Michigan Law Review

Volume 36 | Issue 5

1938

NEGLIGENCE - PROXIMATE CAUSE -TRAIN OBSTRUCTING HIGHWAY - FAILURE TO WARN OF OBSTRUCTION - ICE ON HIGHWAY

Michigan Law Review

NEGLIGENCE — PROXIMATE CAUSE — TRAIN OBSTRUCTING HIGHWAY — FAILURE TO WARN OF OBSTRUCTION — ICE ON HIGHWAY — Deceased, for whose death an administratrix sued defendant railroad, was a guest in a car which collided with a standing freight car at a highway crossing. The train was unlighted; the crossing unguarded; the visibility poor (as the accident occurred at about nine-thirty in the evening, during a snow storm). The host-driver did not see the train until he was rather close to it; but he testified that, had it not been for ice concealed under the snow on the road, he could have stopped, after he saw the car on the crossing in time to have avoided a collision. Plaintiff complains also that defendant had blocked the highway for an unreasonable time. *Held*, one judge dissenting, that the ice was the sole proximate cause of the death. *Megan v. Stevens*, (C. C. A. 8th, 1937) 91 F. (2d) 419.

There is good authority to the effect that unreasonable obstruction of the highway does not, in itself, render defendant railroad liable to one who collides with a standing train. Nor does the fact that such obstruction is in violation of a statute change the result.[1] As most of the cases of this sort involve plaintiffs who were driving at night, or in storms, bad visibility, in itself, does not seem to present a feature which will cause courts to change the result. And, in *Gilman v. Central Vermont R. R.*,[2] the fact that the road was oily was not enough to justify liability, for this condition was not caused by or known to defendant. Does the instant case, in which the driver's inability to stop in time was caused by the icy condition of the highway, present such a set of facts as will call for liability in the event that defendant fails to place warning signals at the crossing which it is obstructing? It would appear that this case could be decided without resort to the difficult problems of causation. Yet many courts apparently feel obligated to decide the case on that ground. In the instant case, for example, the majority judges held that the ice was the sole proximate cause of the death, after having pointed out that plaintiff's own evidence showed that defendant's failure to warn was not, in fact, the cause of the collision.[3] And the dissenting judge was of the opinion that defendant's negligence concurred with the icy condition, hence defendant was not relieved of liability. It would appear that the question is really one of negligence. If the dangerous road conditions could give rise to a duty not usually existing

[1] Gilman v. Central Vermont R. R., 93 Vt. 340, 107 A. 122 (1919); Simpson v. Pere Marquette R. R., 276 Mich. 653, 268 N. W. 769 (1936); Gage v. Boston & Maine R. R., 77 N. H. 289, 90 A. 855 (1914); Orton v. Pennsylvania R. R., (C. C. A. 6th, 1925) 7 F. (2d) 36; see cases collected in 15 A. L. R. 901 (1921); 56 A. L. R. 1114 (1928); 99 A. L. R. 1454 (1935).

[2] 93 Vt. 340, 107 A. 122 (1919).

[3] In the principal case, 91 F. (2d) at 422, the court states, "In each of the cases the plaintiff's own testimony was to the effect that the accident, in spite of the alleged negligence of the defendant in failing to give adequate warning of a dangerous situation, would not have happened except for the presence of the ice, which was something entirely unforeseen and for which the defendant was in no way responsible."

(and require warning signals when usually "a train upon a crossing is itself effective and adequate warning" [4]), then it appears illogical to relieve a negligent defendant when one of the conditions which would create the duty did arise. The use of the causation device in such a case would seem to be analogous to its use in the intervening criminal act cases. On the other hand, to create a duty, and permit a jury to find its breach, as against defendant railroad would suggest circumstances which affirm the existence of a duty upon the motorist to keep his car in unusually good control when driving on icy pavements. Where plaintiff is himself the driver, the situation calls for the negligence and contributory negligence formulae. Where, as here, plaintiff is a guest, these devices are less effective, and a court (especially an appellate court) may feel forced to rely on the causation device. Would a court, in a case of this general type, find negligence from the fact that defendant's employees should realize that many cars are being driven with poor brakes, and permit a judgment against defendant to stand (in a suit by a guest) when the evidence shows that the host could have stopped, after he saw the standing train, but for his defective brakes? If not, then is it not clear that the real issue in such a case is not proximate cause but, rather, negligence?