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Torts: Fact Evidencing Contributory Negligence

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NOTES AND COMMENTS

Torts: Facts Evidencing Contributory Negligence

In the case of *Bennett v. Hall*,[1] an action was brought for damages for personal injuries alleged to have been sustained by the plaintiff through the negligent operation of defendant's automobile, resulting in a collision with the automobile which the plaintiff was driving.

There was no substantial conflict in the evidence which indicated that the accident resulted when the plaintiff, driving at a speed within the authorized limit, struck the defendant's car which had pulled on to the principal highway from a side road and into the path of the plaintiff's automobile. The plaintiff had seen the defendant's automobile approaching the highway when he (the plaintiff) was about 500 feet away from the intersection. The plaintiff watched the defendant approach the intersection, and when 300 feet away began to slow his automobile. When he realized that the defendant was not going to stop, he "applied his brakes as quickly as he could," but was unable to avoid the collision.

The Colorado Supreme Court, in a 4-1 decision, conceded that the plaintiff was travelling on a preferred thoroughfare, at a speed under the allowable limit, in his proper lane, had the right-of-way, and that the defendant was negligent, but affirmed the action of the District Court of Alamosa County in entering a judgment of dismissal.

The majority opinion, written by Justice Clark, stated that the general rule was that the driver of a motor vehicle must at all times so operate it as to maintain reasonable control over it, the degree of control being dependent upon conditions and circumstances.

The court cited *Crocker v. Johnston*,[2] in holding, "The right of way of one proceeding in the favored direction is not absolute, but he must exercise all reasonable care and keep his car under control."

The opinion then decided that the plaintiff's failure to guard against "the probability of the eventuality" furnished ample ground for a conclusion that the plaintiff was contributorily negligent.

Finally, the court concluded that under the circumstances there was no reasonable basis upon which fair minded men, without prejudice, could reach different conclusions, and that, as a matter of law, the plaintiff was contributorily negligent.

It would appear, to the contrary, that under the facts as above enunciated, the issue of contributory negligence should have been submitted to the jury.

In *Ankeny v. Talbot*,[3] the court recognized the fundamental rule that a person driving a motor vehicle on a highway has the

[1] Colo. ..., 290 P. 2d 241, 1954-55 C.B.A. Adv. Sh., Vol. 8, No. 2, P. 56, (1955).
[2] 43 N.M. 469, 95 P. 2d 214 (1939).
[3] 126 Colo. 313, 215 P. 2d 1019 (1952).

right to rely upon observance of the law by other persons driving motor vehicles thereon. The U.S. Court of Appeals, in *Thomasson v. Burlington Transportation Co.*,[4] adopted the same rule.

'53 C.R.S. 13-4-55 reads: "The driver of a vehicle about to enter . . . a highway from a private road . . . shall yield the right-of-way to all vehicles approaching on said highway."

An interesting, and applicable, analogy can be drawn from the case of *Rosenbaum v. Riggs*[5] in which the court held that where one party had the right-of-way, the other party was under a *duty* to recognize that the one having the right-of-way might not slacken speed.

It seems clear then, that the plaintiff had a *right* to assume that the defendant would not take the right-of-way from him in entering the highway in clear violation of the statutory duty.

The court in the instant case recognized the fundamental rule to be that the determination of whether the plaintiff failed to use due and proper care ordinarily should be submitted to the jury. However, it took the view that under the facts reasonable men could not differ as to the ultimate determination.

It is felt that the court should have perhaps emphasized the fundamental rule, heeding its words in *Arps v. Denver*,[6]:

> "It is only in the *clearest* of cases, when the facts are undisputed, and it is plain that all intelligent men can draw *but one* inference from them, that the question is *ever* one of law for the court."

On the above bases, the conclusion is inescapable that the court in the instant case failed to give due consideration to the effect of the duty of the defendant to stop at the intersection, and the resulting right in the plaintiff to assume that the defendant would comply with the law. Such a "right to assume a compliance with the statute" should necessarily be an element to be considered in determining whether the plaintiff exercised reasonable care under the circumstances.

It is submitted that the "right to assume compliance," along with the facts conceded by the court to be present, should be sufficient to permit the view that "the minds of reasonable men might properly reach different conclusions." Any other view, it is felt, would impose upon the driver of a vehicle on the highway the duty of guarding against, not the probability, but the "possibility of the eventuality." Such a rule would hardly be consistent with any rule of law previously applied by the Court in this state.

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[4] 128 F. 2d 355, Tenth Circuit (1942).
[5] 75 Colo. 408, 225 P. 832 (1924).
[6] 82 Colo. 189, 257 P. 1094 (1927).

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