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Torts - Guest Statute - Carpools

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TORTS—GUEST STATUTE—CARPOOLS—Plaintiff, a passenger, and defendant's decedent, the driver on the day in question, were two of six members of a carpool, each of whom drove every sixth day from the town where they all lived to the place of their common employment, thereby effecting a saving to each of approximately five dollars per week. As a result of a collision due to ordinary negligence of the driver, plaintiff was injured and sued for damages, alleging that he was not a guest passenger. The court submitted to the jury the question of whether plaintiff was a passenger for hire or a guest. On appeal from a verdict for plaintiff, *held,* affirmed. There was sufficient evidence to submit to the jury the question of whether the main purpose of the carpool was financial. Since payment for transportation does not necessarily require a money consideration, jury could properly determine that the benefit accruing to each member of the pool

was the right to demand a corresponding service from other members of the pool. *Collins v. Rydman,* 344 Mich. 588, 74 N.W. (2d) 900 (1956).

The purpose of Michigan's automobile guest statute[1] is to protect owners and operators of automobiles from suits arising out of the ordinary negligence of the driver while gratuitously transporting another.[2] The interpretation of the statute has raised questions as to what constitutes "gross negligence or wilful and wanton misconduct,"[3] the definition of payment for transportation,[4] and what general circumstances are required to place a passenger within or without the operation of the statute.[5] The Michigan court has held that the word "guest," as used in the statute, connotes a "social relationship,"[6] but that a person may still be a guest within the meaning of the statute even though he pays for part[7] or all[8] of the gasoline expenses, or even if he shares in the driving.[9] If the passenger, however, makes an agreement before the trip to pay the driver a set price for transportation, he may be placed in the category of passenger for hire.[10] Carpools contain both business and social elements, and therefore present a difficult problem for the courts. Carpools of the type where one driver transports a group of passengers and receives a pre-determined price for the transportation, or a percentage of costs, approach the passengers-for-hire situation, in that repeated transportation plus cash payments carry with it the characteristics of a business arrangement.[11] Carpools of the rotation

1 ". . . [P]rovided, however, that no person, transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been caused by the gross negligence or wilful and wanton misconduct of the owner or operator of such motor vehicle and unless such gross negligence or wilful and wanton misconduct contributed to the injury, death or loss for which the action is brought." Mich. Comp. Laws (1948) §256.29.

2 Castle v. McKeown, 327 Mich. 518, 42 N.W. (2d) 733 (1950). ". . . [I]t is unjust to impose liability upon one who offers a free ride for his guest's convenience . . . [and] there is a peculiar opportunity for collusion between host and guest, both desiring to establish liability in order to defraud insurance companies." 47 MICH. L. REV. 854 (1949).

3 35 MICH. L. REV. 804 (1937).

4 Peronto v. Cootware, 281 Mich. 664, 275 N.W. 724 (1937); McGuire v. Armstrong, 268 Mich. 152, 255 N.W. 745 (1934).

5 See, generally, 47 MICH. L. REV. 854 (1949); 41 MICH. L. REV. 157 (1942).

6 Anderson v. Conterio, 303 Mich. 75, 5 N.W. (2d) 572 (1942) (demonstration of automobile by salesman to prospective buyer does not give rise to host-guest relationship); McGuire v. Armstrong, 268 Mich. 152, 255 N.W. 745 (1934) (transportation of charity patient in automobile of county nurse for medical treatment does not give rise to host-guest relationship).

7 Brody v. Harris, 308 Mich. 234, 13 N.W. (2d) 273 (1944); Bushouse v. Brom, 297 Mich. 616, 298 N.W. 303 (1941).

8 Morgan v. Tourangeau, 259 Mich. 598, 244 N.W. 173 (1932).

9 In re Harper's Estate, 294 Mich. 453, 293 N.W. 715 (1940).

10 Johnson v. Mack, 263 Mich. 10, 248 N.W. 534 (1933) (passenger who paid thirty cents a day for transportation was a passenger for hire); Wojewoda v. Detroit, 264 Mich. 277, 249 N.W. 850 (1933) (passenger who paid one dollar a week for transportation was held to be a passenger for hire).

11 See note 10 supra. The leading case on the subject appears to be Miller v. Fairley, 141 Ohio St. 327, 48 N.E. (2d) 217 (1943), wherein the court stated (at 337): "Generally, when it appears that a contract for transportation bears one or more of the indicia of a

type, where no money is exchanged, but members take turns driving their own cars, had been considered by the Michigan court on two previous occasions with inconclusive results. In *Everett v. Burg*[12] six employees alternated each week in the use of their cars for transportation to and from their place of employment. One of them, not having a car, agreed to pay the driver, whoever he might be, seventy-five cents a week for such transportation. In a suit for personal injuries brought by one of the passengers who possessed an automobile, the court held that the plaintiff was a guest, and hence could not recover in the absence of pleading gross negligence on the part of the driver. The court stated that the relationship was simply the exchange of amenities between fellow employees.[13] In *Bond v. Sharp*[14] the plaintiff and defendant made an agreement whereby each party would drive his automobile for one week alternately, and if in default, the party so required to drive would pay to the other one dollar for each day he failed to drive. The court, stressing this latter fact, held that the agreement was not for social purposes, but was purely a business arrangement, and hence the guest statute did not apply. In the instant case, the court followed the rationale of the *Bond* decision, and thus brought Michigan in line with the great majority of jurisdictions which have considered the rotation carpool.[15] Undoubtedly there are some elements of "sociability" in carpools, but since, for the most part, the very incentive for their organization is a saving of cost or a desire for convenience, they should be categorized as primarily business arrangements, rather than a host-guest relationship, and as such, they should be outside the scope of the guest statute.

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business arrangement and especially where such arrangement is specifically for transportation . . . or contemplates repeated and more or less regular rides, even though the ultimate purpose may be for pleasure, the person paying for gasoline and oil consumed, or other automobile expenses, is held to be a passenger and not a guest." *Accord:* Kelly v. Simoutis, 90 N.H. 87, 4 A. (2d) 868 (1939); Dennis v. Wood, 357 Mo. 886, 211 S.W. (2d) 470 (1948); Fountain v. Tidwell, 92 Ga. App. 199, 88 S.E. (2d) 486 (1955); Rosa v. Briggs, 200 Ore. 450, 266 P. (2d) 427 (1954); Dirksmeyer v. Barnes, 2 Ill. App. (2d) 496, 119 N.E. (2d) 813 (1954); Jensen v. Mower, 4 Utah (2d) 336, 294 P. (2d) 683 (1956).

12 301 Mich. 734, 4 N.W. (2d) 63 (1942).

13 "Practically every interchange of amenities and hospitality, when very carefully analyzed, may appear to be a quid pro quo arrangement, but this does not prevent the relationship from being that of host and guest." Id. at 736.

14 325 Mich. 460, 39 N.W. (2d) 37 (1949).

15 See 38 ILL. L. REV. 293 (1944). See generally 146 A.L.R. 640 (1943), 161 A.L.R. 917 (1946). *Accord:* Peccolo v. Los Angeles, 8 Cal. (2d) 532, 66 P. (2d) 651 (1937); Coerver v. Haab, 23 Wash. (2d) 481, 161 P. (2d) 194 (1945); Ott v. Perrin, 116 Ind. App. 315, 63 N.E. (2d) 163 (1945); Huebotter v. Follett, 27 Cal. (2d) 765, 167 P. (2d) 193 (1946); Sparks v. Getz, 170 Kan. 287, 225 P. (2d) 106 (1950); Riggs v. Roberts, 74 Idaho 473, 264 P. (2d) 698 (1953).