decedent was bound to guard, to the extent stated, against that and every other possibility, and the statute must be construed and applied to further that purpose." [28]

Similarly, in *D'Ambrosio et al v. Philadelphia,*[29] a twelve year old boy was thrown off the tailgate of a truck on which he was a trespasser in violation of the Vehicle Code and seriously injured. He brought a suit against the defendant city for failing to keep its streets in repair. Holding that the plaintiff's violation of the Code was contributory negligence per se, the court stated:

> "In the absence of the statute, the minor plaintiff's contributory negligence would have been for the jury but the Legislature established a standard of conduct for all persons which neither court nor jury may set aside in a case within its terms." [30]

It should be noted that in both of the above cases, the causal relation between the plaintiff's violation of the Code and the accident was direct and clear.

Where such causal relation is not clear, or is non-existent, is the plaintiff still guilty of contributory negligence per se because he violates the Code?

In his opinion in the *D'Ambrosio* case, Mr. Justice Linn intimated that the plaintiff would not be guilty, stating:

> "It is, of course, true that not every violation of such statutes is proof of negligence per se but as this is a clear case we need not discuss the general subject." [31]

And the cases dealing squarely with the question have uniformly held that a violation of the Code does not constitute contributory negligence where the violation has no causal relation to the accident.

Thus, in *Purol Inc. v. Great Eastern System, Inc.,*[32] in which the plaintiff failed to place flares at the front and rear of his truck as the Code required, the court (Keller, J.) stated:

> "The general rule is that the violation of a statute will not convict a plaintiff of contributory negligence unless it was the effective cause of the accident or at least contributed to its happening although there may be circum-

[28] *Id.* at 544, 179 Atl. at 86.
[29] 354 Pa. 403, 47 A. 2d 256 (1946).
[30] *Id.* at 405, 47 A. 2d at 258.
[31] *Id.* at 407, 47 A. 2d at 259.
[32] 130 Pa. Super. 341, 197 Atl. 543 (1938).

> stances in connection with the mischief to be remedied by the statute or in the enforcement of its provisions which require a ruling that an injury suffered in connection with the violation of the statute will be attributed to such violation."[33]

The opinion in the *Purol* case listed as examples, the faulty registering of a motor vehicle,[34] the operation of a car by an unlicensed person,[35] and the failure to have his car equipped with legal lights.[36]

Other cases of like tenor include *Hayes et ux v. Schomaker*,[37] where the plaintiff cut a corner in making a left turn; *Ross et al v. Reigelman* [38] and *Balzer v. Reith et ux* [39] in which the plaintiffs exceeded the speed limit of 15 miles per hour in a school zone; *Vunak v. Walters*,[40] where the plaintiff stopped his truck to repair it on the left side of a wide street; *Steffenson v. Lehigh Valley Transit Co.*,[41] in which the plaintiff stopped his car in front of a street car without giving a hand signal, although the application of his brakes automatically lighted a red tail light; and *Salvitti v. Throppe*,[42] where the lack of a view for 500 feet ahead had no connection with the accident.

There is, therefore, no question that mere violation of the Vehicle Code by a plaintiff will not convict him of contributory negligence if the violation is unrelated to the accident.

There is some uncertainty in the law, however, as to whether to constitute contributory negligence, the violation must be a proximate cause of the accident, or whether it is enough if the violation merely contributes to the accident.

It will be remembered that in the *Purol* case, the court states that either is sufficient. The language to that effect in the *Purol* case was quoted by the court in *Ross et al v. Reigelman, supra.*, and in *Vunak v. Walters, supra.*

In other cases, however, notably *Hayes et ux v. Schomaker, supra., Collichio et ux v. Williams*,[43] *Shakely v. Lee*,[44] and *Steffenson v. Lehigh Valley Transit Company, supra.*, the court stated that violation of the Vehicle Code will not prove contributory negligence unless it is the proximate cause of the

---

[33] *Id.* at 343, 197 Atl. at 544.
[34] Williams v. D'Amico, 78 Pa. Super. 575 (1922).
[35] Yeager v. Winton Mo. Carr. Co., 53 Pa. Super. 202 (1913); McIlhenny v. Baker, 63 Pa. Super. 385 (1916); Hart v. Altoona & Logan Valley Elec. Ry. Co., 79 Pa. Super. 180 (1922); Scorsoni v. Pittsburgh P. & P. Co., 272 Pa. 253, 116 Atl. 154 (1922).
[36] Clamper v. Philadelphia, 279 Pa. 385, 124 Atl. 132 (1924).
[37] 302 Pa. 72, 152 Atl. 827 (1930).
[38] 141 Pa. Super. 293, 14 A. 2d 591 (1940).
[39] 161 Pa. Super. 182, 54 A. 2d 64 (1947).
[40] 157 Pa. Super. 660, 43 A. 2d 536 (1945).
[41] 361 Pa. 317, 64 A. 2d 785 (1949).
[42] 343 Pa. 642, 23 A. 2d 445 (1942).
[43] 311 Pa. 553, 166 Atl. 857 (1933).
[44] 368 Pa. 476, 84 A. 2d 322 (1951).

accident. There is a substantial difference. This is illustrated by the recent companion cases of *Crane v. Neal* and *Dean v. Neal*.[45]

In those cases, the two plaintiffs stopped their motorcycles on the paved portion of the highway to repair them. There they were struck by the defendant's car. The trial court charged the jury that they (the plaintiffs) would be guilty of contributory negligence only if their act in so stopping on the highway was the proximate cause of the accident. The Supreme Court reversed, holding that, while violation of a statute does not support a charge of contributory negligence unless it is the proximate and efficient cause of an accident, in that case the defendant relied upon the common law principles of contributory negligence (i. e., that a plaintiff is barred if his negligence contributes in the slightest degree to his injury); that the jury could have found the plaintiffs guilty of contributory negligence in parking their motor vehicles so as to occupy and block all but one foot of their traffic lane, irrespective and independent of the provisions of the Vehicle Code; and that the trial court should have so charged the jury.

It would appear, from the above, that it is now the law that the violation of the Vehicle Code by a plaintiff must be a proximate cause of the accident, and not merely contribute in some degree to the happening of it, if such violation is to constitute contributory negligence on his part. It will be noted that, in this respect, a departure from the statutory standard of due care differs from a departure from the common law standard where it is the plaintiff's contributory negligence that is being considered.

To summarize. It is the general rule that violation of the Vehicle Code by a plaintiff will constitute contributory negligence on his part if, but only if, the violation is a proximate cause of the accident. Where, however, it is clear that the violation is a proximate cause, the violation constitutes contributory negligence per se and bars a recovery. And where the act of violation is of such a nature that a jury could find it to be negligent at common law,[46] independently of the Code, it will be contributory negligence and bar a recovery if it contributes in the slightest degree to the happening of the accident.

[45] 389 Pa. 329, —— A. 2d —— (1957).

[46] i. e., an act that an ordinary, reasonably prudent person would not do under the circumstances.