Michigan Law Review

Volume 33 | Issue 3

1935

TORTS - CONTRIBUTORY NEGLIGENCE - CARE REQUIRED OF AUTOMOBILE DRIVERS AT RAILROAD CROSSINGS

TORTS — CONTRIBUTORY NEGLIGENCE — CARE REQUIRED OF AUTOMOBILE DRIVERS AT RAILROAD CROSSINGS — Pokora, while driving his truck, approached the defendant's railroad at a crossing where his view was obstructed

by box cars standing on a switch which ran beside the main tracks. He stopped his truck at a point about ten or fifteen feet from the switch and listened and looked, so far as the obstruction permitted, and then drove upon the main tracks where he was hit and injured by defendant's train which was coming from the direction of the box cars. The trial court directed a verdict for the defendant on the ground that the plaintiff, as a matter of law, had been guilty of contributory negligence. On writ of certiorari it was *held*, that the question of contributory negligence should have been left to the jury. *Pokora v. Wabash Ry.*, 292 U. S. 98, 54 Sup. Ct. 580 (1934).

The United States Supreme Court in *Baltimore & O. Ry. v. Goodman*,[1] speaking through Holmes, J., laid down the rule that when a driver approaches an obstructed railroad crossing he has, as a matter of law, the duty to alight and go forward to an unobstructed point for observation before attempting to cross.[2] The rule announced was opposed to that of the numerical majority of the state courts.[3] The decision provoked much discussion in legal periodicals.[4] The instant case expressly overrules the dictum [5] of the *Goodman* case.[6] It is submitted that the decision in the instant case is in accord with generally accepted rules of law and involves desirable legal policy. The degree of care required should be no greater than that used by a reasonably prudent driver,[7] and to require the driver whose view is obstructed to alight from his vehicle and reconnoiter is to require a precaution uncommon today among automobile drivers. Also it is doubtful legal policy for the courts to translate standards of behavior into arbitrary rules of law. Such standards give to unscrupulous practitioners extraordinary opportunities for the successful coaching of witnesses in order that they may be sure to prove enough to escape a non-suit or a directed verdict.[8] There are

[1] Baltimore & O. Ry. v. Goodman, 275 U. S. 66, 48 Sup. Ct. 24 (1927).

[2] In the Goodman case Mr. Justice Holmes, in speaking of the duty of a driver when approaching an obstructed crossing, said (275 U. S. 66 at 70):

> "In such circumstances it seems to us that if a driver can not be sure otherwise whether a train is dangerously near he must stop and get out of his vehicle, although obviously he will not often be required to do more than stop and look. . . . We are dealing with a standard of conduct, and when the standard is clear it should be laid down once for all by the courts."

[3] For an annotation of the cases decided prior to the Goodman case, see 56 A. L. R. 647.

[4] For discussions approving the Goodman case, see 14 VA. L. REV. 379 (1928); 22 ILL. L. REV. 800 (1928); 37 YALE L. J. 532 (1928); 17 MINN. L. REV. 771 (1932). For discussions opposed to the decision, see 26 MICH. L. REV. 582 (1928); 76 UNIV. PA. L. REV. 321 (1928); 28 COL. L. REV. 250 (1928); 43 HARV. L. REV. 926 (1930).

[5] The rule laid down was dictum, for the decision could have been placed on the well-accepted rule that a driver has the duty to look and listen when approaching a crossing.

[6] Cardoza, J., in the instant case, says (54 Sup. Ct. 580 at 583): "The opinion in Goodman's case has been a source of confusion in the federal courts to the extent that it imposes a standard for application by the judge, and has had only wavering support in the courts of the states. We limit it accordingly."

[7] See HARPER, THE LAW OF TORTS, sec. 69 (1933).

[8] See Bohlen, "Mixed Questions of Law and Fact," 72 UNIV. PA. L. REV. 111 (1924).

extraordinary situations where it might easily be unreasonable for a driver to alight and reconnoiter before attempting to cross an obstructed crossing. The tracks might approach the crossing at a sharp curve,[9] or the stop might have to be made at such a distance from the crossing that a fast-moving train could be upon the driver before he could regain his vehicle and cross.[10] Also, the circumstances might render it dangerous for the driver to walk forward for an unobstructed view of the tracks.[11] The question of contributory negligence, in such cases, should remain one of fact, for the jury.

L. W. I.

[9] See Torgeson v. Missouri-Kansas-Texas Ry., 124 Kan. 798, 262 Pac. 564 (1928).

[10] See Georgia-Pacific Ry. v. Lee, 92 Ala. 262, 9 So. 230 (1891).

[11] See Dobson v. St. Louis-San Francisco Ry., 223 Mo. App. 812, 10 S. W. (2d) 528 (1928).