Michigan Law Review

Volume 48 | Issue 1

1949

NEGLIGENCE-TAKING THE ISSUE OF NEGLIGENCE FROM THE JURY IN PUBLIC UTILITY CASES

Charles D. Bell S.Ed.
University of Michigan Law School

NEGLIGENCE—TAKING THE ISSUE OF NEGLIGENCE FROM THE JURY IN PUBLIC UTILITY CASES—After boarding a trolley owned and operated by defendant, plaintiff dropped her return slip. Holding a package in one hand, she stooped to pick up the slip. Plaintiff testified that although defendant's operator saw her in this position, he started the trolley with a "very fast jerk" which threw plaintiff to the floor and caused certain injuries. At the conclusion of plaintiff's evidence, which consisted of her uncorroborated testimony, the trial court directed a verdict for defendant. On appeal, *held,* affirmed. *Przborowski v. Baltimore Transit Co.,* (Md. 1948) 59 A. (2d) 687.

In Maryland, a trolley may be started after a passenger boards the car and before he reaches his seat, unless there is some reason to apprehend danger in so doing,[1] as in the case of infirm or disabled passengers.[2] The central issue in the principal case is whether the operator's cognizance of plaintiff's stooping position should have raised in him reasonable perception of possible danger to the plaintiff.[3] This question appears to be within the rule that the issue of negligence is generally for the jury,[4] and is properly taken from it only when reasonable persons could not differ as to the inferences to be drawn from the facts.[5] A jury might properly infer negligence here from defendant's acts;[6] certainly reasonable minds could differ on the question.[7] One possible ex-

[1] Brocato v. United Rys. & Electric Co., 129 Md. 572, 99 A. 792 (1916).

[2] Baltimore & O. R. Co. v. Leapley, 65 Md. 571, 4 A. 891 (1886) (pregnant woman). See 8 L.R.A. (n.s.) 299 (1907) for a discussion of a carrier's duty to disabled passengers; 38 L.R.A. (n.s.) 564 (1912) (duty to the blind); 48 L.R.A. (n.s.) 821 (1914) (duty to weak and infirm passengers).

[3] The issue is unchanged even assuming plaintiff to be contributorily negligent in not using the protective bars provided on the trolley. Balt. City Passenger Ry. Co. v. Cooney, 87 Md. 261, 39 A. 859 (1898).

[4] Geiselman v. Schmidt, 106 Md. 580, 68 A. 202 (1907).

[5] Texas Co., Inc. v. Wash. B. & A. Electric Ry. Co., 147 Md. 167, 127 A. 752 (1925); Balt. C. & A. Ry. Co. v. Trader, 106 Md. 635, 68 A. 12 (1907).

[6] Two dissenting judges believed there was sufficient evidence to send the case to the jury.

[7] Plaintiff's testimony that the operator was visibly perturbed when she dropped the return slip and that he gave her "a nasty look" could found a reasonable inference that the operator acted in angry haste rather than in a manner calculated to protect plaintiff from possible injury.

planation of the case is the court's apparent desire to protect defendant from fraudulent tort claims. Such an explanation is supported by the obvious emphasis the court places on plaintiff's failure to explain satisfactorily how she could have fallen on her right side, and on the fact that plaintiff had suffered a previous injury to her right side for which she had recovered damages. Should this explanation be correct, the issues raised relate only to plaintiff's credibility as a witness[8] and to the amount of damages. These also are within the province of the jury. However meritorious the court's desire to protect this utility from an adverse verdict on a possibly fraudulent claim, it would seem that the rules for submitting cases to juries should be strictly followed so long as juries are fundamental in our judicial process. Theoretically, juries are competent to detect possible fraud and return verdicts accordingly. To deny them this competence is to challenge the entire jury system.

Charles D. Bell, S.Ed.

[8] Morrison v. Whiteside, 17 Md. 452, 79 A.D. 661 (1861).