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Automobiles - Negligent Homicide - Driver Subject to Periods of Unconsciousness

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RECENT CASES

AUTOMOBILES — NEGLIGENT HOMICIDE — DRIVER SUBJECT TO PERIODS OF UNCONSCIOUSNESS. — Defendant while driving his car suffered an attack of fits causing him to lose control of his car resulting in the death of a pedestrian. The defendant, who knew he was subject to epileptic fits which caused periodic unconsciousness, was indicted on charges of criminal negligence under the New York criminal negligence statute.[1] The Supreme Court, Appellate Division, dismissed the defendant's demurrer and on appeal the New York Court of Appeals, three justices dissenting, *held* that the defendant's act of driving his car when he knew he was subject to periods of unconsciousness was sufficient disregard for the welfare and safety of others to constitute criminal negligence. *People v. Decinia,* 2 N.Y.2d 133, 138 N.E.2d 799 (1956).[2]

Rarely have attempts been made to obtain a conviction for a criminal offense under conditions similar to those in the instant case. In a 1951 New Jersey case a conviction for criminal negligence was sustained where the defendant driver became unconscious and was involved in an accident resulting in the death of another.[3] Convictions of criminal negligence as well as involuntary manslaughter have been sustained where sleepiness[4] or intoxication[5] have impaired the ability of the driver and the resulting uncon-

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1. N. Y. Sess. Laws 1936, c. 733 § 1053-a. "A person who operates or drives any vehicle of any kind in a reckless or culpably negligent manner, whereby a human being is killed, is guilty of criminal negligence in the operation of a vehicle resulting in death." Section 1053-b provides for a fine of up to one thousand dollars or five years imprisonment or both on conviction of criminal negligence.

2. See People v. Eckert, 2 N.Y.2d 126, 138 N.E.2d 794 (1956); decided on the same day in which the court gave a similar opinion on facts almost identical to those of the instant case.

3. State v. Gooze, 14 N. J. Super. 277, 81 A.2d 811 (App. Div. 1951) (Defendant had been hospitalized for treatment of Meniere's Syndrome, a malfunction of the semicircular canal of the inner ear, which subjects the person so afflicted to spells of dizziness and "blacking out". At the time of the accident the defendant had not had such an attack for over a year, but had been warned by his physician of the possibility of the recurrence of an attack). This decision was criticised by the South Dakota Supreme Court in Espeland v. Green, 74 S. D. 484, 54 N.W.2d 465 (1952), a civil case, in which the operator of the car who was subject to fainting spells became unconscious and was involved in an accident which caused injury to his guest passenger. Because of the guest statute in South Dakota (S. D. Code § 44.0362) it was necessary to show wilful and wanton misconduct of the driver if the Plaintiff was to recover damages. The South Dakota court, in holding that the defendant was not guilty, was of the opinion that the possibility of injury to another person in these instances was too remote to constitute wilful and wanton negligence.

4. People v. Robinson, 253 Mich. 507, 235 N. W. 236 (1931); State v. Olson, 108 Utah 377, 160 P.2d 427 (1945). (The courts held in these cases that the defendant must have been aware of the possibility of his going to sleep while driving if the conviction was to be sustained.) For a good report of digests of recent cases involving liability due to disabilities of drivers of vehicles, see 28 A. L. R.2d §§ 12-104 Supp. Service 1-50 (1948-1957).

5. People v. Townsend, 214 Mich. 267, 183 N.W. 177 (1921); State v. Brady, 244 Minn. 455, 70 N.W.2d 449 (1955); State v. Kline, 168 Minn. 263, 209 N.W. 881 (1926).

sciousness is the proximate cause of the death of another. Courts have also sustained convictions of involuntary manslaughter[6] and negligent homicide[7] where the person in control of the car permits one incapable of driving to operate the car.

In the instant case, the court held that the defendant's act of driving the car knowing he was subject to attacks of fits constituted culpable negligence as was required for conviction by the statute.[8] A number of courts have held that gross negligence or a wilful and wanton disregard for the safety of others must be shown to sustain a conviction of criminal homicide.[9] However at least two courts have held that criminal homicide laws are strictly police regulations for the protection of the public and that gross negligence is not necessary to sustain a conviction.[10]

The decision in the instant case has particular significance in North Dakota since the 1957 Legislature has passed a criminal homicide act similar to the New York statute.[11] However the application of the negligent homicide law at the present time is somewhat vague, as North Dakota already has statutes providing for the punishment of a person convicted of driving vehicles while under the influence of intoxicating liquor[12] and of reckless driving,[13] and

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6. Story v. United States, 16 F.2d 342 (D. C. Cir. 1926).

7. People v. Ingersol, 245 Mich. 530, 222 N.W. 765 (1929).

8. See People v. Angelow, 246 N. Y. 451, 159 N.E. 394 (1927). (In this case, which was cited in both the majority and minority opinion of the instant case and in People v. Eckert (see note 2 *supra*) the court held that "[c]ulpable negligence is therefore something more than the slight negligence necessary to support a civil action for damages. It means disregard for the consequences which might ensue from the act and indifference to the rights of others.") (The minority opinion in the instant case maintained there was no culpable negligence "No motorist suffering from any serious malady or infirmity can with impunity drive any automobile at any time or place, since no one can know what physical conditions make it 'reckless' or 'culpably negligent' to drive an automobile. Such a construction of a criminal statute offends against due process and against justice and fairness." People v. Decinia, 2 N.Y.2d 133, 138 N.E.2d 799, 809 (1956) (dissent).

9. See, *e. g.*, State v. Homme, 226 Minn. 83, 32 N.W.2d 151 (1948); State v. Diamond, 16 N.J. Super. 26, 83 A.2d 799 (App. Div. 1951).

10. People v. McMurchy, 249 Mich. 147, 228 N.W. 723 (1930); State v. Wojhan, 204 Ore. 84, 282 P.2d 675 (1955). The Michigan negligent homicide statute was the first of its kind to be enacted in the United States. Act 98 of Public Acts of 1921 § 1. "Every person who by the operation of any vehicle at an immoderate speed or in a careless, reckless or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of the crime of criminal homicide . . ." This statute has been superseded by § 750.324 Compiled Laws of Mich. which defines the crime in practically the same terms. In holding the first statute constitutional the court said: "There is no doubt but that the legislature was prompted to pass a law to curb reckless, careless and negligent driving which caused death in cases where negligence was less than gross." Ore. Rev. Stat. § 163.090 provides: "When the death of any person ensues within one year as the proximate result of injuries caused by the driving of any vehicle in a negligent manner . . . the person so driving such vehicle . . . is guilty of negligent homicide . . ."

11. N. D. Sess. Laws 1957, c. 263 (the laws of the 1957 Legislative session are not yet printed, but this is the tentative assignment according to the Secretary of State.) "When the death of any person ensues within one year as a proximate cause of the injury received by driving of any vehicle in a reckless disregard of the safety of others, the person so operating the vehicle shall be guilty of negligent homicide."

12. N. D. Rev. Code § 39-0801 (Supp. 1953).

13. N. D. Rev. Code § 39-0803 (Supp. 1953).

the North Dakota Supreme Court has sustained convictions of second degree manslaughter where a driver's recklessness caused the death of another.[14] These situations are therefore already provided for. It seems that if the statute is to be of material significance in improving the safety of the North Dakota highways, it will be applicable to situations such as those in the instant case.[15]

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CORPORATIONS — ACQUISITION OF MEMBERSHIP — CO-OPERATIVE PATRON'S APPLICATION FOR MEMBERSHIP DENIED. — The Cherry-Todd Electric Co-operative, Inc., a non-profit, non-stock, corporation was converted to a co-operative under statute. The creating statute provided that patrons of the electric co-operative were not required to become members but such patrons should have the right to become members upon such terms as may be prescribed in the by-laws. The by-laws provided, *inter-alia,* that membership could only be attained by acceptance for membership by the Board of Directors or members. A special meeting was held to vote on a proposed change of the principal place of business. Plaintiff's application for membership and right to vote at this meeting were denied. In affirming the trial court, the Supreme Court of South Dakota *held* that the co-operative acting through its Board of Directors or its members does not possess the right to deny an applicant's membership. *Meyers v. Lux,* 75 N.W.2d 533 (S. D. 1956).

Corporations may prescribe through by-laws the qualifications necessary for membership and the procedure by which membership may be acquired.[1] In the absence of statutory provisions a corporation is said to have the implied or incidental power to admit members;[2] the consent of the parties is essential since the relationship is contractual.[3] A non-profit corporation has the right to estab-

14. State v. Tjaden, 69 N.W.2d 272 (N. D. 1955).

15. In North Dakota the only automobile accident cases of a criminal nature where the physical or mental disability of the drivers has been involved are cases in which the driver was under the influence of intoxicating liquor. In State v. Hanson, 73 N.W.2d 135 (N. D. 1955), the North Dakota Supreme Court held that only the slightest physical or mental disability due to the drinking of intoxicating beverage would sustain a conviction for driving while under the influence of intoxicating liquor. If the court in so holding has adopted a policy of construing the law so as to prevent drivers with physical disabilities from driving automobiles and thereby jeopardizing the lives and property of others, it is probable that a conviction of negligent homicide obtained under conditions similar to those in the instant case would be sustained.

1. Stewart v. Monongahela Val. Country Club, 177 Pa. Super. 632, 112 A.2d 444 (1955).

2. See State v. Sibley, 25 Minn. 387 (1879); Ellerbe v. Faust, 119 Mo. 653, 25 S.W. 390 (1894).

3. 18 C. J. S., CORPORATIONS § 478.