Michigan Law Review

Volume 36 | Issue 3

1938

NEGLIGENCE - LIABILITY OF STREET RAILWAYS FOR INJURIES TO ALIGHTING PASSENGERS - DUTY OF CAR EMPLOYEES

Dan K. Cook
University of Michigan Law School

NEGLIGENCE — LIABILITY OF STREET RAILWAYS FOR INJURIES TO ALIGHTING PASSENGERS — DUTY OF CAR EMPLOYEES — Plaintiff passenger, while alighting from the right side of a street car, operated by defendant street railway company in the center of a well-traveled road, was struck by an automobile traveling toward plaintiff from the front of the street car on the same side from which plaintiff was discharged. The automobile was traveling this uncommon course by reason of road repairs which created a temporary situation during which motor traffic in both directions was traveling along the half of the road on which plaintiff was alighting. Plaintiff contended, in an action brought for the injuries she sustained, that a legal duty to warn her of this unusual traffic condition devolved upon the conductor by reason of the fact that notice of her ignorance of the road repairs was impliedly imparted to him when he complied with several requests by plaintiff for information concerning the car stop at which she wished to leave the car. It was *held*, in a four to three decision, that the action of the trial court in granting defendant's motion for judgment in its favor should be affirmed. *Baier v. Cleveland R.R.*, 132 Ohio St. 388, 8 N. E. (2d) 1 (1937).

The courts have given considerable lip service to the doctrine that a street railway company owes a duty to its passengers, either to furnish them a safe place to alight, or to warn them if the place at which they alight is inherently dangerous.[1] This doctrine is further supported by the prevailing view that when

[1] 10 C. J. 951 (1917); 4 R. C. L. 1242, 1250 (1914); Smuzynski v. East St. Louis Ry., 230 Mo. App. 1095, 93 S. W. (2d) 1058 (1936); Caley v. Kansas City, etc. Co., 226 Mo. App. 934, 48 S. W. (2d) 25 (1932); Wilson v. Berlin Street Ry., 84 N. H. 285, 149 A. 602 (1930); Gulfport & Mississippi Coast Traction Co. v.

a passenger has been discharged in a place of safety, the relationship of passenger and carrier is immediately terminated,[2] and thus the carrier has completely fulfilled all its obligations to the passenger by such safe discharge. While the above principles are substantially supported by the authorities, there is considerable conflict in the decisions as to just what constitutes an inherently dangerous alighting place.[3] Physical defects at the place of alighting, such as holes,[4] water-filled ditches,[5] excavations,[6] deep railway cuts,[7], up-right stakes,[8] defective roadbeds,[9] and ice ruts,[10] which are not "glaringly obvious" [11] to the pas-

Raymond, 157 Miss. 439, 128 So. 327 (1930); Kentucky Traction & Terminal Co. v. Soper, 215 Ky. 536, 286 S. W. 776 (1926); St. John v. Connecticut Co., 103 Conn. 641, 131 A. 396 (1925); Alabama Power Co. v. Hall, 212 Ala. 638, 103 So. 867 (1925); Mahoning & S. Railway & Light Co. v. Leedy, 104 Ohio St. 487, 136 N. E. 198 (1922); Jacobson v. Omaha & Council Bluffs St. Ry., 109 Neb. 356, 191 N. W. 327 (1922); Wood v. North Carolina Public Service Corp., 174 N. C. 697, 94 S. E. 459 (1917); Ellis v. Hamilton Street Ry., 48 Ont. L. Rep. 380 (1920). It should be noted that the rules of liability with respect to street railway companies may differ from the rules of liability with respect to other similar carriers, such as steam trains. On this point, see 10 C. J. 944 (1917).

[2] 10 C. J. 625 (1917); 4 R. C. L. 1047 (1914); Smuzynski v. East St. Louis Ry., 230 Mo. App. 1095, 93 S. W. (2d) 1058 (1936); Choquette v. Key System Transit Co., 118 Cal. App. 643, 5 P. (2d) 921 (1931); Powers v. Connecticut Co., 82 Conn. 665, 74 A. 931 (1910); MacDonald v. St. Louis Transit Co., 108 Mo. App. 374, 83 S. W. 1001 (1904); Ft. Wayne Traction Co. v. Morvilius, 31 Ind. App. 464, 68 N. E. 304 (1903). But see, Alabama Power Co. v. Hall, 212 Ala. 638, 103 So. 867 (1925), where it is held that the passenger-carrier relationship is not terminated by the passenger's mere act of leaving the car, but continues until he has a reasonable opportunity to leave the car and roadway of the company.

[3] On the general subject of the liability of a street railway company to a passenger struck by a vehicle not subject to the company's control, see cases collected in: 44 A. L. R. 162 (1926); 31 A. L. R. 572 (1924); 12 A. L. R. 1371 (1921); 1 A. L. R. 953 (1919); Terre Haute, I. & E. Traction Co. v. Evans, 87 Ind. App. 324, 161 N. E. 671 (1928).

[4] Caley v. Kansas City, etc. Co., 226 Mo. App. 934, 48 S. W. (2d) 25 (1932); Sweet v. Louisville Ry., 113 Ky. 15, 67 S. W. 4 (1902). But see, Williamson v. Boston Elevated Railway, 259 Mass. 229, 156 N. E. 22 (1927), where a hole comparable in size and location to the ones involved in the two cases cited above was, in effect, held not to be inherently dangerous.

[5] MacDonald v. St. Louis Transit Co., 108 Mo. App. 374, 83 S. W. 1001 (1904). But see Thompson v. Gardner, W. & F. Street Ry., 193 Mass. 133, 78 N. E. 854 (1906), where it was held that a ditch is not inherently dangerous.

[6] Ft. Wayne Traction Co. v. Morvilius, 31 Ind. App. 464, 68 N. E. 304 (1903).

[7] Alabama Power Co. v. Hall, 212 Ala. 638, 103 So. 867 (1925).

[8] Mayhew v. Ohio Valley Electric Ry., 200 Ky. 105, 254 S. W. 202 (1923). But see, Kentucky Traction & Terminal Co. v. Soper, 215 Ky. 536, 286 S. W. 776 (1926), where it was held that a small rolling object was not inherently dangerous.

[9] Flack v. Nassau Electric Ry., 41 App. Div. 399, 58 N. Y. S. 839 (1899).

[10] Wilson v. Berlin Street Ry., 84 N. H. 285, 149 A. 602 (1930).

[11] Caley v. Kansas City, etc. Co., 226 Mo. App. 934 at 937, 48 S. W. (2d) 25 (1932). This phrase, or its equivalent, has been employed by the courts in a large number of the cases dealing with this subject.

senger, and which are known, or should be known to the car employees, are generally considered inherently dangerous, thus raising a duty upon the car employees not to discharge passengers thereon, or if passengers are discharged thereon, to warn such passengers of the danger. However, the hazards presented to an alighting passenger by ordinary motor traffic passing the alighting place are not generally considered inherently dangerous,[12] the justification of this being that an alighting passenger of normal faculties is generally aware of such hazards and able to guard himself from them.[13] The conclusion to be deduced from the decisions is that the inherent danger of an alighting place (and thus the duties of the car employees) are determined by several factors, including not only the physical condition of the alighting place, but also (1) the car employees' reasonable knowledge of the physical condition, (2) the alighting passenger's reasonable knowledge of the physical condition, and (3) the car employees' reasonable knowledge as to the passenger's apparent ability to avoid the dangers incidental to alighting from the car.[14] A proper consideration of all these factors will help to explain some of the apparent inconsistencies in the decisions.[15] It is submitted that in the instant case, in view of the evidence of the plaintiff's requests of the conductor for information concerning her stop and

[12] Smuzynski v. East St. Louis Ry., 230 Mo. App. 1095, 93 S. W. (2d) 1058 (1936); Trimboli v. Public Service Transport, 111 N. J. L. 481, 168 A. 572 (1933); Cleveland Ry. v. Karbole, 125 Ohio St. 467, 181 N. E. 889 (1932); Choquette v. Key System Transit Co., 118 Cal. App. 643, 5 P. (2d) 921 (1931); Downs v. Northern States Power Co., 200 Wis. 401, 228 N. W. 471 (1930); Terre Haute, I. & E. Traction Co. v. Evans, 87 Ind. App. 324, 161 N. E. 671 (1928); St. John v. Connecticut Co., 103 Conn. 641, 131 A. 396 (1925); Ruddy v. Ingebret, 164 Minn. 40, 204 N. W. 630 (1925); Jacobson v. Omaha & Council Bluffs St. Ry., 109 Neb. 356, 191 N. W. 327 (1922); Hammett v. Birmingham Ry. Light & Power Co., 202 Ala. 520, 81 So. 22 (1918).

Contra, Gulfport & Mississippi Coast Traction Co. v. Raymond, 157 Miss. 439, 128 So. 327 (1930); Wood v. North Carolina Public Service Corp., 174 N. C. 697, 94 S. E. 459 (1917).

[13] "There is no duty, however, to warn a passenger of his danger where the conditions which constitute the danger are as observable by him and apparently as obvious to him as to the employees of the carrier." 10 C. J. 910 (1917).

[14] "If the street at the place of discharging the passenger presents a dangerous condition to one alighting there, and such danger is obvious to the passenger, the carrier is not liable to him for injuries received from such defects. But where the danger is known, or is such as must have been known, to the carrier, and is unknown to the passenger, as where, because of the darkness, he cannot see it, the carrier is bound to warn the passenger of the danger, or to assist him in safely alighting, or stop the car at a point beyond or short of the dangerous point." Sweet v. Louisville Ry., 113 Ky. 15 at 18, 67 S. W. 4 (1902). Quoted with approval in Mayhew v. Ohio Valley Electric Ry., 200 Ky. 105, 254 S. W. 202 (1923); Kentucky Traction & Terminal Co. v. Soper, 215 Ky. 536, 286 S. W. 776 (1926).

[15] Compare, Sweet v. Louisville Ry., 113 Ky. 15, 67 S. W. 4 (1902), and Williamson v. Boston Elevated Railway, 259 Mass. 229, 156 N. E. 22 (1927); Thompson v. Gardner, W. & F. Street Ry., 193 Mass. 133, 78 N. E. 854 (1906), and MacDonald v. St. Louis Transit Co., 108 Mo. App. 374, 83 S. W. 1001 (1904); Kentucky Traction & Terminal Co. v. Soper, 215 Ky. 536, 286 S. W. 776 (1926), and Mobile Light & Ry. v. Therrell, 205 Ala. 553, 88 So. 677 (1921).

the unusual traffic condition of the alighting place, the negligence of the defendant might very well have been, as the dissenting judges suggested, a question for the jury, under proper instructions of the court.[16] This view might very well be supported by reference to those somewhat analogous decisions in which a land owner is held to owe a duty to protect invitees on his land from the tortious acts of third parties.[17]

Dan K. Cook

[16] That is to say, the jury might have reasonably inferred from the evidence that the plaintiff's ignorance of the peculiar traffic condition was actually imparted to the conductor. Such inference might have further warranted the jury in finding that the alighting place was inherently dangerous, which in turn raised a duty upon the conductor to warn the plaintiff of such inherent danger.

[17] Shannon v. Dow, 133 Me. 235, 175 A. 766 (1934); Greenley v. Miller's Inc., 111 Conn. 584, 150 A. 500 (1930); Sinn v. Farmers Deposit Savings Bank, 300 Pa. 85, 150 A. 163 (1930).