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Negligence - Breach of Duty - Assured Clear Distance Ahead Doctrine

Herbert A. Bernhard
University of Michigan Law School

NEGLIGENCE—BREACH OF DUTY—ASSURED CLEAR DISTANCE AHEAD DOCTRINE—Plaintiff, while driving an automobile through a tunnel, collided with defendant's truck, which was stopped without lights. The Pennsylvania Vehicle Code requires an operator to drive at such a speed as will enable him to stop within the "assured clear distance ahead."[1] Plaintiff

[1] Pa. Stat. Ann. (Purdon, 1953) tit. 75, §501 (a). Similar provisions: Mich. Comp. Laws (1948) §256.305, also §§256.511, 256.512; Ohio Rev. Code Ann. (Baldwin, 1953) §4511.21; Okla. Stat. (1951) tit. 47, §121.3; Iowa Code (1954) §321.285. The Iowa statute includes an amendment (1935) giving a driver the right to assume that all persons using the highway will obey the law. For the effect of this amendment, see 35 IOWA L. REV. 468 at 478 (1950). Cf. 62-A N.Y. Consol. Laws (McKinney, 1952) §56 (1).

alleged he was temporarily blinded by the sudden change from bright sunlight to the darkness of the tunnel. The jury found for plaintiff, but defendant's motion for judgment n. o. v. was granted. On appeal, *held,* affirmed, one justice dissenting. Plaintiff's failure to stop his automobile within the assured clear distance ahead constituted contributory negligence as a matter of law. *Notarianni v. Ross,* 384 Pa. 63, 119 A. (2d) 792 (1956).[2]

The assured clear distance ahead doctrine is almost as old as the automobile itself and states that it is negligence as a matter of law to drive a motor vehicle at such speed that it is impossible to stop within the driver's range of vision.[3] The doctrine is, in effect, a speed limit,[4] and as such it differs from the ordinary speed law only in that the limit defined by the assured clear distance ahead varies with driving conditions and the ability to see and stop under those conditions. Literally hundreds of cases[5] have been fought in trying to determine the limits of the doctrine without evolving any consistent rule. The doctrine has run into the problems inherent in an attempt to define negligence by an inflexible rule of law rather than by an objective standard,[6] and it has been periodically criticized on this basis.[7] However, the inequity caused by an inflexible rule may well be offset by the inequity which would result from letting certain types of cases go to the jury, and extraordinary situations are best treated as legitimate exceptions to the basic doctrine. While it may be properly applied in the ordinary rear-end collision case, almost every state which uses the rule does recognize some exceptions to it.[8] In Pennsylvania, it has repeatedly been held that the doctrine does not

2 On similar facts the same ruling was made in Smith v. Petaccio, 384 Pa. 74, 119 A. (2d) 797 (1956).

3 The doctrine is generally a judicially-created standard of conduct, not dependent upon a statute. However, in five states the standard has been made part of the vehicle code (note 1 supra) and can be carried over into negligence law under the per se doctrine. See 1 BLASHFIELD, CYC. AUTOMOBILE LAW AND PRACTICE, perm. ed., §§751, 752 (1948). Louisiana applies the assured clear distance ahead standard (which has not been codified there), notwithstanding La. Rev. Stat. (1950) tit. 32. §241 (B). See 18 TULANE L. REV. 648 (1944).

4 For example, the doctrine should have no application in cases where speed was proper as defined by the doctrine but the obstruction suddenly came into the driver's path. Barner v. Kish, 341 Mich. 501, 67 N.W. (2d) 693 (1954). See 7 OHIO ST. L. J. 468 (1941), for a discussion of the situations in which the doctrine should and should not apply.

5 See 42 A.L.R. (2d) 13 (1955); 31 A.L.R. (2d) 1424 (1953); 22 A.L.R. (2d) 292 (1952); 4 SHEARMAN & REDFIELD, NEGLIGENCE, rev. ed., §698 (1941; Supp. 1956). See additional cases in 47 A.L.R. (2d) 6 (1956); 38 A.L.R. (2d) 143 at 154 (1954); 30 A.L.R. (2d) 1019 (1953).

6 See PROSSER, TORTS, 2d ed., §40 (1955).

7 18 Mo. L. Rev. 79 (1953); 14 GA. B. J. 108 (1951); 28 TEX. L. REV. 120 (1949); 22 MINN. L. REV. 877 (1938); 13 NOTRE DAME LAWYER 324 (1938); 12 MINN. L. REV. 283 (1928). See also 5 WEST. RES. L. REV. 77 (1953); 22 TENN. L. REV. 435 (1952); 27 N.C. L. REV. 153 (1948); 24 IOWA L. REV. 128 (1938); 23 CALIF. L. REV. 498 (1935); 19 IOWA L. REV. 580 (1934); 27 ILL. L. REV. 570 (1933); 4 ROCKY MT. L. REV. 156 (1932); 5 WIS. L. REV. 124 (1929).

8 See generally 31 A.L.R. (2d) 1424 at 1434 (1953).

operate when the driver of the rear auto has been blinded by the lights of an oncoming car.[9] In the principal case, the court refused to extend the exception to include another type of temporary blindness. Whether the decision is due to a general desire on the part of the majority to hold the line at the previously announced exception, or whether the court simply felt that in this particular instance plaintiff should have anticipated the blindness from his prior trips through the tunnel, is not altogether clear. The principal case illustrates one of the particularly harsh applications of the assured clear distance ahead rule, for the application of the doctrine of contributory negligence insulates from liability the person whose prior negligence caused the obstruction which gave rise to plaintiff's negligence as a matter of law.[10] However, a cure should be wrought by change in the contributory negligence doctrine itself, and not, as the dissenting justice advocated, by chipping at valid doctrines when a hard case arises.[11]

Herbert A. Bernhard

9 Wolfe v. Beardsley, 357 Pa. 1, 53 A. (2d) 92 (1947), and cases cited therein. *Contra,* Nevill v. Murdey, 333 Mich. 486, 53 N.W. (2d) 344 (1952). See generally 22 A.L.R. 292 (1952). This exception seems unfortunate in that the existence of such lights is easy to claim as a means of access to the jury and it is by no means clear why a motorist should not be required to slow up when so blinded just as the same court will require him to do in the ordinary assured clear distance ahead case.

10 Compare the difficult situation which arises in last clear chance cases, e.g., O'Rourke v. McConaughey, (La. App. 1934) 157 S. 598.

11 In some jurisdictions an opposite result might have been reached on the facts of the principal case by viewing the defendant's act as a wanton one which contributory negligence will not insulate. Cf. Inter-City Trucking Co. v. Daniels, 181 Tenn. 126, 178 S.W. (2d) 756 (1944). See 19 TENN. L. REV. 795 (1947); Spangenberg, "Developments in the Law of Wanton Misconduct and Nuisance in Relation to the Assured Clear Distance Ahead Rule," 23 OHIO ST. BAR ASSN. REP. 227 (1950).