

Michigan Law Review

Volume 38 | Issue 2

1939

NEGLIGENCE - LIABILITY FOR INJURIES FOLLOWING EMOTIONAL DISTURBANCE - FRIGHT DUE TO PLAINTIFF'S OWN PERIL

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Torts Commons](#)

Recommended Citation

Michigan Law Review, *NEGLIGENCE - LIABILITY FOR INJURIES FOLLOWING EMOTIONAL DISTURBANCE - FRIGHT DUE TO PLAINTIFF'S OWN PERIL*, 38 MICH. L. REV. 267 (1939).

Available at: <https://repository.law.umich.edu/mlr/vol38/iss2/27>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

NEGLIGENCE — LIABILITY FOR INJURIES FOLLOWING EMOTIONAL DISTURBANCE — FRIGHT DUE TO PLAINTIFF'S OWN PERIL — Plaintiff, a woman in good health, was caught in the defectively operated doors of the defendant's bus, as she was about to follow other passengers off the bus. She was released within two minutes. The doors of the bus being encased in rubber, plaintiff received no bruises, abrasions or other physical injuries; but she did suffer thereby a nervous disturbance manifesting itself in paralysis in several parts of her body. *Held*, plaintiff cannot recover for injuries resulting from emotional disturbance caused by the defendant's negligence because there was no physical injury concurrent with the emotional disturbance. *Davis v. Cleveland Ry.*, 135 Ohio St. 401, 21 N. E. (2d) 169 (1939).

Although the courts are for the most part agreed that there can be no recovery for mere fright caused by negligence,¹ they are in conflict whether there can be recovery for physical injuries resulting from fright caused by negligence. This decision note is limited to the situation in which the plaintiff's fright is due to his own physical peril caused by the defendant's negligence. It is not concerned with those cases in which the plaintiff's fright or emotional disturbance is caused by the harm done or threatened to a third party by defendant's negligence.² In the situation under discussion, the numerical weight of authority allows the plaintiff to recover for injuries resulting from emotional disturbance caused by the defendant's negligence where there is no physical impact.³ Many jurisdictions, however, still require some kind of physical impact

¹ But see Goodrich, "Emotional Disturbance as Legal Damage," 20 MICH. L. REV. 497 (1922), where it is forcibly argued that emotional disturbances are physical injuries and should be compensated for in themselves.

² Few courts allow recovery in this situation. Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 (1936); 11 A. L. R. 1119 at 1143 (1921). For the extreme to which courts have gone to allow recovery in this type of case, see *Rasmussen v. Benson*, 135 Neb. 232, 280 N. W. 890 (1938), affg. 133 Neb. 449, 275 N. W. 674 (1937), discussed in 37 MICH. L. REV. 328 (1938), where recovery was allowed for injuries and death resulting from emotional disturbance by defendant's negligence to deceased's property.

³ Hallen, "Damages for Physical Injuries Resulting from Fright or Shock," 19 VA. L. REV. 253 (1933); Throckmorton, "Damages for Fright," 34 HARV. L. REV. 260 (1921), giving the leading cases in those jurisdictions; 98 A. L. R. 402 (1935).

concurrent with the emotional disturbance before they allow recovery. In many jurisdictions this requirement is fulfilled by the slightest invasion of the plaintiff's person, and the impact need not be in the nature of bruises, abrasions or other actual injury.⁴ These courts would probably have decided the case under discussion in favor of the plaintiff. The Ohio court is one of the few courts which have resisted the trend toward recovery and which still demand cuts, bruises or abrasions concurrent with the emotional disturbance before allowing recovery. Of the many arguments at first advanced to deny recovery, that of difficulty of proof is admitted to be the only logical reason for cutting off plaintiff's right to recover.⁵ Courts requiring impact as a requisite of recovery argue that the danger of fraudulent claims can be diminished by requiring proof of some bodily touching to substantiate the truth of plaintiff's claim.⁶ The instant case,⁷ then, can be justified only on the basis that mere impact, without bruises or abrasions concurrent to the emotional disturbance, is not a sufficient guarantee of the validity of plaintiff's claim.⁸

⁴ "Such physical injury need not be indicated upon the surface of the body by bruises or otherwise. It may be caused by a fall when by reason of fright one faints. It may be slight so far as the physical injury is concerned. . . . If there was an actual invasion of the plaintiff's rights by the appreciable and wrongful application of violence to her body causing mental suffering or like injury as its proximate result, such elements may be considered in assessing damages." *Kisiel v. Holyoke Street Ry.*, 240 Mass. 29 at 31-32, 132 N. E. 622 (1921), in which plaintiff was "pushed against" the woman in front of her on a street-car. Also see *Porter v. Delaware, L. & W. R. R.*, 73 N. J. L. 405, 63 A. 860 (1906), dust in the eyes.

⁵ "As has been explained repeatedly, it is an arbitrary exception, based upon a notion of what is practicable, that prevents a recovery for visible illness resulting from nervous shock alone. . . . recognizing as we must the logic in favor of the plaintiff when a remedy is denied because the only immediate wrong was a shock to the nerves, we think that when the reality of the cause is guaranteed by proof of a substantial battery of the person there is no occasion to press further the exception to general rules." *Holmes, C. J.*, in *Homans v. Boston Elevated Ry.*, 180 Mass. 456 at 457, 62 N. E. 737 (1902).

⁶ "The conclusion [of non-recovery] is fortified by the practical consideration that where there has been no physical contact there is danger that fictitious claims may be fabricated. Therefore, where no wrong was claimed other than a mental disturbance, the courts refused to sanction a recovery for the consequences of the disturbance." *Comstock v. Wilson*, 257 N. Y. 231 at 239, 177 N. E. 431 (1931).

⁷ It is interesting to note that the court in the instant case agreed with the trend of the cases in this field, but refused to follow that trend because of the doctrine of stare decisis. The other case, *Miller v. Baltimore & O. S. W. R. R.*, 78 Ohio St. 309, 85 N. E. 499 (1908), was decided at an early stage when the doctrine favoring recovery was first developing.

⁸ See generally: *Bohlen*, "Right to Recover for Injury Resulting from Negligence without Impact," 41 AM. L. REG. N. S. 141 (1902); *Throckmorton*, "Damages for Fright," 34 HARV. L. REV. 260 (1921); *Goodrich*, "Emotional Disturbance as Legal Damage," 20 MICH. L. REV. 497 (1922); *Hallen*, "Damages for Physical Injuries Resulting from Fright or Shock," 19 VA. L. REV. 253 (1933); *Green*, "'Fright' Cases," 27 ILL. L. REV. 761 (1933); *Magruder*, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 (1936); *Harper and McNeeley*, "A Re-examination of the Basis for Liability for Emotional Distress," 1938 WIS. L. REV. 426; 98 A. L. R. 402 (1935).