North Dakota Law Review

Volume 37 | Number 2 Article 8

1961

Automobiles - Injuries from Operation or Use of Highway - Liability of Private Owner or Operator to Occupant

Serge H. Garrison

Follow this and additional works at: https://commons.und.edu/ndlr

 Part of the Law Commons

Recommended Citation

Garrison, Serge H. (1961) "Automobiles - Injuries from Operation or Use of Highway - Liability of Private Owner or Operator to Occupant," *North Dakota Law Review*: Vol. 37 : No. 2 , Article 8.
Available at: https://commons.und.edu/ndlr/vol37/iss2/8

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.commons@library.und.edu.

RECENT CASES

AUTOMOBILES — INJURIES FROM OPERATION OR USE OF HIGHWAY — LIABILITY OF PRIVATE OWNER OR OPERATOR TO OCCUPANT. — The Circuit Court dismissed a complaint which alleged plaintiff's presence in an automobile driven by defendant was necessary by reason of joint undertaking in selling and distributing certain church literature and that plaintiff, the church Pastor's wife, and defendant, a member of the congregation, were jointly engaged in such undertaking for their joint benefit under a car pool arrangement. The Supreme Court of Arkansas, three judges dissenting, *held* that the complaint was insufficient to raise a fact question as to whether the car pool arrangement constituted payment for transportation, even though the benefit to the driver was not necessarily a pecuniary benefit which could be measured in dollars and cents. The majority opinion stated that the benefit derived from religious endeavors is sufficient to raise a question as to whether plaintiff was a guest under the guest statute engaged in a joint venture with defendant for their mutual benefit. *Simms* v. *Tingle*, 335 S.W.2d 449 (Ark. 1960).

Guest statutes, similar to that of Arkansas, are found in a majority of our states.[1] Briefly such statutes provide that a guest is a person who confers no benefit upon his host other than that of the customary courtesies of the road such as sharing expenses and reciprocal hospitality,[2] while a passenger is an individual who confers a substantial benefit upon his host.[3] A guest, within the meaning of the guest statute, assumes the risk of ordinary negligence of his host,[4] but a passenger does not assume this risk.[5] In determining the status of a rider it is for the trier of fact to show whether the rider conferred a benefit or whether the ride was merely of a social nature.[6]

Where the driver receives a substantial tangible benefit, monetary or otherwise, which is the motivating influence for furnishing transportation, compensation is said to be given and the rider is classified as a passenger.[7] This bene-

---

1. 2 Harper and James, Law of Torts, § 16:15 (1956).
2. Crawford v. Foster, 110 Cal. App. 81, 293 Pac. 841, 842 (1930); Miller v. Miller, 395 Ill. 273, 69 N.E.2d 878 (1946); Raub v. Rowe, 119 S.W.2d 190, 192 (Tex. Civ. App. 1938).
3. Follansbee v. Benzenberg, 122 Cal.2d 466, 265 P.2d 183, 186 (1954); Whitmore v. French, 37 Cal.2d 744, 235 P.2d 3, 5 (1951); Harbrook v. Wingate, 152 Ohio St. 50, 87 N.E.2d 87, 90 (1949). "Other courts take the position that the test of the status . . . is whether some substantial benefit is conferred upon the motorist as a consequence of the transportation . . ."; Restatement, Torts § 490 (comment *A* at 1272).
4. Rokusek v. Bertsch, 78 N.D. 420, 50 N.W.2d 657 (1951) "The 'guest statute', N.D. Rev. Code § 39-1503, provides that the 'owner, driver, or person responsible for the operation of a vehicle' shall be liable to a guest only where 'injury to or death of a guest proximately resulting from intoxication, willful misconduct, or gross negligence of such owner, driver, or person responsible for the operation of such vehicle' "; Iles v. Lamphere, 60 Ohio App. 4, 18 N.E.2d 989 (1938); see 2 Harper and James Law of Torts, § 16:15, 950, 951 (1956).
5. Clifford v. Ruocco, 39 Cal.2d 327, 246 P.2d 651 (1952) ". . . the rider is a 'passenger' as distinguished from a 'guest', and the driver is liable to the passenger for injuries resulting from driver's ordinary negligence."; Huebotter v. Follett, 27 Cal.2d 765, 167 P.2d 193, 195, 196 (1946).
6. Martinez v. Southern Pacific Company, 45 Cal.2d 244, 288 P.2d 868, 871 (1955); Follansbee v. Benzenberg, 122 Cal.2d 466, 265 P.2d 183, 186 (1954).
7. Martinez v. Southern Pacific Company, 45 Cal.2d 244, 288 P.2d 868 (1955); Clifford v. Ruocco, 39 Cal.2d 327, 246 P.2d 651, 652 (1952); Lyon v. City of Long Beach, 92 Cal. App. 2d 472, 207 P.2d 73 (1949); Bedenbender v. Walls. 177 Kan. 520, 280 P.2d 630 (1955).

fit need not be actual but merely potential,[8] although it seems clear that it must be given as the result of a prior agreement analogous in nature to a commercial transaction,[9] unless the facts themselves give rise to a commercial situation.[10] These rules apply equally as well to joint undertakings[11] and car pools[12] where the parties are mutually interested. It is evident that the tangible benefit conferred must not be the mere exchange of social courtesies,[13] but must be of a direct[14] and pecuniary nature.[15]

The courts should distinctly hold in mind the question of whether the circumstances presented bring the case within the intent and purposes to be accomplished and the evils to be remedied by the guest statutes.[16] The purposes being to prevent "the proverbial ingratitude of the dog that bites the hand that feeds him",[17] those invited by the operator as a mere generous gesture should not be allowed to recover damages for ordinary negligence, for the motorist should be accorded the status which incurs the lesser liability unless his status is clearly and definitely changed by express consent or by facts constituting acquiescence on his part to a status which entails the greater liability.[18]

It has been held that where the arrangements between the parties are so indefinite and casual that sociability is the dominant element then a guest arrangement exists.[19] In the instant case the arrangements are indefinite, a substantial tangible benefit is lacking and the main purpose of the guest statute is being defeated. The inference of a tangible benefit which rests wholly upon conjecture should not be sufficient to take a case out of the operation of the guest statute.[20]

SERGE H. GARRISON.

LABOR — CONFLICT OF LAW — UNION OFFICERS QUALIFICATION STATUTES. — Plaintiff, a New York union official, was suspended from office because he was an ex-convict and hence disqualified under § 8 of the New York Water-

8. Scholz v. Leuer, 7 Wash.2d 76, 109 P.2d 294, 299 (1941) ". . . but the requirements necessary to constitute payment for transportation such as to avoid the bar of the statute were specifically delineated. Such requirements are (1) actual or potential benefit in a material or business sense resulting to the owner or occupant and (2) that the transportation be motivated by the expectation of such benefit."

9. See Sproule v. Nelson, 81 So.2d 478 (Fla. 1955); Hasbrook v. Wingate, 152 Ohio St. 50, 87 N.E.2d 87, 90, 91 (1949); Angel v. Constable, 57 N.E.2d 86, 88 (Ohio App. 1943); Voelkl v. Latin, 58 Ohio App. 245, 16 N.E.2d 519, 523 (1938); Restatement, Torts § 491 (comment *C* at 1274).

10. Hasbrook c. Wingate, 152 Ohio St. 50, 87 N.E.2d 87, 90 (1949).

11. See Brandis v. Goldanski, 117 Cal. App. 2d 42, 255 P.2d 36, 38 (1953); Bedenbender v. Walls, 177 Kan. 531, 280 P.2d 630, 636 (1955); Voelkl v. Latin, 58 Ohio St. 245, 16 N.E.2d 519, 522, 523 (1938); Restatement, Torts § 491 (comment *C* at 1274).

12. Brand v. Rorke, 225 Ark. 309, 280 S.W.2d 906, 907 (1955).

13. Brandis v. Goldanski, 117 Cal. App. 2d 42, 255 P.2d 36, 38 (1953).

14. See Angel v. Constable, 57 N.E.2d 86 (Ohio App. 1943).

15. Huebotter v. Follett, 27 Cal.2d 765, 167 P.2d 193, 195 (1946).

16. See Rogers v. Vreeland, 16 Cal.App.2d 364, 60 P.2d 585, 586, 587 (1936).

17. Dobbs v. Sugioka, 117 Colo. 218, 185 P.2d 784, 785 (1947) "It will help to bear in mind the purpose of these guest statutes: Clearly they were enacted to prevent recovery by those who had no moral right to recompense, those carried for their own convenience, for their own business or pleasure, those invited by the operator as a mere generous gesture, 'hitch-hikers' and 'bums' who sought to make a profit out of soft hearted and unfortunate motorists."; Bedenbender v. Walls, 177 Kan. 520, 280 P.2d 630 (1955); 2 Harper and James, Laws of Torts, § 16:15 (1956) presents a very good discussion on the purposes and interpretations of guest statutes.

18. See Hasbrook v. Wingate, 152 Ohio St. 50, 87 N.E.2d 87, 89, 90 (1949).

19. Bond v. Sharp, 325 Mich. 460, 39 N.W.2d 37, 39 (1949).

20. See Lyon v. City of Long Beach, 92 Cal. App. 2d 472, 207 P.2d 73 (1949).